

IN THE COURT OF APPEALS OF IOWA

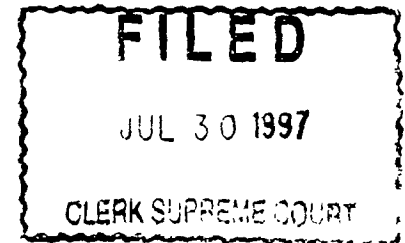
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No. 7-326 / 96-252

DAVID M. JACKSON,
Appellant,

vs.

STATE OF IOWA,
Appellee.



Appeal from the Iowa District Court for Jones County, David M. Remley,
Judge.

David Jackson appeals a denial of his application for postconviction relief
based on prison disciplinary proceedings. **AFFIRMED.**

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

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

Considered by Cady, P.J., and Streit and Vogel, JJ.

VOGEL, J.

David Jackson appeals a denial of his application for postconviction relief based on prison disciplinary proceedings. Jackson contends: (1) he was deprived of any meaningful opportunity to prepare a defense because the disciplinary notice was constitutionally deficient and he was not given counsel substitute; (2) the district court erred in refusing his counsel access to confidential information; and (3) there was insufficient evidence to support the gang conduct violation.

Background facts. Iowa Men's Reformatory inmate David Jackson was found guilty of violating prison disciplinary rule 2 against assault and rule 42 against gang conduct. Specifically, Jackson was found to have been involved in an assault on another inmate which was gang-related.

The administrative law judge sentenced Jackson to fifteen days disciplinary detention, 180 days disciplinary detention at level 1 (with a credit for eight days for time served) and 180 days loss of good conduct time. Jackson exhausted his administrative appeals and filed an application for postconviction relief. The district court denied relief.

Scope of review. When a constitutional error has been alleged, our standard of review is de novo; we review in light of the totality of the circumstances and the postconviction record. *James v. State*, 541 N.W.2d 864, 869-70 (Iowa 1995).

I. Sufficiency of notice; counsel substitute. Consonant with due process, prison officials must give an inmate subject to discipline proper notice of charges against him. *Backstrom v. Iowa District Court for Jones County*, 508 N.W.2d 705,

707-08 (Iowa 1993). That case concerned the adequacy of a disciplinary notice when confidential information was used. The polestar in this determination is whether the inmate is adequately apprised of the relevant charges. *Id.* at 708. Factors concerning adequate notice are the time, place, and nature of the alleged incident, to the exclusion of details, however, if such disclosure would threaten institutional security. *Id.*

We find, as did the district court, Jackson received adequate notice of the time frame—within the span of eight days—and he was sufficiently apprised of the place and nature of his alleged activity. *See James*, 541 N.W.2d at 870-71 (holding it was constitutionally sufficient to apprise inmate his alleged gang activity took place within an eighty (80) day period, permitting him to adequately marshal facts and present a defense). Thus, Jackson was provided with the necessary information with which to prepare his defense, excepting the disclosure of the informant's identity for security reasons, and the specific day the rules violations occurred. Jackson argues he may have an alibi defense if the day was one on which he was in lock-up. That issue could have been raised before the disciplinary committee for them to ascertain without disclosing confidential information. We affirm the district court's finding that Jackson was fully accorded his due process rights.

With respect to Jackson's counsel substitute request, a counsel substitute may be required when an inmate is illiterate, or when there are complex issues the inmate would not be likely to "collect and present the evidence necessary for an adequate comprehension of the case." *Kulow v. Nix*, 28 F.3d 855, 857 (8th Cir. 1994).

Counsel substitute is reserved for a small class of inmates and is not deemed appropriate where, as here, an inmate is literate (and has even completed a few years of college), his written presentations to a disciplinary committee or in administrative appeals demonstrates an understanding of his case against him, or the charges are not complex. *Hudson v. Hedgepeth*, 92 F.3d 748, 751 (8th Cir. 1996). Jackson's Iowa State Men's Reformatory Adjustment Committee Reports and the Inmate Appeal of Disciplinary Action (where he systematically and coherently rebutted the charges against him, noting each "flaw" in the institution's case), and his handwritten report and presentation of December 7, 1994 (delineating in a cogent manner each reason the institution did not properly investigate the incident report) clearly reflect a literate man who understands the nature of the charges against him. Neither do we find this case to be complex: An inmate was charged for engaging in gang conduct that lead to the physical assault on another inmate. Additionally, we held in *Sauls v. State*, 467 N.W.2d 1, 3 (Iowa App. 1990), the "mere fact that the case involved confidential informants does not render the case so complex that [the inmate] required counsel substitute." We therefore hold Jackson does not fall within the small class of inmates entitled to counsel substitute; we affirm the district court.

II. Disclosure of confidential information. The disclosure of confidential information to an inmate or to his counsel for prison disciplinary proceedings is not mandated. *Howard v. State*, 439 N.W.2d 193, 195 (Iowa 1989). This information is not disclosed when it may lead to retaliation against the informant. *Id.* at 194. The State submitted the confidential information for *in camera* inspection by the district

court and the court denied Jackson's counsel access to the confidential information at the district court hearing. As both the district court and the appellate courts have the opportunity to inspect the credibility and reliability of the informant's claim, adequate protections for the due process interests of Jackson are afforded. We affirm the district court; we find it properly concluded the risk of disclosure was too great when it denied Jackson's counsel access to the confidential information.

III. Sufficiency of confidential information. The role of the reviewing court is to determine if there is "any evidence" to support the disciplinary decision. *Superintendent v. Hill*, 472 U.S. 445, 445-46 (1985); see *Wilson v. Farrier*, 372 N.W.2d 499, 501 (Iowa 1985). Confidential information statements may provide sufficient evidence for a prison disciplinary action. *James v. State*, 479 N.W.2d 287, 291 (Iowa 1991). Having reviewed the confidential information, we conclude that it sufficiently supports the district court's finding that Jackson violated disciplinary rules #2 and #42. We thus affirm the district court.

Having carefully considered all issues on appeal, we affirm the findings of the district court.

AFFIRMED.