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IN THE COURT OF APPEALS OF IOWA

No. 0-311 / 89-1033

DAVID WALLACE,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Jones County, Kristin Hibbs, Judge.

Wallace appeals the district court's denial of postconviction relief. **AFFIRMED.**

Philip B. Mears and Jean C. Lawrence of Mears, Zimmermann & Mears, Iowa City, for appellant.

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

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

OXBERGER, C.J.

Prison inmate David Wallace was accused of fighting in violation of Iowa prison rule No. 13, which provides that a resident commits the offense of fighting when he or she "engages in a physical altercation leading to the exchange of blows, shoves, kicks, or offensive physical conduct." Several days later the disciplinary committee met to discuss the case. The committee relied upon witness statements, the statements of Mr. Wallace, the actual cuts on Wallace's face, and the investigating officer's report. In the committee's findings of fact, the committee found that the investigating officer questioned Wallace regarding the cut on his nose. Wallace replied he had fallen down. Wallace later admitted that someone had hit him in the nose. As a result, Wallace lost sixteen days of good time.

Wallace subsequently filed an application for postconviction relief. At the hearing, the State offered the testimony of Officer Steve Wendl. Wendl sought to explain the committee's findings of fact. Wallace's counsel objected to the testimony on the grounds that the findings of fact spoke for themselves, and any further attempts to supplement the written findings would directly conflict with those written findings. Wendl was permitted to testify, and stated the committee had found Wallace had in fact assaulted another inmate by burning him with hot water. Wendl also indicated such actions had not been taken in self-defense.

The trial court denied Wallace's application for postconviction relief, and Wallace has appealed. Wallace challenges the sufficiency of the evidence to establish that he had participated in a fight. Wallace argues the evidence shows he was merely assaulted by another inmate and he took no aggressive action himself. Wallace additionally argues the district court erred by allowing Officer Wendl to testify about the committee's factual findings, which varied from the written findings. We affirm.

Proceedings in a postconviction relief action are special proceedings treated as an action at law. Hackett v. State, 354 N.W.2d 247, 249 (Iowa App. 1984). Thus, in the absence of issues involving fundamental constitutional rights, our scope of review is for the correction of errors at law only. Iowa R. App. P. 4. Generally, the district court's findings of fact are binding if supported by substantial evidence. However, in Wilson v. Farrier, 372 N.W.2d 499, 501 (Iowa 1985), the Iowa Supreme Court citing to Walpole v. Hill, 472 U.S. 445, 455-56, 105 S. Ct. 2768, 2774-75, 86 L. Ed. 2d 356, 365 (1985), applied a different standard to those cases involving a decision of the disciplinary committee to revoke good time credits:

> We hold the requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke good time credits. This standard is met if "there was some evidence from which the conclusion of the administrative tribunal could be deduced . . . ." Ascertaining whether this standard is satisfied does not require examination of the entire record,

> independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board . . . . Revocation of good time credits is not comparable to a criminal conviction and neither the amount of evidence necessary to support such a conviction, nor any other standard greater than some evidence applies in this context.

In the present case, the disciplinary committee had the written reports of Officer Stockton, who initially observed Wallace's injury. Stockton reported in a supplemental page to the original report that Wallace had told him another inmate, Owens, had hit him in the nose. Inmate Cron had filed a statement indicating Wallace and Owens had argued over the use of a table, and that after trading verbal assaults, Owens slapped Wallace, at which time Wallace threw a cup of hot water on Owens. The disciplinary committee also had the evidence of the condition of Wallace's nose. We believe that under the circumstances, the evidence was sufficient to meet the Wilson standards.

We additionally note that Wallace admits that under the "some evidence" standard, the committee's report is supported by the findings of fact. Wallace admits the district court judge correctly identified the evidence. Wallace merely argues the findings of fact are not legally sufficient to constitute a rule violation. In Gladson v. State, 439 N.W.2d 214 (Iowa 1989), the Iowa Supreme Court rejected a similar argument made by a defendant found to have traces of marijuana in his blood samples. The

defendant in Gladson admitted, as does Wallace, the evidence relied upon by the committee was sufficient under the Wilson standard. 439 N.W.2d at 216. The supreme court held there was no real distinction between what the defendant argued and the "some evidence" standard. Id. We believe the holding in Gladson applies just as easily to the present case.

Wallace additionally argues the district court erred in allowing Officer Wendl to testify, since his testimony expanded on the written findings. Wallace contends the testimony by Wendl should not have been allowed since the testimony Wallace had assaulted another inmate was contrary to the disciplinary committee's written findings. We disagree.

In Ponte v. Real, 471 U.S. 491, 497, 105 S. Ct. 2192, 2195-96, 85 L. Ed. 2d 553, 559 (1985), the United States Supreme Court held that prison officials, if necessary, may further explain the reason for the committee's procedure and decision to impose disciplinary sanctions. In Rushing v. State, 382 N.W.2d 141, 145 (Iowa 1986), the Iowa Supreme Court held that "it was for the court to take evidence of a disciplinary committee member as to whether there were other considerations affecting the decision by the committee." In the present case, Wendl testified as to what other evidence, including Wallace's claim of self-defense, the committee used in determining to discipline Wallace. Pursuant to Ponte and Rushing, we

believe the district court was correct in permitting Officer Wendl to testify.

AFFIRMED.