

IN THE COURT OF APPEALS OF IOWA

No. 6-294 / 95-603

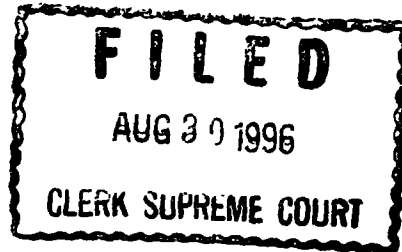
DARRELL ALLEN SHOWENS,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.



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

Prison inmate Darrell Allen Showens appeals from a denial of his application for postconviction relief. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, and Forrest Guddall, Assistant Attorney General, for appellee.

Considered by Sackett, C.J., and Huitink and Streit, JJ.

PER CURIAM.

Applicant-appellant Darrell Allen Showens, a prisoner in the Iowa state penitentiary at Fort Madison, appeals after the district court denied his petition for postconviction relief. Showens contends (1) there was not sufficient evidence he violated disciplinary rule 27 concerned with obstructive and disruptive conduct; and (2) rule 27 is vague and unconstitutional as it applies to this situation.

The disciplinary committee at the Iowa state penitentiary found Showens guilty of violating disciplinary rule 27 concerned with obstructive and disruptive behavior. The charge was based on evidence Showens leaned forward as if to kiss a nurse who was giving him a skin test by injecting a needle. The nurse claimed to have felt Showens attempt to kiss her. Showens was initially also charged with violating rules concerned with threats and intimidation, sexual misconduct, and complicity. However, the committee only found sufficient evidence to convict him of obstructive and disruptive behavior.

As punishment for the violation, the committee imposed fifteen days of disciplinary detention. Additionally, Showens lost ninety days of good conduct time and was restricted to the maximum security cell house for ninety days. Showens appealed to the warden. This appeal was denied. He then appealed to the Department of Correction, and when he received no reply within thirty days, he presumed his appeal was denied as provided by the statute. He then filed an application for postconviction relief in the district court. His application was

subsequently amended and then denied. This appeal follows.

Showens claims there is not sufficient evidence to show he was guilty of disruptive conduct and that rule 27¹ dealing with disruptive conduct under which he was found guilty is vague and therefore not constitutional.

Showens claims his constitutional guarantees to due process have been violated. Therefore, we review de novo. *Kindersley v. State*, 494 N.W.2d 698, 699 (Iowa 1993).

The nurse administering the skin test first asserted she felt Showens was going to kiss her. Her statement was then amended to show Showens had attempted to kiss her. Showens claims because the committee did not find sufficient evidence to convict him of sexual misconduct, there was not sufficient evidence to find him guilty of obstructive and disruptive behavior.

The focal question is whether there is some evidence Showens violated the rule. See *Wilson v. Farrier*, 372 N.W.2d 499, 502 (Iowa 1985). The rule in question

¹ The applicable language of the rule states:

27. *Obstructive/Disruptive Conduct*: An inmate commits an offense under this subsection when the inmate:

a. transmits through any form of communication, threats, demands, or suggestions which advocate disruption of operations of any segment of an institution, or

b. conducts her/himself in a manner which disrupts or interferes with the security, tranquility, or orderly running of the institution, including but not limited to: "horseplay"; rough-housing; interfering with search; making false fire alarms; participating in unauthorized meetings, gatherings, or petitioning; throwing food, liquid, or other subjects; spitting; encouraging others to refuse to work or participate in work stoppage; engaging in, or encouraging a group demonstration, etc.

does not require the inmate disrupt the prison; it only states the rule is violated by actions that may disrupt. The fact there were findings Showens had not violated other rules is not dispositive, the only question being whether there is some evidence he violated the rule he was found to have violated.

The nurse's statement that Showens attempted to kiss her, although refuted, is sufficient to support the charge.

Showens next argues rule 27, making obstructive and disruptive behavior a violation of prison rules, is vague in this situation because he could not have known how the nurse would feel and, therefore, he had no advance notice of the behavior proscribed. He contends, because of the rule's vagueness, it is unconstitutional.

In *Leonard v. State*, 442 N.W.2d 274, 275 (Iowa App. 1989), we said, "Disciplinary Rule 27 is not void for vagueness." In *Leonard*, we recognized (1) disciplinary rules are presumed valid; (2) we will seek to interpret the rule so as to find it constitutional; (3) yet the rule needs to give the inmate adequate notice of the behavior the rule will punish; and (4) in looking at whether the rule adequately notified the inmate of the behavior to be punished, we will consider the rule in light of the conduct alleged as being in violation of the rule. *Id.*

We have examined the rule in light of the conduct Showens is alleged to have engaged in that violated the rule. We reject Showens' argument.

AFFIRMED.