IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 5-615 / 95-0276

CHARLES HIGHTOWER,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Jones County, David M. Remley, Judge.

Hightower appeals the district court's ruling denying him postconviction relief from the imposition of prison discipline for violating the rule against gang activity.

AFFIRMED.

Patrick Ingram of Mears Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, and Kristin W. Ensign, Assistant Attorney General, for appellee.

Considered by Hayden, P.J., and Cady and Huitink, JJ.

PER CURIAM

In January 1994 the applicant, Charles Hightower, received a disciplinary notice at the Iowa Men's Reformatory charging him with violating various prison rules including rule 42 (unauthorized group or gang conduct). The disciplinary notice specifically stated:

> Investigation has revealed that since his arrival at IMR on 9-13-93 inmate Hightower has been actively involved with the Vice Lords (VLs) gang at this institution. Inmate Hightower has achieved the rank of "Chief of Defense" in the VL gang IMR.
>
> As a VL member Hightower has conspired with VL members to "violate" through act of physical violence, other VLs who do not follow the gang's law and codes of conduct.
>
> Certain confidential information and names of those providing this information has been deleted from the body of this report to preserve the peace, tranquility, and orderly running of the institution.

The committee found Hightower had violated the rule against gang conduct and imposed sanctions including disciplinary detention and loss of good conduct time.

After exhausting his administrative remedies, Hightower filed an application for postconviction relief in March 1994 claiming in part (1) he did not receive sufficient notice of the charges against him; (2) the confidential informants were not reliable; and, (3) the rule regarding gang activity was unconstitutionally vague.

After a hearing, the district court entered a ruling denying postconviction relief. First, the court determined notice was not unconstitutionally insufficient because, if the identity of the informants had been released, Hightower may have been motivated to

retaliate or cause disruption within the prison. Second, after reviewing the confidential information, the court determined the informants were credible and there was sufficient evidence to support the disciplinary action taken by the disciplinary committee. Lastly, the court found the prison rule against gang activity was not unconstitutionally vague because the rule clearly prohibited Hightower's conduct in being an officer in the gang and enforcing gang rules by a conspiracy to commit violence.

On February 16, 1995, Hightower filed a notice of appeal.

I. Standard of Review.

Ordinarily, our review of postconviction relief proceedings is for errors of law. *Hinkle v. State*, 290 N.W.2d 28, 30 (Iowa 1980). However, when a postconviction petitioner asserts violation of constitutional safeguards, we make our own evaluation based on the totality of the circumstances. This is the equivalent of de novo review. *Id.* All issues raised by Hightower involve violation of constitutional safeguards. As such our review is de novo.

II. Notice.

Hightower claims notice was insufficient because he was not told what he had done or when he had done it, and he was not given the names of the other people involved in the incident leading to punishment.

The adequacy of notice depends on whether or not it allows the inmate to "marshall the facts" and prepare a defense. *Freitas v. Auger*, 837 F.2d 806, 809 (8th

Cir. 1988). Notice is sufficient to allow a prisoner to prepare a defense when it contains the following information: (1) the date and general time the alleged incident took place, as well as the place where the alleged incident occurred; (2) the general description of the alleged incident itself for which the prisoner is being charged, and the citation for the prison rules allegedly violated; and, (3) the identity of any other person, if any, involved in the incident. *Rinehart v. Brewer*, 483 F. Supp. 165, 169 (S.D. Iowa 1980).

Nonetheless, prison officials may delete from the notice specific facts concerning the incident if the inclusion would result in security problems for the institution. *Id.* Furthermore, prison officials have discretion in refusing to disclose the identify of confidential informants in order to secure the safety of persons providing information. *James v. State*, 479 N.W.2d 287, 291 (Iowa 1991); *see Freitas*, 837 F.2d at 809 (notice upheld where notice did not state the dates, place, or parties involved when the risk of revealing the information may have endangered the informant); *Gladson v. State*, 439 N.W.2d 214, 216 (Iowa App. 1989) (notice upheld where it did not name co-conspirators when the release of such information would allow inmates through the process of elimination to determine which if any co-conspirators were confidential informants).

