

IN THE COURT OF APPEALS OF IOWA

No. 7-202 / 95-2153

000279

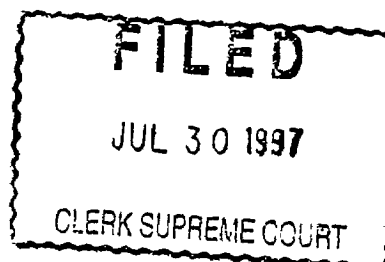
RONALD KULOW,

Appellant,

vs.

STATE OF IOWA,

Appellee.



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

The applicant appeals from the district court's ruling denying him
postconviction relief from prison discipline. **AFFIRMED.**

Patrick Ingram of Mears Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, and Forrest Guddall, Assistant Attorney
General, for appellee.

Considered by Cady, P.J., Vogel, 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

Ronald Kulow, an inmate at the Iowa State Penitentiary, appeals the denial of his application for postconviction relief. He claims he was entitled to counsel substitute in two disciplinary proceedings. The district court found Kulow presented adequate defenses and counsel substitute was not required. We affirm.

The first disciplinary notice charged Kulow with violating rules prohibiting threats and intimidation, verbal abuse, and disruptive conduct. The notice alleged Kulow began arguing with another inmate and stated, "F--- you, you want to start something?" A correctional officer ordered them to stop arguing, but after the other inmate whispered in Kulow's ear, Kulow stepped in front of the inmate and said, "You start f---ing with me again, we're going to fight." The officer radioed for assistance and informed the inmates they were to return to their cells. Kulow told the officer, in a manner the officer found threatening and intimidating, "The only fight we're going to have is if you lay your hands on me or touch me." As two officers approached to escort the inmates to their cells, Kulow stated, "That goon squad you have coming better not touch me either, or there will be a fight."

The second disciplinary notice charged Kulow with a rule prohibiting misuse of mail. The notice alleged Kulow forged the name of another inmate on a postage slip, which caused the inmate's account to be charged. The notice alleged the other inmate had not authorized Kulow to complete a postage slip in his name.

The disciplinary proceedings were conducted separately. The disciplinary committee disciplined Kulow in both proceedings, and he took separate appeals. When the appeals in both proceedings were denied, Kulow filed his action for postconviction relief.

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.” *James v. State*, 541 N.W.2d 864, 869 (Iowa 1995). This is functionally equivalent to de novo review. *Mark v. State*, 556 N.W.2d 152, 153 (Iowa 1996). Because Kulow’s arguments implicate a constitutional right, *Giles v. State*, 511 N.W.2d 622, 627 (Iowa 1994), our review is de novo.

Counsel substitute may be required when an inmate is illiterate or when the complexity of issues “makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case.” *Kulow v. Nix*, 28 F.3d 855, 857 (8th Cir. 1994). Counsel substitute is reserved for a small class of inmates, and is not appropriate when an inmate is literate, his written presentations to a disciplinary committee or in administrative appeals demonstrate an understanding of the case against him, or the charges are not complex. *Hudson v. Hedgepeth*, 92 F.3d 748, 751 (8th Cir. 1996).

We hold Kulow does not fall within the small class of inmates entitled to counsel substitute. The disciplinary committee found Kulow competent because he appeared rational, was aware of the charges against him, and was able to present a defense. In his written materials submitted during the first hearing, he addressed each rule violation separately. He challenged the charge of threats and intimidation by arguing he did not intend to injure another inmate and more serious incidents involving physical contact went unpunished. He stated his comments were not abusive and he was just in a bad mood. He argued the conduct was not disruptive because prison is a harsh environment and any comments would have to be evaluated in that context.

In his administrative appeal, he questioned whether the violation was a major or minor infraction. He argued his conduct with the other inmate was merely an exchange of words and no horse playing or exchange of blows or kicks occurred. He claimed inmates frequently exchange words and something more is required to constitute a threat. He quoted the text of the rules allegedly violated and focused on the lack of physical contact. He claimed he was on medication, and was moody because he had not been awake long.

In his appeal from the second proceeding, he cited to an Iowa Supreme Court case by name. He maintained the postage slip had to be in the same name as on the envelope, and he was writing the letter on the inmate's behalf.

Kulow is literate, as evidenced by the lengthy written appeals he wrote unassisted, although he cannot read large words of sixteen or more letters. The district court found Kulow understood the proceedings, was logical, and wrote to the court frequently. He understood the appeal process and wrote appeals from both disciplinary proceedings.

The issues in the disciplinary proceedings were not complex, and Kulow had an adequate comprehension of the issues involved. Kulow is literate and presented defenses at his disciplinary hearing and in his appeals. Based on our review of the record, we hold Kulow does not fall within the small class of inmates for whom counsel substitute should be appointed.

AFFIRMED.