IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 6-176 / 95-0826

RANDY LINDERMAN,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Lee County, William L. Dowell, Judge.

Linderman challenges the order denying his application for postconviction relief from prison disciplinary action. **AFFIRMED.**

Jeffrey M. Lipman of the Lipman Law Firm, P.C., Des Moines, until withdrawal and then Kermit L. Dunahoo of the Dunahoo Law Firm, Des Moines, for appellant.

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

Considered by Sackett, P.J., and Huitink and Streit, JJ.

HUITINK, J.

Randy Linderman appeals a district court order denying his application for postconviction relief from prison disciplinary action. We affirm.

Randy Linderman is an inmate at the Mount Pleasant Correctional Facility. On November 14, 1993, Linderman was served with notice of proposed disciplinary action following his alleged assault of another inmate while in an unauthorized unit. Although Linderman admitted to having an argument with the inmate, he denied assaulting him. After a hearing, the disciplinary committee found Linderman guilty of assault, unauthorized absence/presence and obstructive/disruptive conduct. Linderman was sentenced to fifteen days of disciplinary detention, forty-five days of administrative segregation, and a loss of sixteen days of good conduct time.

After exhausting his administrative remedies, Linderman filed an application in district court for postconviction relief. At the postconviction hearing, Linderman claimed he was denied due process because he was unable to call witnesses on his behalf. He testified that during the disciplinary review of his case he saw his witnesses sitting in the hallway outside of the committee hearing room but the administrative law judge would not allow the witnesses in the room. He further claimed that although the ALJ asked him if he wished to call any witnesses, his request to do so was denied because he did not know the names of the individuals he wished to call. The ALJ testified that although Linderman mentioned having passed his witnesses in the hallway

on the way to the hearing, Linderman was unable to identify his witnesses by name or physical description. The ALJ further testified that because inmates are not authorized to be in the area directly outside the hearing room, it is unlikely Linderman's witnesses were seated in the hallway as Linderman had described. The district court denied Linderman's application for postconviction relief. Linderman appeals.

Ordinarily our review of postconviction proceedings is for errors of law. *Hinkle v. State*, 290 N.W.2d 28, 30 (Iowa 1980). When a postconviction prisoner asserts a violation of constitutional rights, however, we make our own evaluation based on the totality of the circumstances. *Id.* Here, Linderman asserts a violation of his due process rights. As a result, our review is de novo. *See id.*

Linderman contends he was denied due process of law because he was unable to call witnesses on his behalf during his disciplinary hearing. He claims that although he did not identify these witnesses by name or physical description, his request to call the witnesses he claims were in the hallway provided prison staff with sufficient information to identify them. We disagree.

Minimum requirements of procedural due process appropriate for the circumstances must be observed in prison disciplinary proceedings involving loss of good conduct or honor time. *Kelly v. Nix*, 329 N.W.2d 287, 293 (Iowa 1983). The right of an inmate to call witnesses in a disciplinary hearing, however, is not unqualified. *Gladson v. State*, 439 N.W.2d 214, 215 (Iowa App. 1989). Instead, an

inmate facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence in his or her defense when permitting the inmate to do so will not be unduly hazardous to institutional safety or correctional goals. *Wolff v. McDonnell*, 418 U.S. 539, 566, 94 S. Ct. 2963, 2979, 41 L. Ed. 2d 935, 956 (1974). An inmate's right to present witnesses is limited by penological interests in providing swift discipline. *Ponte v. Real*, 471 U.S. 491, 495, 105 S. Ct. 2192, 2195, 85 L. Ed. 2d 553, 558 (1985). This right is subject to the mutual accommodation between institutional needs and objectives and the provisions of the Constitution. *Id.*

Mount Pleasant Correctional Facility Disciplinary Policy Rule 1(B)(4) requires that an inmate name witnesses during the initial investigatory stage of a disciplinary action. Failure to do so will preclude the accused inmate from calling such witnesses at a later time unless the identity or existence of the witness was unknown to the inmate prior to the investigation or substantial prejudice will result without such witnesses being contacted for a statement. Mt. Pleasant Correctional Facility Disciplinary Policy Rule 1(B)(4)(a) and (b).

Based on the untimely nature and ambiguity of Linderman's request to call witnesses, we find the district court was correct in finding Linderman was not denied due process. Linderman made no request to call witnesses during the initial investigation of the alleged assault as required by prison policy. At the subsequent disciplinary hearing, he claimed his witnesses were present in the hallway, but failed

to provide their names or descriptions. Even if Linderman's lack of knowledge as to the identity of his witnesses was sufficient reason for his failure to name them during the investigation, his inability to clearly identify his witnesses did not allow prison authorities sufficient information to obtain statements from these witnesses. *See Gladson*, 439 N.W.2d at 215-16 (inmate's failure to specifically identify prison guards he wished to call as witnesses created undue burden on prison officials to obtain witness statements).

Like the district court, we question Linderman's credibility regarding the presence of the witnesses in the hallway. Despite not knowing their names, Linderman claims his witnesses were outside the hearing room door because he contacted them with a note regarding the time and place of the disciplinary hearing. Moreover, because prison inmates are not authorized to be in the hallway outside the disciplinary hearing room, it is unlikely Linderman's witnesses were present in the area as he had described. These factors lead us to conclude that establishing the identity of Linderman's witnesses would have required prison officials to undergo a burdensome investigation beyond simply opening the hearing room door to witnesses waiting in the hallway. Accordingly, we conclude Linderman's inability to call witnesses on his behalf was the result of his failure to specifically identify his witnesses and not a denial of due process. We affirm the decision of the district court.

AFFIRMED.