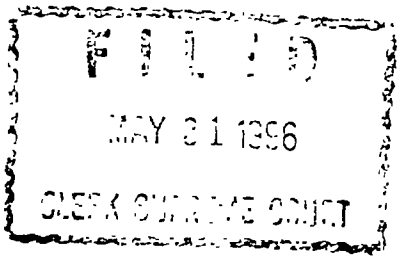
IN THE COURT OF APPEALS OF IOWA

No. 5-734 / 95-654

000387



JAKE THOMPSON,

Appellee,

vs.

STATE OF IOWA,

Appellant.

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

The State appeals the district court's grant of Thompson's application for postconviction relief from his prison discipline. **REVERSED.**

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

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

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

CADY, J. 000388

The State appeals the district court's grant of postconviction relief to Jake Thompson from prison disciplinary actions. We find Thompson is not entitled to postconviction relief and reverse the district court.

On February 18, 1994, Jake Thompson, an inmate at the Iowa Men's Reformatory in Anamosa, Iowa, was served with a disciplinary notice charging him with violations of various institutional rules. Included among the violations was Prison Disciplinary Rule 27 which prohibits disruptive conduct. An inmate commits an offense under Rule 27 when the inmate engages in "[c]onduct which interferes with the security, tranquility or orderly running of the institution. . . ."

Prison investigator Lewis reported "several inmates were yelling from their cell demanding to see me objecting to the way the food was served. Inmate Thompson readily admitted to being one of the inmates yelling." Thompson claimed he was yelling merely to get the attention of the official in order to tell him he received the wrong tray of food. Thompson had been designated a non-pork eater for religious reasons, and was served a tray which contained pork and beans. The disciplinary committee found Thompson guilty of disorderly conduct for "yelling at" prison officials, and sanctioned him to twenty days disciplinary detention and a loss of sixteen days of good conduct time.

Thompson exhausted his administrative appeals and applied for postconviction relief from the district court. He contended he was not "yelling at" Lewis, but rather

"yelling for" Lewis. Following a hearing the district court reversed the disciplinary committee specifically finding "no evidence presented for the committee's consideration [indicated] that Thompson was doing anything other than calling for the assistance of a correctional official when he discovered his food violated his religious convictions."

The State appeals contending the district court erred in reversing the disciplinary committee. It claims, since the evidence showed Thompson was yelling, some evidence existed to support the disciplinary committee's findings.

I. Standard of Review

We must be mindful of our 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.* 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.*

II. Disruptive Conduct

We find some evidence exists to support the discipline imposed. Regardless of the reasons for which Thompson was yelling, the evidence unequivocally establishes he was yelling and demanding to see the prison officials. Lewis' report, as well as Thompson's own testimony, indicated Thompson's involvement in the demands for prison officials. *See Mahers*, 437 N.W.2d at 569 (report of a corrections officer is sufficient to satisfy the "some evidence" requirement). Both the reporting officer and the disciplinary committee found Thompson's actions to be disruptive behavior.

In light of the deference given to the disciplinary committee and our low standard of review, we find Thompson's manner in attempting to obtain the attention of the prison guards constitutes some evidence to support the disciplinary discipline for disruptive conduct.[1] As such, we reverse the decision of the district court.

III. First Amendment

Thompson also argues he is entitled to postconviction relief since the disciplinary committee's decision violated his First Amendment freedom of speech and freedom of religion rights.

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[1] We note the district court relied heavily upon the reason Thompson was yelling. Prisoners should not be precluded from requesting to speak with prison officials, or from exercising their own religious beliefs. Prison officials, however, are given wide discretion to adopt and execute policies needed to preserve order and security in the prison setting. *See Bell v. Wolfish*, 441 U.S. 520, 547-48, 99 S. Ct. 1861, 1889, 60 L. Ed. 2d 447, 473 (1979).

We find Thompson's First Amendment rights were not violated. An inmate retains those First Amendment rights not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system. *Pell v. Procunier*, 417 U.S. 817, 822, 94 S. Ct. 2800, 2804, 41 L. Ed. 2d 495, 501 (1974). A prison regulation is valid if it is reasonably related to legitimate penological interests *Turner v. Safley*, 482 U.S. 78, 89, 107 S. Ct. 2254, 2261, 96 L. Ed. 2d 64, 79 (1987). Here the regulation was reasonably related to penological interests in the security and tranquility of the prison. Moreover, the regulation does not dictate the type of speech prohibited, but the manner in which the speech in made. If the manner in which the speech is made is disruptive, it jeopardizes the prison environment. We find Thompson's First Amendment rights were not violated by this regulation.

We also find the discipline imposed did not violate Thompson's First Amendment right to exercise his religious beliefs or his rights under the Religious Freedom Restoration Act (1993). The punishment was imposed not because of the reason for which Thompson was trying to get the attention of the prison officials, but rather because of the way in which Thompson acted. We find the disciplinary committee did not violate Thompson's right to exercise his religious rights.

REVERSED.