

IN THE COURT OF APPEALS OF IOWA

No. 7-130 / 96-272

000291

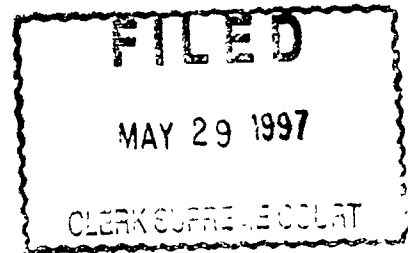
EDDIE C. RISDAL,

Appellant,

vs.

STATE OF IOWA,

Appellee.



Appeal from the Iowa District Court for Lee County, R. David Fahey, Judge.

Eddie Risdal appeals the district court's denial of his application for postconviction relief. **AFFIRMED.**

Kelly A. Phipps of Mears Law Office, Iowa City, for appellant.

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

Considered by Habhab, C.J., Streit, J., and Hayden, S.J.*

*Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

PER CURIAM

Eddie Risdal, an inmate at the John Bennett correctional facility at the Iowa State Penitentiary, appeals the denial of his application for postconviction relief.

Over the course of three days, prison officials seized all of Risdal's property. After each seizure, Risdal was given a list of the property taken, but the list did not indicate which property, if any, was unauthorized under Rule 16. Rule 16 provides an inmate commits an offense if he possesses "any contraband delineated as contraband or dangerous contraband including, but not limited to: . . . i. Altering authorized property." Rule 16, *Disciplinary Policy and Procedures for the Government of the Iowa State Penitentiary Inmates*. A correctional officer served Risdal with a five-page disciplinary notice alleging violations of Rule 16 and two other rules.

An Inmate Witness-Investigating Officer contacted Risdal. Risdal told the officer names of witnesses he could think of, and later provided a written statement listing twenty witnesses. The names included inmates, counselors, a federal judge, and the F.B.I. The officer obtained thirteen written witness statements and interviewed two other inmates. Two inmates, Young and Biggs, were not contacted and no reason was given for the failure to contact them. Risdal testified at the PCR hearing that these inmates would have testified everyone had tape on their personal and prison property.

The administrative law judge assigned to the disciplinary hearing continued the hearing four times, twice to allow him an opportunity to locate and review the seized property. He examined the property, but did not prepare an itemized list. He observed many books had clear tape covering the front and back covers. Risdal requested his witnesses testify in person, but the ALJ denied the request as untimely, and denied the request for testimony of Young and Biggs as untimely and cumulative. The ALJ examined the written witness statements, considered Risdal's testimony, and found Risdal violated Rule 16 due to the large number of altered items.

Risdal filed a petition for postconviction relief, which was denied. He argues on appeal his due process rights were violated in the following manner: (1) Rule 16 did not prohibit his conduct, (2) the disciplinary notice was inadequate, (3) the ALJ sanctioned him based on improper considerations, and (4) he was not allowed to present all of his witnesses.

I. "Proceedings for postconviction relief are special proceedings treated as an action at law." *Hughes v. State*, 543 N.W.2d 872, 874 (Iowa 1995). When a prisoner claims he was disciplined in violation of his constitutional rights, we review the claim " 'in light of the totality of the circumstances upon which the postconviction court's ruling was made.' " *Mark v. State*, 556 N.W.2d 152, 153 (Iowa 1996) (quoting *James v. State*, 541 N.W.2d 864, 869 (Iowa 1995)). This is functionally equivalent to de novo review. *Id.* Because all of Risdal's claims are based on violations of due process, our review of all claims is de novo.

II. "[P]rison officials have broad administrative and discretionary authority over the prisons they manage [while] incarcerated persons retain only a narrow range of protected liberty interests." *Hewitt v. Helms*, 459 U.S. 460, 467, 103 S. Ct. 864, 869, 74 L. Ed. 2d 675, 685 (1983). Imprisonment carries with it the loss of many significant rights. *Hudson v. Palmer*, 468 U.S. 517, 524, 104 S. Ct. 3194, 3199, 82 L. Ed. 2d 393, 401 (1984). Prison officials must provide the appropriate level of due process, however, before they promulgate a disciplinary decision that deprives the prisoner of a protected liberty interest. *Ryan v. Sargent*, 969 F.2d 638, 640 (8th Cir. 1992). Because prison disciplinary proceedings are not part of a formal criminal prosecution, the full panoply of rights triggered in those proceedings does not apply. *Hughes v. State*, 543 N.W.2d 872, 874 (Iowa 1995). Instead, only minimal due process protections are required, including the right to call and present witnesses and documentary evidence. *Id.*

A. Vagueness

Risdal's claim he had inadequate notice that putting clear packing tape on otherwise authorized property would subject him to punishment under Rule 16 is an as-applied due process challenge under the vagueness doctrine.¹ Due process requires notice that conduct is prohibited before a sanction may be imposed, and this principle

¹ Because Risdal does not challenge Rule 16 on its face, Appellant's Br. at 15, we do not need to determine whether Rule 16 is unconstitutionally vague in all its possible applications or whether some applications might chill the exercise of constitutionally protected rights. *Adams v. Gunnell*, 729 F.2d 362, 369 (5th Cir. 1984). Rather, the issue is whether Davis had fair warning that his conduct was proscribed. *Id.*

applies in the prison setting. *Williams v. Nix*, 1 F.3d 712, 716 (8th Cir. 1993). “The root of the vagueness doctrine is a rough idea of fairness.” *Rios v. Lane*, 812 F.2d 1032, 1038 (7th Cir. 1987) (quoting *Colten v. Kentucky*, 407 U.S. 104, 110, 92 S. Ct. 1953, 1957, 32 L. Ed. 2d 584, 590 (1972)). The issue in this case is whether Rule 16 is impermissibly vague as applied to Risdal--that is, whether he had fair warning his conduct was proscribed. See *Adams v. Gunnell*, 729 F.2d 362, 369 (5th Cir. 1984) (defining inquiry for as-applied vagueness challenge).

