IN THE COURT OF APPEALS OF IOWA

No. 7-452 / 96-1212

000215

MICHAEL LOMAX,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

FILED
SEP 24 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Jones County, Larry J. Conmey, Judge.

On appeal from the denial of his application for postconviction relief, a prisoner contends he should not have been disciplined for disobeying an unreasonable order which infringed upon his constitutional and departmental rights to refuse medication. **AFFIRMED.**

Kari L. Hamel of Mears Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, and H. Loraine Wallace, Assistant Attorney General, for appellee.

Considered by Sackett, P.J., and Streit and Mahan, JJ.

SACKETT, P.J.

In this appeal from the denial of his application for postconviction relief, Michael Lomax, a prisoner at the Iowa State Penitentiary at Fort Madison, challenges a finding he failed to comply with a reasonable order and should be sanctioned for the failure. We affirm.

Lomax raises constitutional issues and contends because he does we are required to make our own independent evaluation of the totality of the circumstances in a de novo review. If there are constitutional issues, he is correct concerning our scope of review. *See Kinnersley v. State*, 494 N.W.2d 698, 699 (Iowa 1993). The State advances our review is at law because there are no constitutional issues.

We will review de novo, though our scope of review is not significant, as we find the material facts undisputed and the factual findings made by the trial court to be the only findings that can be inferred from the evidence.

Lomax's wisdom teeth were extracted on March 15, 1994. On March 19, 1994, Lomax was in the prison infirmary and asked a nurse for Tylenol for pain relief. The nurse gave Lomax Tylenol and a glass of water. Lomax then questioned the nurse about whether he could get treatment for a fungal condition. A correctional officer gave Lomax a direct order to take the Tylenol and gave him to the count of five to do so. Lomax did not take the Tylenol. The officer took the Tylenol and water away from Lomax.

Lomax received a notice he was being disciplined for failing to comply with the officer's order to take the Tylenol in violation of prison rule 23. Lomax was given detention and lost good conduct time.

After exhausting his administrative appeals, Lomax filed an application for postconviction relief. His application was denied. The district court found Lomax had requested the Tylenol and had admitted he intended to take it. The court concluded Lomax had never indicated he was exercising his right to refuse the medication and it was within the officer's authority to set a time limit for its consumption. The court ruled Lomax failed to comply with a reasonable order and was properly sanctioned for a violation of prison rule 23.

Prison rule 23 provides:

> *Disobeying a Lawful Order Direction*: An inmate commits an offense under this subsection when the inmate:
>
> a. Fails to obey a written rule or posted order;
> b. Fails to obey a verbal order given by any person in authority or staff of the institution; or
> c. Interferes with or circumvents established procedures.
>
> Orders will be reasonable in nature and give reasonable notice of the conduct expected

It is conceded the correctional officer, a person in authority, gave Lomax a verbal order. It is also conceded Lomax did not obey the order. The question is whether under applicable law the officer's order was reasonable.

Lomax contends the order given was a direct order to take medication. He contends this was an unreasonable order because he has a constitutional right not to take medication.

A mentally competent adult has a right under both common law and the Fourteenth Amendment to refuse medical treatment. *Cruzan by Cruzan v. Missouri Department of Health*, 497 U.S. 261, 277-78, 110 S. Ct. 2841, ____, 111 L. Ed. 2d 224, 241-42 (1990). The right to refuse medication extends to prisoners. *See Washington v. Harper*, 494 U.S. 210, 221, 110 S. Ct. 1028, ____, 108 L. Ed. 2d 178, ___ (1989).

The State advances that under the circumstances of this case the correctional officer's order to Lomax to take the Tylenol on the count of five was reasonable. The State contends this interpretation is supported by the realities of prison life. We recognize in considering such issues we give deference to prison officials. *See Bell v. Wolfish*, 441 U.S. 520, 547-48, 99 S. Ct. 1861, ____, 60 L. Ed. 2d 447, 473-74 (1979). The State contends it was not an issue of taking medication but of Lomax manipulating a situation for his benefit.

We do not believe the limited circumstances of this case support a finding that the order was unreasonable. Lomax asked for the Tylenol, was given it, and then refused to take it. We distinguish *Blair v. State*, 498 N.W.2d 412, 413 (Iowa App. 1993). where there was a finding a command to work overtime was not a violation of rule 23 where no rule mandated overtime on request.

Lomax's theory why the rule is unreasonable is not supported by the record. We affirm the trial court. *See Hughes v. State*, 513 N.W.2d 711, 713 (Iowa 1994).

AFFIRMED.