IN THE COURT OF APPEALS OF IOWA

No. 5-733 / 95-649

FILED
MAY 31 1996
CLERK SUPREME COURT

RUSTIN C. HARVEY,

Appellee,

vs.

STATE OF IOWA,

Respondent-Appellant.

Appeal from the Iowa District Court for Lee County, D. B. Hendrickson, Judge.

The State appeals from the district court's ruling granting the applicant postconviction relief from prison discipline imposed for violating a prison rule regarding the disobeying of a lawful order. **REVERSED.**

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

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

Considered by Sackett, P.J., and Habhab, Cady, Huitink, and Streit, JJ. Vogel, J., takes no part

STREIT, J.

The State appeals the district court's ruling granting applicant-appellee Rustin C. Harvey partial postconviction relief from prison discipline. The discipline was imposed after Harvey allegedly violated two prison rules: (1) when he refused to throw his food tray in the garbage and (2) when he refused to return to his cell. The State claims the district court erred in determining the order to Harvey to throw away a food tray was unreasonable and, therefore, not a violation of the rule. We reverse.

Harvey, an inmate at the state penitentiary, was charged by a disciplinary notice with violating prison rules: specifically, it was alleged Harvey disobeyed an order by a correctional officer to throw away a food tray and a second order to return to his cell. Harvey did not receive his food tray at the designated time because he failed to hear his food buzzer with his headphones on He thought he had implicit authority to leave his cell and get a tray because his cell door opened When an officer discovered Harvey with the food tray he was told to return it and return to his cell. Harvey refused.

A prison disciplinary committee found Harvey had violated the prison rule regarding disobeying a lawful order by refusing to obey the two orders and imposed discipline, including the loss of good conduct time During the administrative appeals by Harvey, the discipline was suspended, but the committee's decision was otherwise affirmed

After exhausting his administrative remedies, Harvey filed an application for postconviction relief challenging the committee's decision. The parties stipulated meals could not be withheld as punishment.

On March 17, 1995, the district court entered an order granting Harvey partial postconviction relief. The court concluded the order to throw away the food tray was unreasonable while the order to return to a cell was reasonable and proper. On the basis of evidence the punishment would have been different if Harvey had been found guilty of disobeying only one order, the district court ordered the case remanded to an administrative law judge for redetermination of the punishment to be imposed.

The State filed a notice of appeal.

I. Standard of Review.

There is a unique standard for reviewing decisions by prison disciplinary committees not involving constitutional issues Our role is not to afford a de novo review of the committee's findings. *Hoeppner v. State*, 379 N.W.2d 23, 25 (Iowa App. 1985) Instead, we look to see whether "some evidence" exists which would support the committee's decision *Backstrom v. Iowa Dist. Court for Jones County*, 508 N W 2d 705, 709 (Iowa 1993) This means we largely defer to the findings of the committee *Id.* The relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board. *Hoeppner v. State*, 379 N.W.2d 23, 25 (Iowa App 1985). Our sole question for review is "whether there

exists any evidence at all, that is, whether there is any basis in fact to support the action taken by prison officials." *Mahers v. State*, 437 N.W.2d 565, 569 (Iowa 1989). We conduct a de novo review only when constitutional issues have been raised. *Id.* The role of the district court is not to afford a de novo review of the disciplinary board's factual findings. The district court should simply determine whether the decision was supported by some facts. The sole and only issue of constitutional substance is 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. Otherwise the district court would assume the task of retrying all prison disciplinary disputes. *Wilson v. Farrier*, 372 N.W.2d 499, 502 (Iowa 1985); *Willis v. Ciccone*, 506 F.2d 1011 (8th Cir.1974).

II. Disruptive Conduct.

An inmate may not be punished for disobeying an order that is unreasonable. *Blair v. State*, 498 N W 2d 412, 413 (Iowa App 1993).

Rule 23 provides

> 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

To find an inmate in violation of rule 23, it is also necessary the underlying rule was reasonable. *Blair*, 498 N W.2d at 413. Regardless of the reasons for which Harvey refused to obey the officer to return the food tray, there is some evidence

supporting the reasonableness of the order of the officer. There is some evidence that such an order, under the circumstances, was reasonable. The disciplinary committee could find Harvey's actions to be violative of a lawful order.

In light of the deference given to the disciplinary committee and our standard of review, we find Harvey's manner in attempting to obtain food and his refusal to return the tray constitutes some evidence of misconduct to support the disciplinary action.

We cannot find the order to return the food tray to be unreasonable. We reverse.

REVERSED.

All judges concur except Sackett, P.J., who dissents.

SACKETT, P.J. (dissenting)

I would affirm the trial court. It was stipulated on the record a prisoner cannot be punished by denying him or her meals. I agree with the conclusion; therefore, it is not reasonable to order an inmate to throw away a dinner tray.

I would affirm the trial court.