IN THE COURT OF APPEALS OF IOWA 000285

No. 7-526 / 96-0985
Filed March 27, 1998

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CLERK SUPREME COURT

JAMES EARL OVERTON, SR.,
Appellant,

vs.

STATE OF IOWA,
Appellee.

Appeal from the Iowa District Court for Jones County, William L. Thomas, and Van D. Zimmer, Judges.

The applicant appeals from the district court ruling denying him postconviction relief from prison discipline imposed for his alleged participation in an assault. **AFFIRMED.**

Philip B. Mears of Mears Law Office, Iowa City, for appellant.

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

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

STREIT, J.

An inmate appeals the sanction he received at a prison disciplinary hearing after being found guilty of violating prison rules. He argues insufficient evidence supported the charges, he was given inadequate notice of the charges, and he was entitled to counsel substitute. We affirm the postconviction court on all issues.

I. Background & Facts.

James Overton, Sr., an inmate at the Clarinda Correctional Facility, received a disciplinary notice charging him with violation of the prison rules against assault, extortion, blackmail, fighting, threats/intimidation, destructive/disruptive conduct, unauthorized group/gang conduct, and complicity. The essence of the charges were Overton distracted a unit officer while another inmate was assaulted.

The prison administrative law judge found Overton guilty of violating all rules except extortion, blackmail, and gang conduct. Overton was sanctioned with ten days disciplinary detention, sixteen days loss of good conduct time, thirty days administrative segregation, and recommended for a transfer to a higher-security facility. Overton appealed to the warden and the Iowa Department of Corrections. Both appeals were denied. The district court denied Overton's application for postconviction relief. Overton appeals.

II. Confidential Statements as Sufficient Evidence of Guilt.

Overton contends there was insufficient evidence to support the decision of the administrative law judge and the resulting punishment.

A disciplinary decision should be upheld if it is supported by "some evidence." *Johnson v. State*, 542 N.W.2d 1, 2 (Iowa App. 1995); *Superintendent v. Hill*, 472 U.S. 445, 455, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356, 365 (1985). The threshold for determining whether some evidence exists is low. *Id.; see also Wilson v. Farrier*, 372 N.W.2d 499, 502 (Iowa 1985)(sole and only issue of constitutional substance is whether any evidence supports the action taken by the prison officials). Although the "some evidence" standard seems harsh, it protects prisoners from arbitrary and retaliatory treatment, *James v. State,* 541 N.W.2d 864 (Iowa 1995)(quoting *Goff v. Dailey*, 991 F.2d 1437, 1440-42 (8th Cir.1993))(citations omitted), and is a reasonable accommodation between the rights of prisoners and the rights of the public. *Id.*

Overton suggests we adopt a higher standard than "some evidence" when prison officials' actions are based on confidential information. In light of the decisions of our Supreme Court, we decline to do so. In *James,* the court held a disciplinary committee "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." *Id.* at 874; *see also James v. State*, 479 N.W.2d 287, 291 (Iowa 1991)(informant statements by themselves are sufficient under the some evidence standard to support the committee's decision). When relying on confidential information to satisfy the "some evidence" requirement, however, there does need to be an indication of the reliability of the information. *James,* 541 N.W.2d at 874.

Under these principles we analyze two questions: first, whether there is some evidence supporting the committee's disciplinary action; and second, if supported by confidential information, whether the information is reliable. The some evidence standard is easily met in this case. The administrative law judge relied upon the investigative report of Brad Richards, confidential informant statements, inmate witness statements, and Overton's verbal statements.

Overton asserts the only information inculpating him was the confidential information. He argues the district court did not adequately review the confidential information to determine its reliability. The record must convince the reviewing authority the disciplinary committee made an inquiry into whether the information was reliable and correctly determined it was. *Id.* Reliability can be established by *in camera* review of material documenting an investigator's assessment of the credibility of a confidential informant. *Id.*

After *in camera* review of the confidential file, we conclude the disciplinary committee adequately inquired into the reliability of the confidential information and correctly determined it was reliable. There is a summary of why the committee believed the confidential statements reliable within the confidential file. The disciplinary committee was aware of the identity of the informants and the exact nature of the information they provided. This provided the committee, and the reporting staff members, with the opportunity to consider any known problems

between the informants and the accused. The confidential statements sufficiently linked Overton to the rule violations of which he was found guilty.

Even if we found the confidential information unreliable, there was some evidence to find Overton was guilty of the rule violations. Overton's statement partially corroborates the confidential information. Overton's witnesses contradicted each other, rendering the credibility of their statements questionable. The investigative report linked Overton to the rule violations. This evidence, even without the confidential information, was sufficient.

