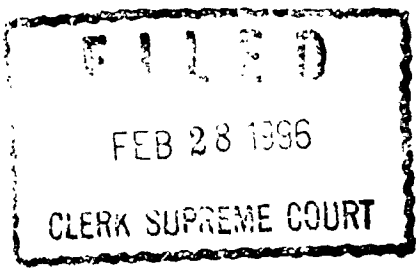
IN THE COURT OF APPEALS OF IOWA

No. 5-661 / 94-2050



JOHN POTTER,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Jones County, Van D. Zimmer, Judge.

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

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

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

Considered by Hayden, P.J., and Cady and Huitink, JJ.

CADY, J.

John Potter appeals the district court's denial of his application for postconviction relief. We affirm.

In March 1994, Potter, an inmate at the Iowa Men's Reformatory in Anamosa, received a disciplinary report charging him with rule violations for conversations he had with other inmates encouraging a riot, taking prisoners, and killing prison staff members. Six days prior to the issuance of the disciplinary notice, Potter was interviewed by correctional officer Ralph Schafer. Schafer reported Potter did not request witnesses.

Potter appeared before the adjustment committee. It found him guilty of disruptive conduct for promoting a riot. The committee specifically noted it relied upon Schafer's report in rendering its decision. No witnesses were presented to testify for Potter. The committee sanctioned him to thirty days of disciplinary detention, 730 days of disciplinary detention at level one and the loss of 730 days of good conduct time.

Potter appealed to assistant warden John Sissel contending his investigation was incomplete as four inmate witnesses were not interviewed. He contended he requested these inmates be interviewed when he spoke with Schafer. Sissel responded by informing Potter no witnesses had been requested, but instead the four persons named were "references." Sissel also noted he spoke with the two of the named inmates and they could not attest to the circumstances. The review was

denied, and Potter filed an application for postconviction relief to the district court, which was also denied.

Potter appeals contending the disciplinary notice was insufficiently specific regarding the dates, times, and places he promoted the riot. He also claims the committee's use of confidential informants did not demonstrate sufficient reliability. He argues he was denied his right to present witnesses on his behalf and was entitled to counsel substitute. Finally, he claims his statements were protected by the First Amendment.

I. Standard of Review

All of Potter's claims involve fundamental constitutional questions. As such, we review de novo in light of the totality of the circumstances. *Picard v. State*, 339 N.W.2d 368, 373 (Iowa 1983).

II. Disciplinary Notice

The due process clause requires prison officials to give inmates subject to discipline proper notice of charges against him or her. *Backstrom v. Iowa District Court*, 508 N.W.2d 705, 707-08 (Iowa 1993) *cert. denied* 114 S. Ct. 1566, 128 L. Ed. 2d 211 (1994). A disciplinary notice must be sufficient to allow the prisoner to prepare an adequate defense. *Rinehart v. Brewer*, 483 F. Supp. 165, 169 (S.D. Iowa 1980). Our inquiry focuses on whether prison officials successfully appraised the inmate of relevant charges. *Backstrom*, 508 N.W.2d at 708. Generally, the notice should contain (1) the approximate date, time, and place of the alleged incident for

which the inmate is being disciplined, (2) the general description of the incident and the citation of the rule violated, and (3) the identity of any persons, if any, involved in the incident. *Rinehart*, 483 F. Supp. at 169.

Here the notice to Potter informed him of the general dates and places of his repeated activities. The disciplinary notice stated

> An investigation into inmate Potter's activities during the month of February 1994 concluded . . . [he] repeatedly spoke to other inmates, voicing his support for a riot . . . encouraged the taking of hostages and the killing of staff members, and promoted the commission of these felonies as being beneficial to the inmate population. These conversations took place in the areas of the institution such as the dining hall and LUC [Living Unit C].
>
> The identities of persons providing confidential information during the course of the investigation have been deleted from this report in order to preserve the security, tranquility and good order of the prison.

Due to the repeated nature of Potter's activities, specific dates would be difficult to identify. Moreover, since he repeatedly spoke to other inmates concerning riots in the institution, the time span of the incidents could easily cover the month of February. The notice provided Potter with the general places in which the repeated conversations took place.

The notice also provided a detailed description of the conversations Potter allegedly had with other inmates. It specified he supported a riot, and encouraged taking hostages and killing prison staff members. The notice gave Potter a general description of the nature of his offense.

While the notice only stated Potter had conversation with other inmates and never specifically named any other persons involved in the incident, the notice did provide confidential informants' names had been deleted in order to preserve order at the institution. We allow officials to delete names in the notice to the prisoner if disclosure threatens the security of the institution or may lead to retaliation against informants. *Backstrom*, 508 N.W.2d at 708. *See also James v. State*, 479 N.W.2d 287, 291 (Iowa 1991) (prison officials entitled to exercise discretion in refusing to disclose identity of confidential informants in order to prevent the informant's safety from being jeopardized). Here, the information deleted from the notice was necessary to prevent retaliation against the confidential informants and to preserve prison security.

