IN THE COURT OF APPEALS OF IOWA

No. 7-072 / 96-0188

DARIN GODFREY,

Appellant,

vs.

STATE OF IOWA,

Appellee.

FILED
MAR 28 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Jones County, August F. Honsell, Judge.

Darin Godfrey appeals from the district court's ruling denying his application for postconviction relief concerning prison discipline. **AFFIRMED.**

Philip B. Mears, Mears Law Office, Iowa City, for appellant.

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

Considered by Sackett, P.J., and Huitink and Vogel, JJ.

PER CURIAM

This is an appeal by Darin Godfrey claiming the district court erred in granting the State's motion for summary judgment in this postconviction relief action. Specifically, Godfrey contends: (1) the confidential information was not adequately reliable to support the disciplinary committee's decision; (2) he was denied due process by the committee's decision to keep his own witnesses' statements confidential; and (3) his attorney was improperly denied access to the confidential information. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Postconviction proceedings are law actions and ordinarily we review on error. *Kinnersley v. State*, 494 N.W.2d 698, 699 (Iowa 1993). However, when an applicant claims constitutional safeguards have been violated, we make an independent evaluation of the totality of the circumstances equivalent to a de novo review. *Id.*

Godfrey was charged by a disciplinary notice at the Iowa Men's Reformatory with possession of dangerous contraband. The notice related that on November 23, 1994, several inmates observed Godfrey in possession of a knife-like weapon, that the weapon was displayed during a confrontation with other inmates, and that confidential information was relied upon.

During the course of the investigation regarding the disciplinary charge, Godfrey requested witness statements be taken from two inmates. The inmates were

interviewed. The disciplinary committee subsequently entered a decision that Godfrey had violated the rule against possession of dangerous contraband. The committee made its finding on the basis of confidential information and also on the fact that Godfrey's statements to the committee were inconsistent with those of the witnesses he requested. Godfrey was not shown these witness statements and was not informed of the nature of the inconsistencies.

Godfrey exhausted his administrative remedies and then filed this application for postconviction relief. He asserted the committee did not make a good faith determination of the reliability of the witnesses, there was insufficient evidence to support the disciplinary decision, and the committee unnecessarily kept his own witnesses' statements confidential. The State filed a motion for summary judgment contending there was sufficient evidence to support the committee's decision and the use of confidential information was appropriate; it also asked for an *in camera* review of the confidential material. In response to the motion for summary judgment, Godfrey requested access to the confidential documentation subject to a protective order.

After an *in camera* review of the confidential information supplied by the State, the district court granted the State's motion for summary judgment. The court determined there was sufficient evidence to support the disciplinary committee's decision.

I. We, too, have reviewed the confidential information relied upon by the disciplinary committee. We find sufficient information in the record to convince us the disciplinary committee undertook an inquiry of the reliability of the information and correctly concluded the confidential information was credible and reliable. *See Howard v. State*, 439 N.W.2d 193, 195 (Iowa 1989). There is some evidence in the record to sustain the disciplinary charge. This is sufficient to uphold the discipline imposed. *See Backstrom v. Iowa Dist. Ct.*, 508 N.W.2d 705 (Iowa 1993).

II. We reject Godfrey's contention that he was denied due process by the committee's decision to keep his own witnesses' statements confidential. In this disciplinary proceeding, Godfrey had a right to call defense witnesses. *See Marshall v. State*, 524 N.W.2d 150, 152 (Iowa 1994). But that right does not extend to confrontation or cross-examination of those witnesses. *Id.* The right may be further limited at the discretion of prison officials where security risks are posed. *Id.* Our independent review of this record convinces us circumstances were such that Godfrey could appropriately be denied access to the statements.

III. Finally, we conclude Godfrey's counsel could appropriately be denied access to the confidential information relied upon in this disciplinary matter. *See Howard*, 439 N.W.2d at 195.

AFFIRMED.