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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed May 31, 1983

112

CHARLES O. REESE,

Plaintiff-Appellant,

vs.

CRISPUS NIX,

Defendant-Appellee.

3-09
2-68354

Appeal from Lee District Court, David E. Hendrickson, Judge.

Plaintiff, an inmate of the Iowa State Penitentiary at Fort Madison (ISP), appeals a trial court ruling denying relief on his petition for habeas corpus, which petition challenged his placement in administrative segregation by prison officials. Hearing ordered with 30 days to determine the propriety of continued administrative segregation. AFFIRMED WITH DIRECTIONS.

Christine S. Marshall, Fort Madison, for plaintiff-appellant.

Thomas J. Miller, Attorney General, and Layne M. Lindebak, Assistant Attorney General, for defendant-appellee.

Considered by Oxberger, C.J.,and Donielson, Snell, and Schlegel, JJ.

Hayden, J., takes no part.

PER CURIAM

Plaintiff, an inmate of the Iowa State Penitentiary at Fort Madison (ISP), appeals a trial court ruling denying relief on his petition for habeas corpus, which petition challenged his placement in administrative segregation by prison officials. We affirm with directions.

The entire inmate population of I.S.P. was placed under a general lockdown in the aftermath of a serious prison riot in September 1981. As a result of the lockdown, several prisoners were transferred to different cellhouses for administrative purposes. Plaintiff was transferred on November 3 to cellhouse 419, which prior to the lockdown was used to house prisoners in segregation. During the lockdown, no distinction was made between those prisoners housed in cellhouse 419 and other cellhouses, except that when the lockdown was gradually lifted, cellhouse 419 was the last to be released. The lockdown for cellhouse 419 ended on January 14, 1982.

After the lockdown, prison officials notified plaintiff that he was to appear before a classification board for possible classification into indefinite administrative segregation on the grounds that he was a management problem. After his appearance and a hearing, which took place on January 29, 1982, the classification board ruled that plaintiff was to be placed in indefinite administrative segregation. He has remained there since that date.

Plaintiff's petition for habeas corpus came up for hearing on February 2, 1982. The trial court held that prison officials had met the "objective guidelines" for administrative segregation required by due process and federal court opinions. The court did not specify the "objective guidelines," but the court did note that prison officials were faced witn a task of orderly management of the prison in the aftermath of a serious riot and that inmate Reese had an extensive record of misconduct in prison.

On appeal, plaintiff argues preliminarily that he is entitled to due process protections prior to administrative segregation because he has a liberty interest in being part of the general prison population rather than suffering the alleged

additional constraints of administrative segregation. He also contends the trial court erred by failing to state the "objective standards" which it found had been applied by prison officials and by failing to address several other matters.

Defendant contends that plaintiff's correct procedural remedy would be an action for postconviction relief rather than a petition for habeas corpus. Defendant also contends that for the first part of the time period in controversy, plaintiff was not entitled to due process protections because he was not deprived of any liberty available to the general prison population but rather was merely transferred from one cellhouse to another during the course of a post-riot "lockdown" which affected the entire prison population. Finally, defendant contends that when plaintiff was eventually placed in administrative segregation differing from the treatment of the general prison population, he was accorded due process.

I. Scope of Review

Because plaintiff has asserted a violation of a basic constitutional safeguard, our review is an independent evaluation of the circumstances on this issue. Lawson v. State, 280 N.W.2d 400, 401 (Iowa 1979). This is the same as a de novo review. Kellogg v. State, 288 N.W.2d 561, 563 (Iowa 1980).

II. Jurisdiction

Defendant argues that the district court was (and that we are) without jurisdiction because plaintiff initiated this action under Iowa Code chapter 663 (Habeas Corpus) rather than chapter 663A (Postconviction Procedure). Defendant argues that chapter 663A is plaintiff's exclusive remedy for challenging the lawfulness of his restraint. We do not agree.

We admit that Iowa Code section 663A.2(5) provides a remedy for an inmate unlawfully placed in administrative segregation. However, section 663A.2(6) provides that the remedy "comprehends and takes the place of all other common law, statutory, or other remedies formerly available for challenging the validity of

the conviciton or sentence." (emphasis added). Plaintiff is not challenging the validity of his conviction or his sentence. He is therefore not limited to remedies available under postconviction procedure.

