IN THE COURT OF APPEALS OF IOWA

No. 5-658 / 94-1936

DAVID L. HAYTON,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Jones County, L. Vern Robinson, Judge.

David Hayton challenges the order granting the State's motion for summary judgment on his application for postconviction relief from a prison disciplinary action. **AFFIRMED.**

Kelly A. Phipps of the Mears Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, and Kristin W. Ensign, Assistant Attorney General, for appellee.

Considered by Habhab, P.J., and Cady and Huitink, JJ.

HABHAB, P.J.

On December 6, 1993, David L. Hayton appeared before the prison disciplinary committee. The committee found him guilty of violating prison rules proscribing escape and attempt or complicity. The violation concerned an alleged plan to escape entered into with other inmates from the Luster Heights facility in Harper's Ferry, Iowa. The committee sanctioned Hayton to ten days of disciplinary detention, ninety days of disciplinary detention at level one, and the loss of 365 days of good conduct time. The committee based its decision upon Hayton's alleged admission he spoke of escape, an investigation by a prison authority, and confidential information.

Hayton filed an application for postconviction relief before the district court on February 7, 1994. The State moved for summary judgment on March 14, 1994, claiming Hayton failed to exhaust his administrative remedies. This motion was denied. The State filed a second motion for summary judgment in August 1994. The district court granted this motion for summary judgment.

Hayton appeals.

I. *Motion for Summary Judgment.* The district court's ruling on a motion for summary judgment is for errors at law. *Lihs v. Lihs*, 504 N.W.2d 890, 892 (Iowa 1993). Summary judgment is proper only when there is no genuine issue of fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *Brown v. Monticello State Bank*, 360 N.W.2d 81, 83-84 (Iowa 1984). On review, we

determine whether a genuine issue of fact exists and whether the law was applied correctly. *Id.* at 84.

Hayton claims he did nothing more than talk about escape and he never planned on actually escaping. Hayton argues there are factual disputes regarding what he told the committee and what the committee interpreted in his statements. Hayton also contends there is a factual dispute concerning the reliability of the confidential information. Finally, Hayton asserts there is a factual dispute as to whether he simply talked about escaping or whether he talked about and intended to escape.

On a challenge of the evidentiary support of a disciplinary matter, the reviewing court must find there must be "some evidence" to support the committee's decision in order to affirm the decision of the committee. *Backstrom v. Iowa Dist. Court*, 508 N.W.2d 705, 709 (Iowa 1993). "We largely defer to the committee's findings, refraining from a de novo review of the proceedings." *Id.* Confidential information may provide sufficient evidence for prison disciplinary action. *James v. State*, 479 N.W.2d 287, 291 (Iowa 1991). There must be an indication of reliability in order for the inmate to be disciplined on the basis of confidential information. *Id.*

The committee relied on confidential information and statements made by Hayton in reaching its decision. As discussed later in this opinion, we find there was sufficient reliability. It is not necessary for the committee to state why it believes the informant as opposed to the inmate. *See Niday v. State*, 353 N.W.2d 92, 94 (Iowa

1984). The district court correctly determined there was more than "some evidence" supporting the committee's decision. The accusation of planning to escape is a simple accusation. The evidence against Hayton comes from many different sources. This enhances the credibility of the sources. *See Niday*, 353 N.W.2d at 94. Hayton's objections are self-serving and lack support in the record. We find the district court correctly found there was no genuine issue of material fact. Accordingly, we affirm the ruling of the district court granting the motion for summary judgment.

II. ***Reliability of Confidential Information.*** Hayton contends the confidential information used by the committee lacked sufficient reliability. As the issue involves a constitutional claim, our review is de novo. *Kinnersley v. State*, 494 N.W.2d 698, 699 (Iowa 1993).

Our supreme court has stated:

> When an inmate is disciplined on the basis of confidential information, his interest in a fair hearing requires that there be some indication of the confidential informant's reliability. To that end, we require that there be sufficient information on the record to convince a reviewing authority that the disciplinary committee undertook such inquiry and correctly concluded that the confidential information was credible and reliable.

Howard v. State, 439 N.W.2d 193, 195 (Iowa 1989) (citation omitted). We conclude there was adequate information to determine the issue of credibility and that such a determination was properly made. We find no error.

III. ***Counsel Substitute.*** Hayton contends he was denied due process by the failure of the institution to appoint counsel substitute. As the issue involves a

constitutional claim, our review is de novo. *Kinnersley v. State*, 494 N.W.2d 698, 699 (Iowa 1993). Hayton asserts substitute counsel should have been appointed since the accusations made against him were complex.

Inmates have no right to either retained counsel or appointed counsel in disciplinary proceedings. *Wolff v. McDonnell*, 418 U.S. 539, 570, 94 S. Ct. 2963, 2981, 41 L. Ed. 2d 935, 959 (1974). If the prisoner lacks the ability to read or is faced with particularly difficult issues, then the Due Process Clause of the Fourteenth Amendment affords the prisoner the aid of counsel substitute. *Id.* Counsel substitute has no authority to review confidential information in a prison disciplinary proceeding. *Backstrom*, 508 N.W.2d at 708.

The accusations made in this case are not complex. Hayton was accused of planning to escape. Hayton contends he did participate in discussions concerning escape, but had no intention of actually escaping. We do not believe this case falls under the category of cases involving particularly difficult issues as was discussed in *Wolff*. This claim must fail.

IV. *Constitutional Claim.* Finally, Hayton contends his First Amendment rights were violated. As the issue involves a constitutional claim, our review is de novo. *Kinnersley*, 494 N.W.2d at 699.

A prison regulation is valid and does not impinge on an inmate's constitutional rights if it is reasonably related to legitimate penological interests. *Turner v. Safley*,

482 U.S. 78, 89, 107 S. Ct. 2254, 2261, 96 L. Ed. 2d 64, 79 (1987). The rationale behind this standard, as stated by the United States Supreme Court, is:

> [S]uch a standard is necessary if "prison administrators . . ., and not the court, [are] to make the difficult judgments concerning institutional operations." Subjecting the day-to-day judgments of prison officials to an inflexible strict scrutiny analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration. The rule would also be subject to the possibility that some court somewhere would conclude that it had a less restrictive way of solving the problem at hand. Courts inevitably would become the primary arbiters of what constitutes the best solution to every administrative problem, thereby "unnecessarily perpetuat[ing] the involvement of the federal courts in affairs of prison administration."

Id. (cites omitted). There are four factors to consider in determining whether the regulation is reasonably related to legitimate penological interests. *Id.* at 89-90, 107 S. Ct. at 2262, 96 L. Ed. 2d at 79-80. The four factors are whether: (1) there is a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it; (2) the inmates have alternative means open to them to exercise the constitutional right; (3) accommodation of the asserted constitutional right will have a significant "ripple effect" on the guards and other inmates; and (4) there are alternatives to the regulation. *Id.*

We find the regulation does not impinge on Hayton's First Amendment rights. The legitimate interest to justify the regulation is institutional security. This interest is rationally connected to the regulation on escaping and planning an escape. The regulation does not prohibit the inmates from communicating; rather, it only prohibits

communication regarding the planning of escapes from the prison. To allow inmates to freely communicate regarding escape plans would be contrary to penological interests as it would condone the planning of escapes from the institution. There is no alternative. As a result, we find there is a reasonable relation between the regulation against planning escapes and legitimate penological interests. Hayton's First Amendment rights were not violated.

Upon consideration of all arguments raised on appeal, we affirm the ruling of the district court.

AFFIRMED.