

IN THE COURT OF APPEALS OF IOWA

No. 7-135 / 96-452

000255

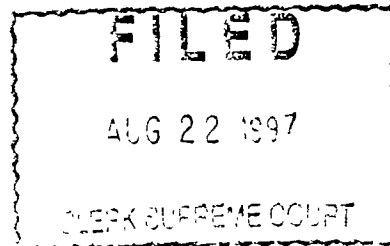
EDDIE C. RISDAL,

Appellee,

vs.

STATE OF IOWA,

Appellant.



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

The State appeals a district court ruling granting Eddie Risdal's application for postconviction relief. **REVERSED.**

Thomas J. Miller, Attorney General, and Forrest Guddall, Assistant Attorney General, for appellant.

Peter W. Hansen of Hildreth & Hansen, Burlington, for appellee.

Considered by Habhab, C.J., and Cady and Vogel, JJ.

HABHAB, C.J.

The State appeals from a district court order granting an inmate's application for postconviction relief. The district court ruled discipline imposed on the inmate for verbal abuse based on a letter he wrote to the director of the Department of Corrections violated his First Amendment rights. The court reversed the decision of the Administrative Law Judge and ordered the discipline expunged from the inmate's prison records and restoration of his good time credits.

On May 22, 1995, Eddie Risdal, an inmate at the Iowa State Penitentiary (ISP), wrote a letter to Sally Halford, the director of the Department of Corrections (DOC). He complained the DOC failed to reply to two of his appeals and prison officials had illegally seized his property. Risdal requested Halford consider terminating the employment of James and Judy Burton, two ISP officials. He recommended Halford discharge them "for illegally seizing and retaining Risdals property etc., also for having sex with inmates, also for a 1992 murder attempt set up on Risdals life conspired by James & Judy Burton."

Halford asked an assistant deputy director, Paul Muller, to reply to Risdal's letter. Muller sent a copy of the letter to the acting warden of ISP. On June 7, 1995, an ISP official served Risdal with a disciplinary notice alleging the warden's office had received a copy of the letter and the letter "revealed slanderous statements against Captain James Burton and Lt. Judy Burton, verbal abuse in written form and

deceptive statements." On June 16, 1995, Risdal appeared before the disciplinary committee. The committee found Risdal violated rule 26, which provides, "An inmate commits verbal abuse when the inmate subjects another person to abusive or defamatory language, remarks, or gestures, in writing or orally, and includes insolence or disrespect to another person."

Risdal exhausted his administrative remedies and then filed an application for postconviction relief. In his amended application, Risdal argued his letter did not violate rule 26 because he had a right to complain of illegal conduct in the prison to the director of the DOC. The district court, relying on *Procunier v. Martinez*, 416 U.S. 396, 94 S. Ct. 1800, 40 L. Ed. 2d 224 (1974), found Risdal's letter did not interfere with the prison's legitimate interest in maintaining security and discipline because Risdal did not direct his comments to the Burtons or circulate the letter within the prison. The court found Risdal was punished because of the content of his letter and not because of the manner in which those complaints were expressed. The court concluded the imposition of discipline under these facts violated Risdal's First Amendment rights.

On appeal, the State argues Risdal's letter interfered with the prison's legitimate interest in maintaining security and discipline. The State reasons the comments allege criminal and vulgar acts, and Risdal admitted his letter would probably be routed to the Burtons eventually. The State also stresses Risdal did not send the letter to an

outside third party unrelated to the security and discipline of ISP, but ensured the letter would be circulated within ISP by sending it to the director of the DOC.

"Proceedings for postconviction relief are special proceedings treated as an action at law." *Hughes v. State*, 543 N.W.2d 872, 874 (Iowa 1995). When a prisoner claims he was disciplined in violation of his constitutional rights, however, we review the claim "in light of the totality of the circumstances upon which the postconviction court's ruling was made." *Mark v. State*, 556 N.W.2d 152, 153 (Iowa 1996) (quoting *James v. State*, 541 N.W.2d 864, 869 (Iowa 1995)). This is functionally equivalent to de novo review. *Id.*

Censorship of outgoing prisoner mail, or the imposition of discipline based on statements made in that mail, is justified if (1) the regulation or practice in question furthers an important or substantial governmental interest, such as security, order, or rehabilitation, unrelated to the suppression of expression; and (2) the limitation of First Amendment freedoms is no greater than is necessary or essential to the protection of the particular governmental interest involved. *Procunier*, 416 U.S. at 413-14, 94 S. Ct. at 1811, 40 L. Ed. 2d at 240 (limited to outgoing mail by *Thornburgh v. Abbott*, 490 U.S. 401, 109 S. Ct. 1874, 104 L. Ed. 2d 459 (1989)). Prison officials are not required to show with certainty that adverse consequences would flow from allowing a letter to be written without sanction, but any restriction or sanction must be generally necessary to protect one or more of the legitimate

governmental interests of security, order, and rehabilitation. *Id.* at 414, 94 S. Ct. at 1811-12, 40 L. Ed. 2d at 240.

The second prong of *Martinez* is not a strict "least restrictive means" test. *Abbott*, 490 U.S. at 411, 109 S. Ct. at 1880, 104 L. Ed. 2d at 471. Under *Martinez*, official action must be "generally necessary" to a legitimate governmental interest. *Id.* The Supreme Court in *Martinez* rejected the regulation at issue, not under a least restrictive means analysis, but from its recognition that outgoing personal correspondence did not, by its very nature, pose a serious threat to prison order and security. *Id.* at 411, 109 S. Ct. at 1880, 104 L. Ed. 2d at 471-72.

Courts have applied *Martinez* to grant First Amendment protection to legitimate grievances in outgoing mail directed to private citizens not associated with the prison system. *See Loggins v. Delo*, 999 F.2d 364, 367-68 (8th Cir. 1993); *Brooks v. Andolina*, 826 F.2d 1266, 1268 (3d Cir. 1987); *McNamara v. Moody*, 606 F.2d 621, 624 (5th Cir. 1979). However, there is a fundamental distinction between "permissible and constitutionally protected 'unflattering' remarks about prison staff in personal correspondence directed at a recipient on the outside and impermissible written abusive language that is directed not to the addressee but at and to the warden." *Leonard v. Nix*, 55 F.3d 370, 375 (8th Cir. 1995) (citation omitted).

On the basis of this standard, we reverse the ruling of the district court. Risdal was disciplined based on the statements that the Burtons engaged in sex with inmates

and had attempted to murder him. He did not make these statements in a letter to a private citizen not associated with the prison system, but directed them to the head of the DOC. The Burtons are employed by the DOC and Risdal testified he believed the letter would eventually be routed to the Burtons.

The record indicates the nature of James Burton's job responsibilities requires him to be in contact with inmates, including Risdal. There is evidence Burton has had contact with Risdal in the past, and it is reasonable to infer further contact will occur. Allowing a prisoner to escape discipline for accusing two prison officials, who are married to each other, of having sex with inmates and trying to kill him interferes with the prison's legitimate interests in security, order, and rehabilitation. This is especially so when the prisoner will have future contact with the subjects of his remarks. Failing to impose discipline appears to condone disrespecting guards charged with maintaining order and undermines their authority. The prison is hampered in attempting rehabilitation when prisoners feel free to antagonize those responsible for their care and then respond, in effect, "What are you going to do about it?" Under *Martinez* and its progeny, the imposition of discipline did not violate Risdal's First Amendment rights.

We reverse the district court and affirm and reinstate the decision of the Administrative Law Judge.

REVERSED.