IN THE COURT OF APPEALS OF IOWA

No. 5-476 / 94-1389

GREGG QUIGLEY,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Jones County, August F. Honsell, Judge.

The applicant appeals from the district court's ruling denying his application for postconviction relief challenging prison discipline for his involvement in drug transactions within the institution. **AFFIRMED.**

Philip B. Mears of Mears Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, and William A. Hill, Assistant Attorney General, for appellee.

Heard by Hayden, P.J., and Habhab and Huitink, JJ.

HABHAB, J.

Dewey Allison, an inmate at the Clarinda Correctional Facility, implicated applicant Gregg Quigley, a fellow inmate, along with other inmates, with participation in drug transactions within the facility in violation of its rules. An ensuing investigation implicated a correctional officer, Connie Troxel, in the transactions. Troxel was fired and also criminally charged for her role in the transactions. Troxel implicated Quigley in the transactions. Troxel ultimately received a deferred judgment on the criminal charges with six months probation.

On January 27, 1993, Quigley received his disciplinary report charging him with facility rule violations involving drug transactions, unauthorized possession, and attempt or complicity on the basis of the drug transactions. The report indicated the charges were based on confidential information which apparently rested on the statements of Allison and Quigley. Quigley indicated to a prison investigator he could not call witnesses without having specific dates regarding the drug transactions. Quigley ultimately learned during discovery in the criminal prosecution against him involving the drug transactions the confidential information included the statements of Allison and Quigley.

A prison administrative law judge ultimately found Quigley guilty of violating the facility rules as charged. The judge imposed a sanction of thirty days disciplinary detention, 365 days of administrative segregation, and a loss of 1825 days of good time with a recommended transfer to a cell environment. During Quigley's

administrative appeals, the loss of good time was reduced to sixteen days. The judge made a determination the confidential informants were reliable.

After Quigley exhausted his administrative remedies, he filed an application for postconviction relief challenging the prison discipline on June 16, 1993. He asserted he did not receive adequate notice of the charges against him, he was not given counsel substitute, and the confidential information was not reliable. After a trial to the court, the district court entered a ruling on July 27, 1995, denying Quigley postconviction relief. The court rejected his claims.

Quigley appeals.

I. ***Scope of Review.*** Postconviction proceedings are law actions which are triable to the court and ordinarily reviewed on error. *Polly v. State*, 355 N.W.2d 849, 854 (Iowa 1984). When an issue involving the denial of a constitutional right is alleged on appeal, however, we make our own evaluation of the totality of circumstances in a de novo review. *Kinnersley v. State*, 494 N.W.2d 698, 699 (Iowa 1993).

II. ***Notice.*** Quigley's first contention is the notice given to him was constitutionally insufficient. As a result, Quigley argues he did not have the opportunity to defend himself.

In discussing the issue of notice in prison disciplinary matters, our supreme court has provided the following guidance:

> Our analysis, reflecting that of the Supreme Court, focuses on whether the prison officials have successfully apprised the inmate of the relevant charges. We look to the time, place and nature of the alleged activity, although we allow officials to delete some facts in the notice to the prisoner if disclosure threatens the security of the institution. For example, prison officials sometimes rely on confidential informants for incriminating information; revelation of certain names or facts may lead the prisoners charged with infractions to retaliate against the informants. *See, e.g., Morris v. Auger*, 414 N.W.2d 858, 861 (Iowa App. 1987) (citing *Wolff*, 418 U.S. at 562, 94 S. Ct. at 2978, 41 L. Ed. 2d at 954). If prison officials use confidential information in their investigation, however, they must state that fact in the disciplinary notice to the prisoner. *Morris*, 414 N.W.2d at 860.

Backstrom v. Iowa Dist. Court, 508 N.W.2d 705, 708 (Iowa 1993). "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." *Morris v. Auger*, 414 N.W.2d 858, 860 (Iowa 1987) (quoting *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S. Ct. 2963, 2975, 41 L. Ed. 2d 935, 951 (1974)).

The disciplinary notice Quigley alleges was constitutionally insufficient was as follows:

> Based upon confidential information, Greg Quigley is being placed on report for being involved in drug transactions during the months of November 1992 through January 1993 at MHI and the Clarinda Correctional Facility. Greg Quigley is in violation of Class I Rules 10, 16 and 43.

We recognize the case before us is a close case. However, in such instances, we should not be quick to second guess the actions of prison officials and the disciplinary committee. *Morris v. Auger*, 414 N.W.2d 858, 861 (Iowa 1987).

Quigley's notice provided him with the time period in which the alleged actions took place and the nature of the alleged actions. Quigley was also told the alleged actions took place at the Clarinda facility and MHI. In addition, as required, the notice informed Quigley the allegations were based upon confidential information. We do not find the notice was insufficient. Further, we do not find error in the failure to give Quigley the specifics of the confidential information. Disclosure of the confidential information is not required where there is the possibility of retaliation or where disclosure could threaten the security of the institution. *See Backstrom*, 508 N.W.2d at 708. In conclusion, we find the notice given to Quigley was constitutionally sufficient.

III. ***Counsel Substitute.*** Quigley contends he was denied due process by the failure of the institution to appoint counsel substitute. Quigley asserts when confidential information is used, counsel substitute should be provided.

Inmates have no right to either retained counsel or appointed counsel in disciplinary proceedings. *Wolff*, 418 U.S. at 570, 94 S. Ct. at 2981, 41 L. Ed. 2d at 959. If the prisoner lacks the ability to read or is faced with particularly difficult issues, then the Due Process Clause of the Fourteenth Amendment affords the prisoner the aid of counsel substitute. *Id.* Counsel substitute has no authority to review confidential information in a prison disciplinary proceeding. *Backstrom*, 508 N.W.2d at 708.

We find the question in this case has been ruled upon in the previous case of *Sauls v. State*, 467 N.W.2d 1 (Iowa App. 1990). In *Sauls*, we found "the mere fact that the case involved confidential informants does not render the case so complex that Sauls required counsel substitute." *Sauls v. State*, 467 N.W.2d 1, 3 (Iowa App. 1990). This holding was given approval in *Backstrom v. District Court*, 508 N.W.2d 705, 709 (Iowa 1993). We conclude this case is governed by the rule in *Sauls* and accordingly find no merit in Quigley's argument.

IV. ***Reliability of the Informants.*** Finally, Quigley contends the administrative law judge did not conduct a good faith examination of the reliability of the informants. Our supreme court has stated:

> When an inmate is disciplined on the basis of confidential information, his interest in a fair hearing requires that there be some indication of the confidential informant's reliability. To that end, we require that there be sufficient information on the record to convince a reviewing authority that the disciplinary committee undertook such inquiry and correctly concluded that the confidential information was credible and reliable.

Howard v. State, 439 N.W.2d 193, 195 (Iowa 1989) (citation omitted). We conclude there was adequate information to determine the issue of credibility and that such a determination was properly made. We find no error.

Upon consideration of all arguments raised by the parties, we find the ruling of the district court must be affirmed.

AFFIRMED.