**IN THE COURT OF APPEALS OF IOWA**

No. 7-256 / 95-1758

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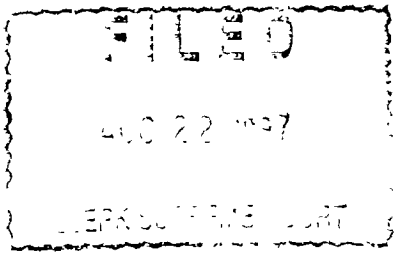
**RUSTIN C. HARVEY,**

Applicant-Appellant,

**vs.**

**STATE OF IOWA,**

Respondent-Appellee.




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Appeal from the Iowa District Court for Lee County, John G. Linn, Judge.

Rustin Harvey appeals from the denial of postconviction relief from prison disciplinary proceedings. **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 Habhab, C.J., and Sackett and Cady, JJ.

**HABHAB, C.J.**

This is an appeal by a prisoner claiming he should not have been denied postconviction relief from prison disciplinary action. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On May 3, 1994, Rustin Harvey, who was an inmate of the Iowa State Penitentiary, sent correspondence in a red star envelope to inmate Dustin Ortiz. Under prison policy, red star envelopes were to be used for jailhouse lawyer correspondence. Harvey's letter encouraged Ortiz to seek an early parole. Included with the correspondence was a blank red star envelope.

Prison officials alleged that by transferring the blank red star envelope to Ortiz, Harvey violated rule 33, which prohibits inmates from giving or receiving things of value. The red star envelope had value, albeit nominal in amount. Officials also claimed Harvey violated rule 40, which prohibited misuse of mail, by sending non-legal correspondence under the guise of jailhouse lawyer correspondence.

At the disciplinary hearing, Harvey's request for three witnesses was denied by the prison disciplinary committee on the ground that the witnesses were not relevant to the issues and the request was untimely. The committee found the letter to Ortiz was not legal in nature because is was not about pending or proposed legal matters. The committee concluded Harvey violated rules 33 and 40.

Harvey exhausted his administrative appeals. The district court denied his application for postconviction relief. Harvey now appeals.

**I.** Harvey's claims on appeal allege a denial of constitutional rights. Therefore, we make our own evaluation of the totality of the circumstances in a de novo review. *McLaughlin v. State*, 533 N.W.2d 546, 547 (Iowa 1995).

**II.** In an affidavit, Harvey claimed a correctional officer had seen him place the blank red star envelope in the other envelope. Harvey claims that because the officer did not object to this action, it is a denial of his due process rights to be punished for it.

It is an inmate's responsibility to understand all rules and procedures of the institution. Harvey was charged with knowledge of the rule that inmates were not to transfer items of value to other inmates. He knew the red star envelope had value because inmates were required to purchase such envelopes.

**III.** Harvey contends he was improperly punished for misuse of mail. He claims his letter to Ortiz was legal in nature. In the alternative, he claims the prison policy was unconstitutionally vague because there was no definition of "non-legal correspondence."

After reviewing the letter, we find it is not legal in nature. We concur in the district court's statements:

> The correspondence does not involve any specific legal proceeding which was ongoing, nor are any recommendations made with regard to specific recourse to legal or administrative proceedings. The letter is really more "pep talk" and encouragement for an early parole plus a recommendation to get an evaluation at the Iowa Medical and

> Classification Center. This correspondence was of a personal nature, not legal correspondence.

We also reject Harvey's claim that the prison policy concerning legal correspondence was unconstitutionally vague. We believe it was Harvey's responsibility to seek a determination from prison officials whether the letter was legal in nature.

**IV.** Harvey claims he was denied his constitutional due process right to call witnesses at the disciplinary hearing. An inmate facing disciplinary proceedings is allowed to present evidence in his behalf. *Wolff v. McDonald,* 418 U.S. 539, 566, 94 S. Ct. 2963, 2979, 41 L. Ed. 2d 935, 956 (1974). However, prison officials can refuse to call witnesses if the testimony would be irrelevant or unnecessary to the individual case. *Id.*, 94 S. Ct. at 2980, 41 L. Ed. 2d at 957.

The prison disciplinary committee determined Harvey's proposed witnesses would not provide relevant testimony. Harvey indicated one of the witnesses could testify about an incident regarding an unrelated red star envelope, but gave no indication of the nature of the testimony of the other witnesses. We agree with the committee's conclusion that the testimony of Harvey's proposed witnesses would be irrelevant and unnecessary to his case.

We affirm the decision of the district court denying Harvey's request for postconviction relief.

**AFFIRMED.**