III. Due Process

As the court noted in Langley v. Scurr, 305 N.W.2d 418, 420 (Iowa 1981), "prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." When an inmate is threatened with indefinite administrative segregation, due process requires three things: first, it requires a hearing to determine whether or not the inmate should be classified into administrative segregation; second, it requires that classification be made according to objective standards; third, it requires periodic review of the inmate's continued confinement.

We are satisfied that the requirements of due process have been met in the present case. Plaintiff was granted an adequate hearing, at which he had the opportunity to to present his side of the issue. He was given sufficient notice of the hearing to prepare for his appearance before the committee. See Wolff v. McDonell, 418 US 539 (1974)(minimum period of notice prior to disciplinary hearing set at 24 hours). The fact that the hearing lasted no more than half an hour is not fatal. In Langley v. Scurr, the hearing lasted "only a few minutes," yet this did not stir the court to hold that due process had been violated.

Likewise, we are not persuaded by plaintiff's claims that the committee members were not impartial. There is no indication of personal prejudice on the part of any of the three committee members, beyond the fact that, as prison officials, all three had been involved in prior disciplinary actions against plaintiff. "It is of course required that the tribunal be sufficiently impartial but the tribunal need not be recruited from outside the institution." Langley v. Scurr, at 420.

We agree with the lower court that the review committee was aware of the criteria established in US v. Cuyler, 454 F. supp 51 (E.D. Penn 1978) and applied

them as objective standards in plaintiff's case.

Under the standard announced in Cuyler, prison officials must consider the inmate's conduct record (specifically the nature, recentness, and frequency of misconduct), his release on institutional stability in determining whether he should be segregated in administrative confinement. All of these factors were reviewed in defendant's classification summary.

Plaintiff's prison record includes 18 disciplinary reports between June 1976 and December 1977, at which time he was transferred to a Minnesota prison under the Interstate Corrections Compact. Plaintiff was transferred back after experiencing disciplinary problems in Minnesota, and since his return has received 9 disciplinary reports. Included in his record are reports for disobedience, threats, attempted assault, assault, possession of contraband, and disruptive behavior. Plaintiff's psychological report classified him as an antisocial personality "who has the potential to develop into a chronic disciplinary problem." Plaintiff's record indicates his potential has been realized. The lower court correctly ruled that "the decision of the Committee to continue administrative segregation was supported by the record, and the Committee, to the extent possible, adhered to the guidelines set forth in US v. Cuyler."

There are two other points which we are obliged to address. First, we agree with plaintiff that due process requires a hearing prior to the imposition of administrative segregation, and that plaintiff was not accorded a hearing until after his placement in administrative segregation. However, we are not obliged to remedy such an error in a habeas corpus proceeding. The only remedy available in a habeas corpus proceeding is release, and release is mandated only where continued administrative segregation would be illegal.

> It is well settled that a prisoner has no right to a writ of habeas corpus unless he is entitled to immediate release. . . The writ is available only where the release of the prisoner will follow as a result of a decision in his favor. It will be denied where it is apparent that the only result, if the writ were issued, would be the remanding of petitioner to custody.

Wright v. Bennet, 131 N.W.2d 155, 156 (Iowa 1965). In the present case, plaintiff received an admittedly belated hearing which resulted in a determination that plaintiff should be placed in administrative segregation.

> The final question remains of the proper remedy to be afforded the petitioners. The difficulty in this regard is the fact that the issue is largely moot, since petitioners have received their hearing, however untimely. To vacate the decision of the [committee] would be a meaningless action.

Rinehart v. Brewer, 360 F Supp 105, 115-16 (D.C. Iowa 1973).

As a last point, we note the continuing requirement of periodic meaningful review of plaintiff's administrative segregation. The trial court, in denying the writ, ruled that "continued administrative confinement shall be evaluated periodically and a decision to further continue administrative confinement must be supported by specific evidence of some or all of the applicable criteria in Cuyler." We agree. Plaintiff has been held in administrative segregation for over a year. The record does not indicate whether or not his continued segregation has been reviewed. We therefore affirm the denial of the writ and further implement the trial court's order by directing that a hearing be convened within 30 days to review the propriety of continuing administrative segregation under the standards announced in Cuyler. Any continued segregation must be reviewed periodically thereafter. If periodic reviews are not provided, plaintiff can petition for release based upon that issue. See Ely v. Haugh, 172 N.W.2d 144, 151 (Iowa 1969).

AFFIRMED WITH DIRECTIONS.

All judges concur except Oxberger, C.J., who dissents.