FILED
NOV 27 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-410 / 89-270

433

TIMOTHY WHITFIELD,

Appellee,

vs.

STATE OF IOWA,

Appellant.

Appeal from the Iowa District Court for Henry County, David B. Hendrickson, Judge.

The State appeals from a district court ruling granting appellee's application for postconviction relief and reversing the punishment imposed by the prison disciplinary committee. **REVERSED.**

Thomas J. Miller, Attorney General; Gordon E. Allen, Deputy Attorney General; and Anuradha Vaitheswaran, Assistant Attorney General; for appellant.

James M. Becker, Jr., of Becker Law Office, P.C., Mt. Pleasant, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

PER CURIAM

The State of Iowa appeals from a district court ruling granting Timothy Whitfield's application for postconviction relief and reversing the punishment imposed by the prison disciplinary committee. Whitfield was charged with being a coconspirator in an escape plan from Mt. Pleasant. The State contends the district court erred in: 1) concluding Whitfield was denied due process because the disciplinary notice to Whitfield failed to identify the other persons involved in the incident; and 2) failing to find some evidence to support the disciplinary committee's decision. We reverse.

On May 19, 1988, Whitfield was served a disciplinary notice stating he was being charged as a coconspirator in a conspiracy to escape from Mt. Pleasant Correctional Facility on or about May 13, 1988. The notice informed Whitfield he was being placed on disciplinary report and was being charged with violation of three prison rules: attempt or complicity to escape; and obstructive/disruptive conduct by disrupting the security of the institution. The report was based on confidential information supplied by informants whose identity could not be revealed without compromising the security of the institution.

The disciplinary committee found Whitfield guilty of violating all three rules. Whitfield received thirty days' disciplinary detention and ninety days' administrative segregation. He also lost sixteen days of good time. He

exhausted all appropriate appeals within the Iowa Department of Corrections and then filed an Application for Postconviction Relief. The district court granted the application in a ruling dated January 19, 1989. The court concluded Whitfield was denied due process because the disciplinary notice failed to identify the other persons involved in the incident and thus, he could not prepare a defense to the charge. The State appeals, arguing the disciplinary notice is constitutionally adequate and the disciplinary decision is supported by sufficient evidence.

Ordinarily, postconviction relief actions are treated as special proceedings at law and review is on assigned errors only. Morris v. Auger, 414 N.W.2d 858, 859 (Iowa App. 1987), citing to Kelly v. Nix, 329 N.W.2d 287, 291 (Iowa 1983). However, where a fundamental constitutional issue is raised, the appellate court makes its own independent evaluation of the totality of circumstances in a de novo review. Id.

The State argues the postconviction relief should be reversed because the disciplinary notice Whitfield received satisfies procedural due process requirements.

The disciplinary notice stated, in toto:

> You are being charges [sic] as a co-conspirator [sic] in a conspiracy to attempt an escape from the Mt. Pleasant Correctional Facility on or about 13 May 88. For your actions you are being placed on disciplinary report and charged with violating institutional rules: 41 Attempt or complicity to commit escape, (Rule 5); 27 obstructive/disruptive

conduct by disrupting the security and tranquillity of the institution.

This report is being written at the end of an investigation which began 10 May 88, and is based on confidential information supplied by an inmate or inmates whose identity cannot be revealed. To reveal the identity of the informant or informants would compromise the security of the institution.

In Wolff v. McDonnell, 418 U.S. 534, 557, 94 S. Ct. 2963, 2975, 41 L. Ed. 2d 935, 951 (1974), the Supreme Court ruled that minimum requirements of procedural due process apply to prisoners in disciplinary proceedings.[1] The Court, however, in acknowledging the inherent flexibility of the due process clause and the need to apply a different standard to prison disciplinary proceedings than notice requirements to those free in society, noted:

The reality is that disciplinary hearings and the *imposition of disagreeable sanctions* necessarily involve confrontations between inmates who are being disciplined and those who would charge or furnish evidence against them. Retaliation is much more than a theoretical possibility; and the basic and unavoidable task of providing reasonable personal safety for guards and inmates may be at stake, to say nothing of the impact of disciplinary confrontations and the resulting escalation of personal antagonisms on the important aims of the correctional process.

---

1. The Supreme Court in Wolff further stated:

Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings do not apply. In some, there must be mutual accommodation between institutional needs and objectives and the provisions of the constitution that are of general application.

Wolff, 418 U.S. at 556, 94 S. Ct. at 2975, 41 L. Ed. 2d at 951.

Id. at 562, 94 S. Ct. at 2977, 41 L. Ed. at 954. Among the minimum requirements of due process in a prison disciplinary proceeding is inmates must receive notice of the charges. Morris, 414 N.W.2d at 860. This notice must be sufficient to inform the inmate of the charges and to enable him to marshal facts and prepare a defense. Id. While a prisoner should be provided with specific information upon which disciplinary charges are founded, the State must be permitted to delete specific information from the notice if, as here, the disclosure will identify confidential informants and will in all likelihood cause security problems within the institution. See id. at 861.

The notice involved in this case identifies when the investigation began and the date the escape was to occur. Furthermore, it explains why additional information could not be provided. We determine the notice provided petitioner with sufficient facts upon which the charge was founded so as to enable him to defend himself.

Additionally, we find the disciplinary committee's decision to have been supported by some evidence. See Wilson v. Farrier, 372 N.W.2d 499, 501 (Iowa 1985). In this respect, the requirements of due process are satisfied if some evidence supports a disciplinary committee decision. Id. at 501. This standard does not require examination of the entire record, independent assessment of the availability of witnesses or weighing of the evidence.

Id. The only relevant question is whether there is any evidence in the record to support the committee decision. Id. A disciplinary committee's findings of fact and decision are not subject to second-guessing upon judicial review if there is some evidence to support the decision. Superintendent v. Hill, 472 U.S. 445, 454, 105 S. Ct. 2768, 2777, 86 L. Ed. 2d 356, 364 (1985).

REVERSED.

HAYDEN, J. (dissenting)

I respectfully dissent.

Among the minimum requirements of due process in a prison is inmates must receive notice of the charges. Morris v. Auger, 414 N.W.2d 858, 860 (Iowa App. 1987). This notice must be sufficient to inform the inmate of the charges and to enable him to marshal facts and prepare a defense. Id.

In this case, Whitfield is charged with being a coconspirator to escape from Mt. Pleasant. Whitfield is not, however, told when he allegedly conspired to escape, or where any of this took place, or even what, exactly, he was supposed to have done. Whitfield is merely informed of the fact he is charged with conspiring to escape and the date the escape was to occur.

Inmate Whitfield has not been provided with information which will allow him to mobilize facts and prepare a defense. The notice, therefore, is inadequate. Freitas v. Auger, 837 F.2d 826, 829 (8th Cir. 1988). The information contained in the notice is so sketchy, the only way Whitfield would be able to defend himself is if he, in fact, did what he is accused of.

In both Freitas and Morris, the disciplinary notice, although withholding the identity of the informants,

contained other information specific enough to allow the inmate to prepare a defense.

The trial court in the instant case concluded the notice fails to tell Whitfield the date and general time the conspiracy was supposed to have occurred; it fails to describe what he allegedly did in furtherance of the conspiracy; and fails to identify the other parties to the conspiracy. After reviewing the confidential material, I concur with the trial court there is nothing in the material which explains to us how revealing the names of the alleged coconspirators would result in security problems for the prison. I would affirm.