IN THE COURT OF APPEALS OF IOWA

No. 5-571 / 94-1852

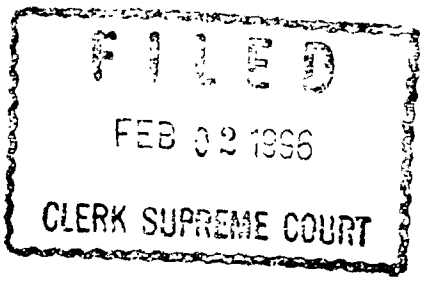
DANIEL PIERCE,

Appellant,

vs.

STATE OF IOWA,

Appellee.



Appeal from the Iowa District Court for Jones County, L. Vern Robinson, Judge.

Daniel Pierce appeals from a district court ruling granting summary judgment for the State in a prison disciplinary proceeding against him. **AFFIRMED.**

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

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

Considered by Sackett, P.J., and Habhab and Cady, JJ.

HABHAB, J.

On December 2, 1993, Daniel Pierce, an inmate at the Iowa Men's Reformatory in Anamosa, appeared before the prison disciplinary committee on charges of attempting to escape. According to the allegations, Pierce and another inmate, Routh, attempted to remove the ignition switch from a power plant employee's personal car with tools removed from the powerhouse. Pierce denied any involvement and questioned the reliability of the confidential information relied on by the committee. Pierce claimed he only took the tools out of the powerhouse to work on a dumpster. The disciplinary committee found Pierce guilty of violating rule 5 (escape), rule 11 (felonious conduct), rule 17 (damage to property), rule 18 (theft), and rule 43 (attempt or complicity).

The committee imposed a sanction of twelve days disciplinary detention, 120 days disciplinary detention at level one, loss of 120 days good time, and payment of one-half the damages ($36.84). After exhausting his administrative appeals, Pierce filed the present postconviction relief action. The State filed a motion for summary judgment which the district court granted.

Pierce appeals.

I. *Summary Judgment*. On appeal, Pierce contends the district court erred in granting the State's motion for summary judgment. Postconviction relief proceedings are not criminal proceedings, but rather are civil in nature. *Jones v.*

State, 479 N.W.2d 265, 269 (Iowa 1991). Review of an order granting summary judgment is for correction of errors at law. *Cha v. Irons*, 509 N.W.2d 492, 493 (Iowa 1993); *Keller v. State*, 475 N.W.2d 174, 179 (Iowa 1991).

Summary judgment is appropriate only if there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Overton v. State*, 493 N.W.2d 857, 858 (Iowa 1992). The evidence must be viewed in the light most favorable to the nonmoving party. *Thorp Credit, Inc. v. Gott*, 387 N.W.2d 342, 343 (Iowa 1986). This procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party. *Id.* A fact issue is generated if reasonable minds can differ on how the issue should be resolved. *Id.* If the conflict in the record consists only of legal consequences flowing from undisputed facts, entry of summary judgment is proper. *Farm Bureau Mut. Ins. Co. v. Milne*, 424 N.W.2d 422, 423 (Iowa 1988).

It is true that for us to affirm a grant of summary judgment, evidence, considered in the light most favorable to the resisting party, must show there is no genuine issue as to any material fact and that movant is entitled to judgment as a matter of law. *Westbend Mut. Ins. Co. v. Iowa Iron Works, Inc.*, 503 N.W.2d 596 (Iowa 1993). However, the nonmoving party may not simply rest on its pleadings and allegations once a motion for summary judgment is filed.

> When a motion for summary judgment is made and supported as provided in [Iowa R. Civ. P. 237], an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Iowa R. Civ. P. 237(e).

In Pierce's resistance to the motion for summary judgment, he contended there was a factual dispute since he was challenging the reliability of confidential information. Pierce's only argument regarding reliability was the committee in the same institution had erred in the past in making credibility determinations.

Pierce, in his brief, admits that if this case were to go to trial, he would not be able to specifically dispute the reliability of the confidential information, since a copy of that information was not provided to him or his counsel. However, even though an applicant has no absolute due process rights to confront or cross examine informants supplying information[1], where confidential information is used in a

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[1] As our supreme court has stated:

> However, neither prison inmates nor their attorneys have absolute due process rights to confront or cross examine informants supplying such information. Thus, prison officials are entitled to exercise discretion in refusing to disclose the identity of confidential informants in order that the safety of such persons will not be jeopardized. Furthermore, a disciplinary board has the right to rely on a confidential informant's statements and to disbelieve an inmate's denials, and it need not state why it believes the informant rather than the inmate.
>
> When an inmate is disciplined on the basis of confidential information, however, his interest in a fair hearing requires that there be some indication of the confidential informant's reliability. To that end, there must be sufficient information in the record to convince a reviewing authority that the

disciplinary hearing, the court has an obligation to examine the confidential information to determine its credibility and reliability. *See James v. State*, 479 N.W.2d 287 (Iowa 1991).

At the summary judgment hearing, the trial court had before it the evidence relating to the issue of the reliability of the confidential informants. On appeal, we have the same information before us. From our de novo review of the record and our *in camera* review of the confidential statements, we determine the information was reliable and credible and that there are not any genuine issues of material fact. The district court properly granted the State's motion for summary judgment.

II. ***Reliability of the Confidential Information.*** Pierce also contends the district court erred in affirming the committee's findings the confidential informants were reliable. As this issue involves constitutional rights, we make our own evaluation of the totality of the circumstances in a de novo review. *Kinnersley v. State*, 494 N.W.2d 698, 699 (Iowa 1993). 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

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> disciplinary committee undertook such inquiry and correctly concluded that the confidential information was credible and reliable. The reliability of confidential information may be established by *inter alia, in camera* review of material documenting an investigator's assessment of the credibility of a confidential informant.

James v. State, 479 N.W 2d 287, 291 (Iowa 1991) (citations omitted).

> 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 have made a thorough examination of the confidential information and have determined there is sufficient reliability and corroboration of the confidential information. In addition, there is adequate information for us to determine the issue of credibility and that the determination was properly made. We find no error.

AFFIRMED.