III. Adequacy of Notice.

Overton argues he received insufficient notice of the disciplinary charges against him. The notice Overton received stated he had violated rules two, four, fourteen, twenty-seven, forty-two, and forty-three. The notice stated:

> Based on confidential information, on or about Wednesday, 03-01-95, at 11:00 p.m. on the 1-West living unit at the Clarinda Correctional Facility, an inmate was assaulted in room #9. Information received during the investigation indicates that you were in the day room, distracting the Unit Officer, while the assault was taking place. Further information found during the investigation indicates approximately four weeks ago, you were involved in the assault of another inmate in #1 of 1-West, as well as collecting 10 pop tokens per week from another inmate for protection.

Overton argues he was withheld the identification of other inmates involved in the incident which denied him the opportunity to prepare a defense. He argues the

fact that the inmates' identification was revealed during the postconviction discovery process proves the confidentiality of their identities was not justified.

The due process clause of the Fourteenth Amendment of the federal constitution requires a prisoner subject to discipline be given proper notice of the charges against him. *Backstrom v. Iowa Dist. Ct.*, 508 N.W.2d 705, 708 (Iowa 1993) (citing *Wolff v. McDonnell*, 418 U.S. 539, 564, 94 S.Ct. 2963, 2978, 41 L.Ed.2d 935, 936 (1974)). This requirement is applied in light of the totality of the circumstances. *Id.* The focus is whether prison officials have adequately apprised the inmate of the charges against him. *Id.*

Some situations will mandate certain facts be left out of the notice. For example, when prison officials rely on confidential informants for incriminating information, revealing names or facts which expose those inmates may lead to retaliation by the inmate charged. *Id.* If prison officials use confidential information in their investigation they must state that fact in the disciplinary notice to the prisoner. *Id.*

Here, the disciplinary notice gave Overton the exact date and time of the crimes of which he was found guilty. The notice described the alleged violations with sufficient detail. It also stated the charges were based on confidential information, as required. Overton's contention there was no need the information be confidential is flawed. The officer who wrote the report believed at the time it would compromise the security of the prison and place inmates at risk to reveal the inmates identities.

The fact the identities were revealed in the discovery process is not an indication a legitimate security risk was not present at the time the notice was written.

The disciplinary notice presented enough information to apprise Overton of the charges against him and to give him an opportunity to defend himself. Even though some of the evidence against him remained confidential, the notice provided adequate detail regarding the time, place, and nature of his activities. For these reasons, the notice complied with due process requirements.

IV. Appointment of Counsel Substitute.

Overton claims the disciplinary committee's failure to appoint counsel substitute to represent him violated his due process rights under the Fourteenth Amendment to the federal constitution. He contends appointment of counsel substitute was necessary to act as his advocate, communicate with him through written correspondence, and argue his cause at the hearing.

The retention of a retained or appointed attorney to assist inmates in disciplinary proceedings is not necessary to satisfy due process. *Mahan v. State*, 541 N.W.2d 918, 923 (Iowa App. 1995). The due process clause of the Fourteenth Amendment, however, does afford inmates a right to counsel substitute to assist an inmate who can not read or an inmate who is faced with particularly complex issues. *Backstrom*, 508 N.W.2d at 708.

Overton is not illiterate. He cannot show his case is complex. He asserts the same argument advanced in *James* that when an inmate is having difficulty preparing

a defense because of the prison's refusal to release confidential information to the inmate, the case is complex. *James,* 541 N.W.2d at 873. Disciplinary charges which rely on confidential information do not in themselves render a case sufficiently complex to require the appointment of counsel substitute. *Sauls v. State*, 467 N.W.2d 1, 3 (Iowa App. 1990). Overton's case was not complex. Overton had the opportunity to defend his actions, contest facts, and present his own witnesses. He had the necessary ability and information to defend himself. Under these circumstances, Overton has not adequately shown a need for counsel substitute. In effect, Overton requests this court expand the circumstances under which inmates are entitled to counsel substitute. He argues inmates are entitled to a counsel substitute as an advocate in disciplinary proceedings. Generally, they are not.

Further, Overton's primary contention was he was denied access to confidential information. Even if counsel substitute was appointed, Overton would not have had access to the confidential information. *Howard v. State*, 439 N.W.2d 193, 195 (Iowa 1989).

We find Overton was competent to represent his own interests in the disciplinary hearing and counsel substitute was not required. The postconviction court did not err in finding Overton had no right to counsel substitute.

AFFIRMED.