IN THE COURT OF APPEALS OF IOWA

No. 1-177 / 90-912

FILED
MAY 29 1991
CLERK SUPREME COURT

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RON E. COOLEY,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

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

Prison inmate Cooley appeals the district court's denial of postconviction relief. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Andi S. Lipman, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Gordon E. Allen, Deputy Attorney General, and Layne M. Lindebak, Assistant Attorney General, for appellee.

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

SACKETT, J.

This case concerns restoration of an honor contract to applicant-appellant Ron E. Cooley. Cooley was sentenced in 1981 to a 25-year term and currently is serving his term.

On October 8, 1984, Cooley was found guilty by the prison disciplinary committee of violating two institutional rules and lost days of good time and lost his honor contract. Cooley filed a postconviction relief challenging the committee's decision. On January 22, 1987, the district court, pursuant to a consent order, restored 188 days of good time taken by the disciplinary committee on October 8, 1984, and restored Cooley's honor contract for the period from October 8, 1984 through January 22, 1985. No appeal was taken from that order.

The application for postconviction relief forming the basis for this appeal was filed on July 29, 1988. The application contended Cooley's honor contract was improperly revoked after January 22, 1985. The application alleged the order restoring Cooley's honor contract did not revoke his honor contract after January 22, 1985. The application stated Cooley received several disciplinary reports on or after January 22, 1985, but contended none of the reports had revoked his honor contract.

A hearing on Cooley's application for postconviction relief was held on May 14, 1990. The district court denied the application. Cooley appeals.

At the trial court level, the State advanced that Cooley had not exhausted his administrative remedies. The State does not assert this argument on appeal. The sole question appears to be whether the agreement resulted in the honor contract's suspension extending beyond January 22, 1985.

First, Cooley contends the language of the January 11, 1987 order report provides his honor contract "will be restored for a period of time from 10-8-84 through 1-22-85." Second, he argues the order fails to address the matter of honor time after that date and is void of any language which revokes the honor contract after January 22, 1985. Thirdly, he contends the court's order only relates to the appeal of the October 8, 1984 disciplinary action. Cooley's last contention is that such a revocation requires certain procedural protections to insure his loss of honor time is not arbitrary. Cooley's premise is the district court's order and all subsequent reports do not expressly revoke his honor contract, consequently, any loss of honor time was clearly imposed without the procedural protections mandated by due process. Apparently the refusal to restore this honor contract changes Cooley's discharge date from November 15, 1991 to October 22, 1994.

A prisoner's right in retaining good and honor time provided by state statute is a liberty interest protected by due process. Wolff v. McDonnell, 418 U.S. 539, 557, 94

S. Ct. 2963, 2975, 41 L. Ed. 2d 935, 951 (1974); see also Wilson v. Farrier, 372 N.W.2d 499, 501 (Iowa 1985) (a liberty interest in good time and honor time is created under the Iowa Code). Honor time is specifically provided under Iowa Code section 903A.6 and 246.43 (1983). Iowa Code section 663A.2(6) permits postconviction relief for the unlawful forfeiture of such a reduction in a person's sentence. Certain minimum procedural requirements must be afforded to prisoners in disciplinary proceedings to insure a state-created right is not arbitrarily abrogated. Wolff, 418 U.S. at 557, 94 S. Ct. at 2975, 41 L. Ed. 2d at 951; Niday v. State, 353 N.W.2d 92 (Iowa 1984).

The record made at the trial court level was confusing to the trial court. It is confusing to us. The State has given us little assistance in its brief and cites no authority for its position. Cooley has advanced in his reply brief the State's failure to cite any authority in its brief should be deemed a waiver of the State's argument. We will affirm the trial court if any reasons appear on the record. Hunter v. City of Des Moines, 300 N.W.2d 121, 126 (Iowa 1981); Citizens First Nat. Bank v. Hogt, 297 N.W.2d 329, 332 (Iowa 1980).

The State argues the language of the consent order was specific as to the period of time Cooley's contract would be restored. Cooley concedes the date was agreed to but contends it was because it was the date of the next major

disciplinary report. The language of the agreement restored Cooley's honor roll status for a time ending prior to the drafting of the consent order.

At the time the subsequent major reports were heard, the hearing officer had no need to remove Cooley from the honor contract because he had been removed in 1984. The consent order does not purport to affect any other disciplinary report received by Cooley nor does it purport to affect Cooley's discharge date beyond that specifically stated.

The consent order specified the time Cooley would have his honor contract restored. The district court was correct in dismissing the application for postconviction relief. We affirm.

AFFIRMED.