We find the disciplinary notice provided to Potter sufficiently appraised him of the relevant charges against him and allowed him to adequately prepare a defense.

III. Confidential Information

Confidential information statements may provide sufficient evidence for prison disciplinary actions. *James*, 479 N.W.2d at 291 (Iowa 1991). The use of confidential informants requires sufficient information exist in the record "to convince a reviewing authority that the disciplinary committee undertook such inquiry and correctly concluded that the confidential information was credible and reliable." *Id.* Due process does not require the disciplinary committee to state why it believes the

confidential information to be reliable. *Niday v. State*, 353 N.W.2d 92, 94 (Iowa 1984).

Potter argues the informants had a motivation to lie to prison officials since he works at the furniture shop, earned the highest pay scale, and achieved the highest prison level. Upon review of the confidential information, we find no evidence indicating Potter's status or employment motivated the informants to falsify statements to prison officials. Here, more than one confidential informant provided information to prison officials. Their statements were consistent and the investigators reported the informants seemed genuine, sound, believable, and had no apparent reason to falsify their statements.

We find sufficient evidence to show the confidential information used by the disciplinary committee was reliable.

IV. Right to Present Witnesses

Inmates have limited due process rights at disciplinary hearings to call witnesses and present written evidence. *Wolff v.* McDonnell, 418 U.S. 539, 571-72, 94 S. Ct. 2192, 2980, 41 L. Ed. 2d 935, 960 (1974); *Mahers v. State*, 437 N.W.2d 565, 568 (Iowa 1989). The reformatory rules recognize these rights, but requires inmates to make a request for those witnesses they want present at a disciplinary hearing. Potter contends he requested witnesses when he spoke with Schafer and told him the names of other inmates whom Schafer should contact.

At the time Schafer interviewed Potter no charges had been issued against him nor had any disciplinary notice been served. The report did not reveal Potter's desire or request to call witnesses if Potter would have to defend himself at a disciplinary hearing. It merely named persons with whom he associated and with whom he had recently eaten meals. It also described typical topics of conversations of the group. After Potter received his disciplinary notice and became aware of the charges against him, another officer met with Potter as part of an investigation. Potter stated he had no witnesses he wished to call. Moreover, Potter never complained to the disciplinary committee that his request to call witnesses had not been honored, nor did he request certain witnesses be called.

We find Potter was not denied his due process right to present witnesses.

V. Counsel Substitute

Generally, inmates in prison disciplinary proceedings have no right to either retained or appointed counsel. *Giles v. State*, 511 N.W.2d 622, 627 (Iowa 1994); *Backstrom*, 508 N.W.2d at 709. However, inmates who are illiterate or facing complex cases are entitled to counsel substitutes. *Wolff v. McDonnell*, 418 U.S. at 570, 94 S. Ct. at 2982, 41 L. Ed. 2d at 959. Potter argues since he has had no legal education and he was facing difficult issues dealing with First Amendment rights, he was entitled to a counsel substitute. We disagree.

Potter is not illiterate, but in fact has had two years of college. We reject the contention a person who has not had legal training needs a counsel substitute to

represent his or her interests. This case presented no unusual or unduly complex issues of which a counsel substitute would be effective. *See Sauls v. State*, 467 N.W.2d 1, 3 (Iowa App. 1990) (use of confidential informant does not render the proceedings complex to warrant counsel substitute).

Potter was presented with sufficient information to allow him to understand and appreciate the charges against him and to prepare an adequate defense. We find he was competent to represent his own interests at the disciplinary hearing and a counsel substitute was not required.

VI. First Amendment Rights

An inmate retains those First Amendment rights not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system. *Pell v. Procunier*, 417 U.S. 817, 822, 94 S. Ct. 2800, 2804, 41 L. Ed. 2d 495, 501 (1974). When a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests. *Turner v. Safley*, 482 U.S. 78, 89, 107 S. Ct. 2254, 2261, 96 L. Ed. 2d 64, 79 (1987).

We find the regulation at issue in this case to be reasonably related to legitimate penological interests. The regulation of obstructive or disruptive conduct is necessary to maintain institutional security. Allowing inmates to discuss, advocate, and encourage harm and death to prison staff and the community at large directly affects the institution's ability to maintain security and tranquility. The regulation does not prohibit Potter from communicating his views with inmates, but rather

prevents an inmate from promoting extremely violent acts. Without such a limitation the safety of inmates, prison staff, and the community at large would be severely affected.

We find Potter's First Amendment rights were not violated when the adjustment committee punished him for encouraging riotous activities through his conversations with other inmates. We affirm the district court's denial of postconviction relief.

AFFIRMED.