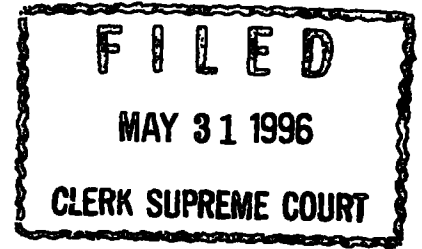


IN THE COURT OF APPEALS OF IOWA

No. 6-148 / 95-0331



ROGER VAN HOFF,

Appellant,

000407

vs.

STATE OF IOWA,

Appellee.

**Appeal from the Iowa District Court for Jones County, Thomas L. Koehler,
Judge.**

**Roger Van Hoff appeals the district court's denial of his application for
postconviction relief from his prison discipline **AFFIRMED.****

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

**Thomas J Miller Attorney General, and Bruce Kempkes, Assistant Attorney
General, for appellee**

Considered by Sackett, P J . and Habhab and Streit, JJ Vogel, J., takes no part.

STREIT, J.

000408

Roger Van Hoff appeals the district court's denial of postconviction relief of Van Hoff's prison disciplinary actions. We find Van Hoff is not entitled to postconviction relief and affirm the district court.

On December 11, 1993, Van Hoff was searched by a correctional officer, and a note with a written message was found. The disciplinary committee found Van Hoff guilty of violating Rule 16 for passing or attempting to pass a note. Van Hoff argues that mere possession is insufficient evidence of such a violation.

On January 18, 1994, a correctional officer found a magazine in Van Hoff's cell. The disciplinary committee found Van Hoff guilty of violating Rule 16, as a serious violation, for possessing the magazine

Van Hoff exhausted his administrative appeals and applied for postconviction relief. Following a hearing the district court affirmed the disciplinary committee specifically finding there was sufficient evidence to support the decisions of the disciplinary committee

Van Hoff appeals claiming the magazine violation should be classed as a minor violation, that he failed to get sufficient notice that such an act would be considered a major violation, and that there was insufficient evidence of the note violation

I. Standard of Review.

There is a unique standard for reviewing decisions by prison disciplinary committees not involving constitutional issues. Our role is not to afford a de novo review of the committee's findings. *Hoepfner v. State*, 379 N.W.2d 23, 25 (Iowa App. 1985). Instead, we look to see whether "some evidence" exists which would support the committee's decision. *Backstrom v. Iowa Dist. Court for Jones County*, 508 N.W.2d 705, 709 (Iowa 1993). This means we largely defer to the findings of the committee. *Id.* The relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board. *Hoepfner v. State*, 379 N.W.2d 23, 25 (Iowa App. 1985). Our sole question for review is "whether there exists *any evidence at all*, that is, whether there is *any* basis in fact to support the action taken by prison officials." *Mahers v. State*, 437 N.W.2d 565, 569 (Iowa 1989). We conduct a de novo review only when constitutional issues have been raised. *Id.*

II. Improper Conduct.

We find some evidence exists to support the discipline imposed

Van Hoff complains there was insufficient evidence of a Rule 16 violation for his passing or attempting to pass the note found in his possession. Van Hoff urges that because the note was difficult to read and the intended recipient was not shown, he could not be disciplined. This is without merit. The record shows that Van Hoff possessed a note with a message on it. Van Hoff had multiple explanations on its

nature. He admitted at one time that he was running the message from Glen Hurst to his uncle in the prison. He now claims he did not intend to deliver the actual note, only the message in the note. The disciplinary finding that he possessed the note with intent to pass it was supported by his mere possession and his admission of his intent to deliver the note. Actual delivery is not required. *Guy v. State*, 396 N.W.2d 197, 202 (Iowa App. 1986).

Van Hoff further urges that he did not have sufficient notice of the rule against magazine possession by disciplinary detainees. There was some evidence the written rules handed out to inmates in disciplinary status state that all magazines are banned and that it is a serious violation to have such material in an inmate's possession. The administrative law judge testified that all these things are in the written rules given to the inmates in discipline

Van Hoff claims that he should get credit for his time served awaiting his appeal to the warden from the disciplinary action. There was evidence before the district court concerning credit for the time Van Hoff spent in detention. Van Hoff was not in the disciplinary living unit despite his status, because of space problems. The administrative law judge stated that Van Hoff received proper credit because the hearing was held within four days and he was living in the LUB unit—a general population unit. There was some evidence of Van Hoff receiving proper credit

In light of the deference given to the disciplinary committee and our low standard of review, we find Van Hoff's contentions to be without merit. We affirm the decision of the district court.

AFFIRMED.