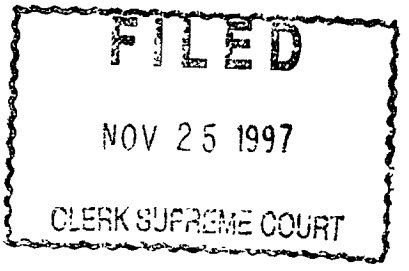
IN THE COURT OF APPEALS OF IOWA

No. 7-446 / 96-872

000069



ORLANDO CABBELL,
Appellant,

vs.

STATE OF IOWA,
Appellee.

Appeal from the Iowa District Court for Jones County, Larry J. Conmey, Judge.

Orlando Cabbell appeals the district court's ruling denying postconviction relief in two consolidated postconviction relief actions challenging prison discipline imposed for violation of prison rules against disobeying a lawful order and unauthorized group/gang conduct. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, and H. Loraine Wallace, Assistant Attorney General, for appellee.

Heard by Streit, P.J., and Vogel and Mahan, JJ.

VOGEL, J.

Orlando Cabbell appeals the district court's ruling denying postconviction relief in two consolidated postconviction relief actions challenging prison discipline imposed for violation of prison rules against disobeying a lawful order and unauthorized group/gang conduct.

Background facts. In February 1995, the applicant, Orlando Cabbell, received a disciplinary notice charging him in part with unauthorized gang conduct for stating "See ya later, folks," an alleged gang salutation of the Black Gangster Disciple Nation of which Cabbell was known to be a member. Cabbell denied that his utterance was gang-related.

On March 3, 1995, Cabbell received a disciplinary notice alleging in part that he disobeyed a correctional officer's lawful order to be handcuffed during an incident in his cell involving his fellow cellmate.

I. Due Process and First Amendment Claims. We review de novo postconviction relief actions where constitutional issues are raised. *Mahers v. State*, 437 N.W.2d 565, 567 (Iowa 1989); *Kinnersley v. State*, 494 N.W.2d 698, 699 (Iowa 1993).

Cabbell claims 1) his due process rights were violated when the disciplinary committee relied on information from a prior and separate disciplinary proceeding that the utterance "See ya later, folks," was a gang salutation; 2) such an utterance

000071

constituted unauthorized gang conduct and violated his constitutional free speech rights under the first amendment; and 3) there was not sufficient evidence to establish the word "folks" was a gang-related term.

We are mindful that "[p]rison administrators . . . should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Bell v. Wolfish*, 441 U.S. 520, 547-48, 99 S.Ct. 1861, 1878, 60 L.Ed.2d 447, 473-74 (1979). Thus, even when an institutional regulation infringes on a constitutional guarantee, we must view the practice in light of the prison's administrative goal of safeguarding the institutional security. *Id.* Internal institutional security is a legitimate penological interest. *Bryson v. Iowa Dist. Court*, 515 N.W.2d 10, 12 (Iowa 1994). It follows that prohibiting gang-related conduct and communications as a matter of internal security measures is a legitimate penological goal. We find no violation of Cabbell's due process and free speech rights in light of the experience of the prison staff's knowledge that "See ya later, folks" is a gang salutation, which associations were deemed to threaten the prison's institutional security.

We adhere to the "some evidence" standard in upholding a prison disciplinary decision. *See Backstrom v. District Court for Jones County*, 508 N.W.2d 705, 709 (Iowa 1993); *accord Mahers*, 437 N.W.2d at 569 ("only 'some evidence' is needed

under the due process clause to justify a prison disciplinary action.") (citing *Wilson v. Farier*, 372 N.W.2d 499, 501-02 (Iowa 1985)). This standard is low. The constitutional issue becomes "whether there exists *any evidence at all*, that is, whether there is *any* basis in fact to support the action taken by the prison officials." *Wilson*, 372 N.W.2d at 502. (Emphasis added.) All that is required to satisfy this standard is the report of a correctional officer. *Mahers*, 437 N.W.2d at 569.

In this case, we note the committee relied on information relayed to them by correctional officers, and relied on its own experience regarding gang-related communication, along with Cabbell's admission he was a gang member. Even if we discount completely any evidence from a prior hearing involving the use of a gang-salutation and the word, "folks," we find there is still *some evidence* that inheres in the disciplinary notice of the corrections officer. Thus, we find no due process violation occurred, and the evidence was sufficient under the "some evidence standard" to support the committee's disciplinary decision. We accordingly affirm on this issue.

II. Reasonableness of officer's order. A separate disciplinary action arose when Cabbell refused to be hand-cuffed in his cell. Correctional officers approached Cabbell's cell in response to his cellmate's yelling. When the correctional officers arrived at the cell they ordered Cabbell several times to allow himself to be cuffed. Cabbell refused the orders. Cabbell argues that the order for him to be handcuffed

was not reasonable given his alleged fear he would be harmed by his cellmate. and there was insufficient evidence to support a determination that he disobeyed a lawful order.

Rule Disciplinary Rule 23 provides:

> *Disobeying a Lawful Order.* An inmate commits an offense under this subsection when the inmate refuses to obey an order, rule, regulation, or procedure, written or verbal, given by any staff of the Division of Corrections, or other person in authority, which is reasonable in nature, and which gives reasonable notice of the conduct expected.

Rules, Regulations and Disciplinary Procedures for the Government of the Iowa State Penitentiary Inmates II-G-52 (1984); *see Giles*, 511 N.W.2d at 626.

We find the order was reasonable as it is essential to maintain an orderly and safe environment in the institution. *See Smith v. State*, 542 N.W.2d 567, 569 (Iowa 1996) ("[T]he power of the correctional institution to discipline inmates for failing to obey direct orders is essential to a safe and orderly institutional environment."); *accord* Iowa Code § 904.505 (1995).

Although the cell mate indicated that he would harm Cabbell, the district court determined that no such threat existed as there were several correctional officers outside the cell that could have defused any potential conflict or threat of harm posed against Cabbell. We agree. In spite of the fact that the officers were *outside* of the cell, they were still present and could have intervened if the cellmate would have attempted to harm Cabbell. We affirm as the order was reasonable and because there

was sufficient evidence to support a determination that he had violated a lawful order when refusing to be handcuffed during the incident in Cabbell's cell.

Having carefully considered all issues before us on appeal, we affirm the decision of the district court upholding the committee's action regarding both incidents.

AFFIRMED.