IN THE COURT OF APPEALS OF IOWA

No. 3-017 / 92-181

MICHAEL BOLANDER,

Appellant,

vs.

STATE OF IOWA,

Appellee.

FILED
MAR 30 1993
CLERK SUPREME COURT

Appeal from the Iowa District Court for Lee County, John C. Miller, Judge.

The applicant appeals the district court's judgment denying his application for postconviction relief in a prison disciplinary action. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia J. Cone-Fisher, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, and Layne M. Lindebak, Assistant Attorney General, for appellee.

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

SCHLEGEL, J.

The applicant, Michael Bolander, appeals the district court's judgment denying his application for postconviction relief in a prison disciplinary action. On appeal, Bolander contends his due process rights were violated by his placement in summary segregation for fifty-six days prior to receiving disciplinary notice. He also argues the record contained insufficient evidence to support the disciplinary committee's finding that he had violated institutional rule 41.

On January 22, 1991, Iowa State Penitentiary officials placed inmate Bolander in summary segregation and notified Bolander that he had been ordered into segregation because he was thought to be a potential threat to the security, tranquillity and order of the institution. On January 24, 1991, prison officials notified Bolander he was in investigative segregation status during the pendency of an investigation into possible rule violations.

Subsequently, on March 19, 1991, the officials provided Bolander with a disciplinary notice. The notice stated that a note had been found on January 19, 1991, during the shakedown of an inmate's cell which threatened the inmate. The note implied that if the first inmate did not pay his debt owed to another inmate, Bolander would harm the first inmate. In addition, the disciplinary notice alleged violations of Iowa State Penitentiary Rules 2(3) (assault), 4 (extortion), 14 (threats/intimidation), 27 (obstructive/

disruptive conduct), 40 (misuse of mail), and 41 (attempt or complicity). In response to this disciplinary notice, Bolander filed an affidavit denying the charges and objecting to the period of time he had been placed in summary segregation before receiving the disciplinary notice.

Following a hearing, the prison disciplinary committee found Bolander had violated institutional rules 41 and 14. The committee ordered various punishments including fifteen days disciplinary detention, loss of 180 days of good time, and restriction to the maximum security cell house for six months. Bolander raised the issue of the length of his segregation prior to the receipt of a disciplinary notice in his appeals to the warden and to the director of corrections. Both denied his requests for relief. He then filed an application for postconviction relief which the district court denied. Bolander appeals.

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 postconviction applicant asserts violation of constitutional safeguards, we make our own evaluation based on the totality of the circumstances. This is the equivalent of de novo review. Id.

Bolander first contends his due process rights were violated by his placement in summary segregation for fifty-six days prior to receiving disciplinary notice.

Bolander argues his disciplinary report was not processed in accordance with the prison disciplinary rules and, consequently, he contends the disciplinary report should be expunged under section III.G.2 of the disciplinary rules. We find this argument to be without merit.

The record reflects that on January 22, 1991, Iowa State Penitentiary officials placed Bolander in summary segregation and notified him that he had been ordered into segregation because he was thought to be a potential threat to the security of the institution. On January 24, 1991, prison officials notified Bolander he was in investigative segregation status during the pendency of an investigation into possible rule violations.

Subsequently, on March 19, 1991, the officials provided Bolander with a disciplinary report. Following the issuance of the report, the disciplinary committee continued the matter for further investigation on March 22, March 28, April 3, and April 9, 1991. Bolander received notices--throughout his time in summary segregation--that the matter remained under investigation. Our supreme court has held that further investigation of disciplinary incidents constitutes good cause for delay in the processing of charges. Allen v. State, 418 N.W.2d 67, 70-71 (Iowa 1988).

In addition, the court in Hewitt v. Helms, 459 U.S. 460, 103 S. Ct. 864, 74 L. Ed. 2d 675 (1983), stated:

> [P]rison officials have broad administrative and discretionary authority over the institutions they manage[;] . . . broad discretionary authority is necessary because the administration of a prison is "at best an extraordinarily difficult undertaking"[;] . . . "to hold that any substantial deprivation imposed by prison authorities triggers the procedural protections of the Due Process Clause would subject to judicial review a wide spectrum of discretionary actions that traditionally have been the business of prison administrators rather than of the . . . courts." . . . "Lawful incarceration brings about the necessary withdrawl or limitation of many privileges and rights, a retraction justified by the considerations underlying the penal system". . . . "[A]s long as the conditions or degree of confinement to which the prisoner is subjected is within the sentence imposed upon him and is not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight."
>
> [T]he transfer of an inmate to less amenable and more restrictive quarters for nonpunitive reasons is well within the terms of confinement ordinarily contemplated by a prison sentence. . . . [A]dministrative segregation is the sort of confinement that inmates should reasonably anticipate receiving at some point in their incarceration.

(Citations omitted.) Id., 459 U.S. at 466-68, 103 S. Ct. at 869-70, 74 L. Ed. 2d at 685-86.

In the present case, Bolander's confinement in summary segregation was nonpunitive for reasons of security and thus not subject to the rules upon which he relies. See Lyon v. Farrier, 727 F.2d 766, 768 (8th Cir. 1984). Accordingly, we conclude there was no violation of the time requirements for processing the charges against Bolander, and we hold his placement in summary segregation did not violate his due process rights.

Bolander also contends the record contained insufficient evidence to support the disciplinary committee's finding that he had violated institutional rule 41 (attempt or complicity). The disciplinary committee considered three sources before concluding Bolander had violated rule 41: the disciplinary report authored by Captain Burton, the statements made by Bolander, and the information gathered from the confidential informant(s).

Having carefully considered the entire record, we conclude the disciplinary committee was entitled to rely on the information received from the confidential informant(s) and to disbelieve Bolander's denial of his involvement in the disciplinary matter. See Wilson v. Farrier, 372 N.W.2d 499, 502 (Iowa 1985). In postconviction proceedings, due process is satisfied if "some evidence" supports the disciplinary committee's decision. Walpole v. Hill, 472 U.S. 445, 454, 105 S. Ct. 2768, 2773, 86 L. Ed. 2d 356, 364 (1985). We agree with the district court's determination that the disciplinary committee's finding is supported by evidence in the record.

Because we find the arguments advanced by the applicant in support of relief to be without merit, we affirm the district court's judgment denying the application for postconviction relief.

AFFIRMED.