In this case, the notice informed Hightower he violated rule 42 because he was actively involved with a gang since his arrival at IMR, he had achieved the high rank

of chief of defense, and he had conspired with VL members to "violate" through acts of physical violence VLs who failed to follow the gang's laws. Prison officials were justified in deleting from the notice specific facts concerning dates, times, places, co-conspirators, and the confidential informants. If such information had been disclosed in the notice, Hightower may have retaliated against the informants endangering their lives and the safety of the institution.

III. Reliability of Confidential Information.

We have held confidential information statements may provide sufficient evidence for prison disciplinary action. *James*, 479 N.W.2d at 291. "When an inmate is disciplined on the basis of confidential information, however, his interest in a fair hearing requires that there be some indication of the confidential informant's reliability." *Id.* There must be sufficient information in the record to convince a reviewing authority the disciplinary committee made an inquiry and correctly concluded the confidential information was credible and reliable. *Id.* Furthermore, in order to meet the minimum constitutional requirements, the findings of a prison disciplinary committee must be supported by "some evidence" in the record. *Backstrom v. Iowa District Court for Jones County*, 508 N.W.2d 705, 709 (Iowa 1993).

We determine the trial court did undertake a proper inquiry and correctly concluded the confidential information was credible and reliable. Witnesses testified the committee knew where the confidential information came from and found the

informants reliable. The committee is not required to state why it believes the confidential information was credible. *Williams v. State*, 421 N.W 2d 890, 893 (Iowa 1988) As such, the showing of credibility was sufficient to provide Hightower with due process. *See Nidav v. State*, 353 N.W.2d 92, 95 (Iowa 1984). Additionally, there is "some" evidence supporting the committee's findings as it based its decision on several pieces of evidence including: the confidential information, the report of Officer Sperfslage, the witness statements, and Hightower's own statements at hearing. As such, the confidential information was reliable and there was "some evidence" in the record to find Hightower guilty of violating prison disciplinary rule 42.

IV. Unconstitutionality of Rule 42.

Hightower contends prison rule 42 is unconstitutionally vague. "[D]isciplinary rules of penal institutions do not define crimes, and the full criminal-law strictures on vagueness are inapplicable. Since sanctions are involved, however, disciplinary rules must be intelligible." *Winnett v. State*, 472 N.W.2d 625, 626 (Iowa App. 1991) (quoting *Fichtner v. Iowa State Penitentiary*, 285 N.W.2d 751, 759 (Iowa 1979). In order to withstand constitutional attack, a penal statute must (1) give a person of ordinary intelligence fair notice of what is prohibited and (2) provide an explicit standard for those who apply it. *Winnett*, 472 N.W.2d at 627. We presume the rule is valid and seek an interpretation which supports the constitutionality of the rule. *Id.* Prison rule 42 states:

> 42. **Unauthorized Group/Gang Conduct:** An inmate commits an offense under this subsection when the inmate
> a. Originates, promotes, participates in, recruits for, etc., any unauthorized group, organization, gang, clique, association, etc., or,
> b. Communicates involvement in any unauthorized groups through written, verbal, physical appearance, hand signs, symbols, photographs, association with others, etc., or,
> c. Possesses, creates, reproduces, or transmits any materials related to unauthorized group/gang activities.

We determine rule 42 provides fair and adequate notice that participation in gang activity, achieving a high rank in a gang, and enforcing gang rules through violence are prohibited and punishable by appropriate sanctions. This is thoroughly intelligible on the face of the rule and provides sufficient notice to inmates. *See Winnett*, 472 N.W.2d at 627. Furthermore, the rule provides explicit standards for those who apply it. As such, prison rule 42 is not void for vagueness. *See id.*

AFFIRMED.