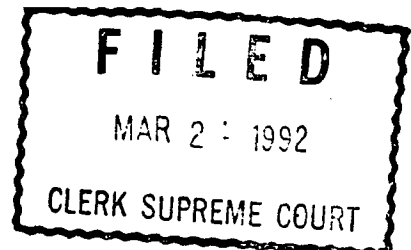


IN THE COURT OF APPEALS OF IOWA

No. 2-005 / 90-1525



JAMES COOK,

Appellant,

vs.

STATE OF IOWA,

Appellee.

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Appeal from the Iowa District Court for Lee County,
Kristin Hibbs, Judge.

Cook appeals the district court's ruling denying his
application for postconviction relief. **AFFIRMED.**

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

Bonnie J. Campbell, Attorney General, Gordon E. Allen,
Deputy Attorney General, and Suzie A. Berregaard Thomas,
Assistant Attorney General, for appellee.

Considered by Donielson, P.J., and Hayden and Habhab,
JJ.

HAYDEN, J.

James Cook is an inmate at the Iowa Men's Reformatory. Disciplinary proceedings were initiated against Cook after two unsigned notes threatening the life of another inmate were discovered. Cook denied writing the notes and asked to take a polygraph or handwriting test. A polygraph test was subsequently conducted.

The disciplinary committee determined Cook had written the threatening notes in violation of two prison rules. The committee imposed sanctions, including time in solitary confinement, time in administrative segregation, a sixteen-day loss of good time, and Cook was assessed the costs of the polygraph examination.

After exhausting his administrative appeals, Cook applied to the district court for postconviction relief. The district court denied Cook's application. The court determined the issues raised by Cook had not been raised during the administrative proceedings. Therefore, the court determined Cook had waived those issues. In addition, the court found some evidence supporting the committee's decision.

Cook appeals, contending he was disciplined on the basis of evidence that lacked scientific reliability, and if such evidence had been excluded, there would be insufficient evidence to support the committee's decision. Cook contends he has preserved this issue for appeal. The State maintains Cook has failed to preserve his claim, or

in the alternative, sufficient evidence supports the committee's decision.

We address the preservation issue first. During the administrative proceedings Cook represented himself pro se. Cook's complaints centered around the reliability and admissibility of the polygraph and handwriting evidence. We determine Cook adequately preserved a sufficiency of the evidence claim. Nevertheless, we affirm the district court's decision because we find some evidence to support the committee's decision.

Following the U.S. Supreme Court's decision in Superintendent v. Hill, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985), our supreme court held only "some evidence" is needed to justify a prison disciplinary action. Wilson v. Farrier, 373 N.W.2d 499, 501-02 (Iowa 1985). "'The sole and only issue of constitutional substance is whether there exists any evidence at all, that is, whether there is any basis in fact to support the action taken by the prison officials.'" Id. at 502 (quoting Willis v. Ciccone, 506 F.2d 1011, 1018 (8th Cir. 1974)).

Cook asserts the evidence relied on by the disciplinary committee was not sufficient to support the finding of the committee given its lack of reliability. The evidence relied on by the committee included (1) a report by the investigating correctional officer, (2) results of a polygraph test which Cook allegedly failed, (3) a

handwriting comparison of the notes found and known exemplars of Cook, and (4) the fact Cook and the threatened inmate were of different races. We review this evidence to determine if it constitutes "some evidence" to support the committee's actions.

"Polygraph examination evidence should not be used as evidence in disciplinary cases unless the parties stipulate to its use." Bradley v. State, 473 N.W.2d 224, 226 (Iowa App. 1991). It was error for the disciplinary committee to rely on the polygraph evidence.

Prison officers' written reports have qualified as some evidence in disciplinary cases. Mahers v. State, 437 N.W.2d 565, 569-70 (Iowa 1989); Pierce v. State, 433 N.W.2d 38, 39 (Iowa App. 1988). Under the circumstances of the instant case, however, the district court determined the officer's report did not qualify as some evidence. We agree with the district court's determination. The reporting officer's conclusion that Cook wrote the notes in question was unsupported by any statements of fact.

The committee also compared the handwriting on the notes with known exemplars of Cook's handwriting. Several similarities were noted. Iowa Code section 622.26 provides "[e]vidence respecting handwriting may be given by experts, by comparison, or by comparison by the jury, with writings of the same person which are proved to be genuine." It was therefore proper for the committee to compare the handwriting on the notes to the handwriting exemplars

submitted by Cook and conclude the notes were written by Cook. The handwriting evidence is also supported by the fact Cook and the threatened inmate are of different races and the notes were racial in nature.

We conclude "some evidence" supports the actions of the prison officials. We affirm the decision of the district court.

AFFIRMED.