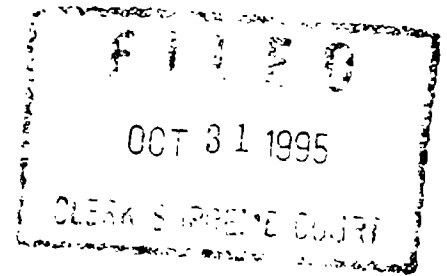


IN THE COURT OF APPEALS OF IOWA

No. 5-496 / 94-2052



IRVIN E. JOHNSON,

Appellant.

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Lee County, Harlan W. Bainter, Judge.

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

Mary K. Hoefer of Mears Law Office, Iowa City, for appellant.

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

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

HUITINK, J.

Irvin Johnson is an inmate at the Iowa State Penitentiary in Fort Madison. On May 20, 1993, he received a disciplinary report charging him with, among other things, a violation of Rule 27, obstructive/disruptive conduct. The incident giving rise to the discipline occurred during a strip search for a shower. As he was being searched Johnson kicked his shower shoes toward the guard, grabbed his genitalia, moved his pelvis toward a guard and stated: "You are going to quit taunting me." Johnson alleged the guard who filed the report had a personal vendetta against him.

After a hearing, the disciplinary committee found Johnson guilty of violating Iowa State Penitentiary Disciplinary Policy and Procedure Rule 27. The rule provides:

An inmate commits an offense under this subsection when the inmate:

- a. Transmits through any form of communication, threats, demands, or suggestions which advocate disruptions 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.

Johnson was given a sanction of ten days of disciplinary detention and the loss of sixteen days of good conduct time. These sanctions, however, were suspended for ninety days. After exhausting his administrative remedies, Johnson filed an application for postconviction relief. The district court denied the application. Johnson appeals.

Ordinarily our review of postconviction proceedings is for errors of law. *Hinkle v. State*, 290 N.W.2d 28, 30 (Iowa 1980). When a postconviction petitioner asserts a

violation of constitutional rights, however, we make our own evaluation based on the totality of the circumstances. *Id.* Here Johnson asserts his due process rights were violated. As a result, our review is de novo.

Johnson contends that his conduct on May 20, 1993, did not violate Rule 27. He asserts there is not evidence in the record to support the action taken against him. A disciplinary decision should be upheld if there is some evidence to support it. *James v. State*, 479 N.W.2d 287, 291 (Iowa 1991). The threshold for determining whether some evidence exists is low, and can be satisfied by the report of a correctional officer. *Mahers v. State*, 437 N.W.2d 565, 569-70 (Iowa 1989). Johnson argues that there is not “some evidence” to support the disciplinary action taken against him. We disagree.

The disciplinary committee found Johnson violated part (b) of Rule 27, which prohibits inmates from acting in a manner which disrupts or interferes with the security, tranquility, or orderly running of the institution. The district court found that there was “some evidence” to support the disciplinary committee’s decision. We agree there is evidence to support the finding that Johnson’s conduct was disruptive. The correctional officer’s report states that Johnson raised his genitals “in a demeaning manner.” While doing so, Johnson made disrespectful and inappropriate comments to the officer. He also refused to comply with the officer’s orders. On our de novo review, we conclude Johnson’s conduct interfered with orderly running of the

institution. As a result, his conduct was disruptive for purposes of Rule 27. There is “some evidence” to support the committee’s disciplinary action.

Johnson also argues that the administrative law judge failed to consider several factors in issuing his decision. Specifically, he asserts the judge failed to consider his defense that the correctional officer was biased against him. In his written decision, the administrative law judge did not mention the committee’s consideration of this defense. A disciplinary committee, however, is not required to state each consideration made in the determination of disciplinary action. *Rushing v. State*, 382 N.W.2d 141, 145 (Iowa 1986). Although the administrative law judge did not discuss Johnson’s bias allegation in his written decision, we can infer from his silence on the issue that the committee rejected the defense. Moreover, on our de novo review, we find no credible evidence in the record to support Johnson’s bias claim. As a result, we agree with the district court that Johnson’s bias contention is without merit.

In summary, we conclude that the disciplinary committee’s decision does not violate Johnson’s due process rights. We also find that it was not necessary for the administrative law judge to mention Johnson’s bias claim in his written decision. Finally, we find no credible evidence in the record to support Johnson’s bias contention. We affirm the disciplinary committee’s decision.

AFFIRMED.