We hold Risdal had fair notice his conduct was prohibited. Rule 16 provides an inmate commits an offense if he possesses contraband “including, but not limited to: . . . i. Altering authorized property.” Possessing numerous books covered front and back with clear tape is clearly possessing altered property. Risdal argues all inmates possess items with tape on them. We note the testimony of the ALJ discipline was imposed on Risdal because he possessed a large quantity of items and had altered them significantly. We defer to the interpretation of prison rules by prison officials unless fair notice is clearly lacking. *Adams*, 729 F.2d at 369. Fair notice was not clearly lacking that Risdal’s conduct was prohibited.

Cases Risdal relies on are distinguishable. In *Adams*, inmates were punished under a catch-all regulation prohibiting “disruptive conduct” for circulating petitions. *Id.* at 364. The court found fair notice lacking because inmates had previously circulated petitions without being disciplined while the catch-all rule was in effect. *Id.* at 369. Similarly, in *Wolfel v. Morris*, 972 F.2d 712 (6th Cir. 1992), the court

found fair notice lacking in the imposition of rules regulating group conduct when the conduct underlying the disciplinary violations was “‘virtually identical to conduct previously tolerated.’” *Wolfel*, 972 F.2d at 717 (quoting *Waters v. Peterson*, 495 F.2d 91, 100 (D.C. Cir. 1973)). In this case, Rule 16 is not a catch-all rule but defined its specific prohibition in clear language. There is no evidence the quantity and extent of alteration of Risdal’s property was common at the John Bennett facility. We reject Risdal’s vagueness challenge.

B. Adequacy of Disciplinary Notice

The five-page disciplinary notice made reference to two attachments, which consisted of itemized lists of property inventoried following the seizure. Risdal’s copy of the disciplinary notice did not contain these attachments. He argues the failure to include them constitutes a violation of his due process right to receive notice sufficient to allow him to prepare a defense. We hold the disciplinary notice was adequate.

A disciplinary notice must inform an inmate of the charges brought against him and the evidence supporting the charges. *Freitas v. Auger*, 837 F.2d 806, 809 (8th Cir. 1988). The notice must be sufficient to enable an inmate to marshal the facts and prepare a defense. *Morris v. Auger*, 414 N.W.2d 858, 860 (Iowa App. 1987). In determining sufficiency of the notice, we look at the time, place, and nature of the alleged activity. *James v. State*, 541 N.W.2d 864, 870 (Iowa 1995).

The disciplinary notice given to Risdal stated the date and time of the search of his cell. The notice indicated the graphic arts instructor viewed the property and identified “state” paper from the graphic arts school. The notice described many books from the “Mystery Boy Inc.” library altered with state packing tape and check out cards. The notice stated some of the books were constructed from other publications, and named two books by title believed to have been stolen from the graphic arts school. Because the notice described property Risdal previously had in his possession, he would have been aware of the extent of taping or alteration and would be able to marshal the facts to prepare a defense. The record reveals he in fact did so, by giving names of witnesses he said would verify that many inmates apply tape to their property. The notice was constitutionally adequate.

C. Improper Sanction Considerations

Risdal argues the ALJ violated his due process rights by using evidence of theft, a charge he was found not to have violated, as a basis for the penalty imposed on the charge of unauthorized possession. Risdal cites no authority for this proposition except the “some evidence” standard. We hold no due process violation occurred.

The disciplinary decision was lengthy and recounted the evidence, including the quantity of property and the extent of its alteration. The ALJ wrote, “Disposition due to possession of this large amount of altered items is disruptive to ISP, and also leads one to believe items stolen (although probably not stolen).” Risdal argues this

sentence shows the ALJ relied on improper considerations in sanctioning him. We find the more likely meaning to be the ALJ mentioned the potential appearance of theft as support for his finding that possession of the altered items was disruptive to ISP. The ALJ also noted the disposition was mitigated by the nondangerous nature of the offense and Risdal's good disciplinary record. We determine this does not support a finding of a due process violation.

D. Right to Call Witnesses

Risdal argues the failure to obtain statements from inmates Young and Biggs violated his due process right to call witnesses in his own behalf. Risdal indicated these inmates would testify everyone at ISP had tape on their personal and prison property.

Inmates have a limited right to call witnesses and to present written evidence. *Fichtner v. Iowa State Penitentiary*, 285 N.W.2d 751, 757 (Iowa 1979) (en banc). Prison officials have broad discretion to decline proffered witnesses when the projected testimony is irrelevant to the matter in controversy, is unnecessary, or creates a hazard to institutional safety or correctional goals. *Hudson v. Hedgepeth*, 92 F.3d 748, 752 (8th Cir. 1996). The discretion of prison officials is so broad that it may be that a constitutional challenge to a disciplinary hearing based upon an inmate's right to call witnesses will rarely, if ever, be successful. *Ponte v. Real*, 471 U.S. 491, 499, 105 S. Ct. 2192, 2197, 85 L. Ed. 2d 553, 560-61 (1985).

We hold it was within the ALJ's discretion to deny the testimony of Young and Biggs as irrelevant or unnecessary. Whether other inmates put tape on their property would not be a defense to the charge that Risdal altered authorized property, especially in light of the extent of alteration and the number of items altered. *See Hudson*, 92 F.3d at 752 (holding no violation of due process to refuse witnesses when proffered testimony was accepted as true but would not have provided inmate a defense).

AFFIRMED.