

IN THE COURT OF APPEALS OF IOWA

No. 0-86 / 89-579

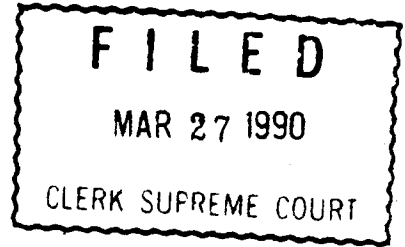
ROGER G. VAN HOFF,

Appellant,

vs.

STATE OF IOWA,

Appellee.



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Appeal from the Iowa District Court for Lee County,
D. B. Hendrickson, Judge.

Appellant appeals from a district court ruling denying
his challenge to a decision of the prison disciplinary
committee. **AFFIRMED.**

Raymond E. Rogers, State Appellate Defender, and Andi
S. Lipman, Assistant State Appellate Defender, for
appellant.

Thomas J. Miller, Attorney General; Gordon E. Allen,
Deputy Attorney General; and Kristin W. Ensign, Assistant
Attorney General, for appellee.

Considered by Donielson, P.J., and Hayden and Habhab,
JJ.

HABHAB, J.

Appellant, Roger Van Hoff, appeals from a district court ruling denying his challenge to a decision of the prison disciplinary committee. Appellant challenges the sufficiency of the evidence to sustain the disciplinary charges against him. Specifically, he argues that the contents and reliability of the confidential informant's report cannot be determined of record. Appellant also challenges the prison disciplinary committee's consideration of a polygraph examination given to another inmate and appellant's refusal to take such an examination. We affirm.

Appellant, an inmate at the Iowa State Penitentiary, was accused of manufacturing a "shank," a crude homemade knife, and giving it to another inmate. The prison disciplinary committee found appellant to be in violation of several prison rules and, accordingly, imposed disciplinary sanctions upon him. Appellant brought this postconviction action, after exhausting his administrative remedies, in order to challenge the prison disciplinary committee's decision.

Postconviction relief actions are treated as special proceedings at law and review is on assigned errors only. Morris v. Auger, 414 N.W.2d 858, 859 (Iowa App. 1987). A prison disciplinary committee's findings of fact and decision are not subject to Monday-morning-quarterbacking upon judicial review if there is some evidence to support

the committee's decision. See Superintendent v. Hill, 472 U.S. 445, 454, 105 S. Ct. 2768, 2777, 86 L. Ed. 2d 356, 364 (1985). Upon our review of the record, excluding consideration by the committee of the appellant's refusal to submit to a polygraph examination, we find the prison disciplinary committee's decision to have been supported by some evidence. See Wilson v. Farrier, 372 N.W.2d 499, 501 (Iowa 1985).

We do note, however, that polygraph examination evidence should not be used as evidence in disciplinary cases unless the inmate stipulates to its use. Cf. State v. Conner, 241 N.W.2d 447, 457 (Iowa 1976) (unstipulated polygraph evidence may not be submitted). By the same token, we also conclude that in its case in chief an inmate refusal to take a polygraph examination should not be used as evidence. We do not necessarily preclude its use, however, should the inmate in the presentation of his case generate a fact question in such manner that it makes such refusal otherwise admissible.

We conclude since some evidence exists in this case, other than the polygraph evidence, which supports the decision of the disciplinary committee, the introduction into evidence of the refusal to take the polygraph was harmless.

AFFIRMED.