

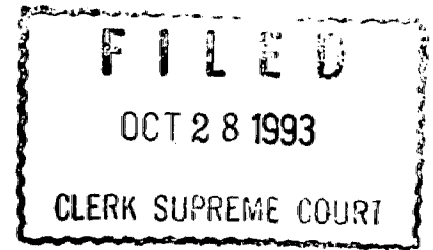
IN THE COURT OF APPEALS OF IOWA

No. 3-340 / 92-248

GERALD LAWRENCE,
Appellant,

vs.

STATE OF IOWA,
Appellee.



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Appeal from the Iowa District Court for Jones County,
Lynne E. Brady, Judge.

Applicant appeals a ruling of the district court
dismissing his application for postconviction relief.

AFFIRMED.

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

Bonnie J. Campbell, Attorney General, and R. Andrew
Humphrey, Assistant Attorney General, for appellee.

Considered by Oxberger, C.J., and Schlegel and Habhab,
JJ.

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OXBERGER, C.J.

The Adjustment Committee found Gerald Lawrence guilty of violating prison disciplinary rule 15, sexual misconduct. Lawrence appealed the finding to the warden. The assistant warden denied his appeal. The memo informed Lawrence of his right to appeal to the director of corrections. No appeal was taken.

Lawrence filed a petition for postconviction relief. Lawrence testified a fellow inmate, Dale Anderson, was to serve as his jailhouse lawyer. Anderson had been approved by the institute to assist inmates who cannot read or write. Lawrence has a fourth or fifth grade education. Lawrence testified Anderson was to appeal to the director. Lawrence was in lock-up when he turned the matter over to Anderson. When he was released from lock-up, he learned that appeal had not been taken. Assistant Warden Sissel testified the inmate himself must sign everything, not the jailhouse lawyer; therefore, Lawrence would have known that an appeal had not been taken.

The district court dismissed Lawrence's application for postconviction relief. The district court found Lawrence had failed to exhaust his administrative remedies. See Bugeley v. State, 464 N.W.2d 878 (Iowa 1991). Lawrence has appealed. He argues his right to access to the judicial system was denied by the State's failure to provide him with competent assistance. In addition, Lawrence contends he was denied effective assistance of counsel.

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Ordinarily, our review of postconviction relief proceedings is for errors of law. Hinkle v. State, 290 N.W.2d 28, 30 (Iowa 1980). However, when a petitioner asserts violation of constitutional safeguards--such as ineffective assistance of counsel--we make our own evaluation based on the totality of the circumstances. This is the equivalent of de novo review. Id.

The administrative appeal process is part of the due process protection afforded prisoners. Benadum v. Scurr, 320 N.W.2d 578, 580 (Iowa 1982). A prisoner who challenges a decision of the prison disciplinary committee must first exhaust administrative remedies before postconviction relief is available. Bugely v. May, 464 N.W.2d 878, 880 (Iowa 1991). However, inmates shall be excused from this requirement if they can establish, by a preponderance of evidence, prison officials interfered with their attempts to pursue administrative remedies. Id.

In this case, no evidence presented indicated interference on the part of prison officials. Prison officials did not choose or assign the fellow inmate to assist Lawrence. From our review of the transcript, it is apparent that Lawrence comprehended the disciplinary proceedings. Thus, prison officials were not required to provide counsel substitute. See, e.g., Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L. Ed. 2d 935 (1974).

Accordingly, we affirm the decision of the district court denying Lawrence postconviction relief.

AFFIRMED.