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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-521 / 94-30

MILTON WEIR,

Appellant,

vs.

STATE OF IOWA,

Appellee.

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

Weir challenges the order denying his application for postconviction relief from prison disciplinary action. **AFFIRMED.**

Patrick Ingram of the Mears Law Office, Iowa City, for appellant.

Bonnie J. Campbell, Attorney General, R. Andrew Humphrey and William A. Hill, Assistant Attorneys General, for appellee.

Considered by Donielson, C.J., and Sackett and Cady, JJ.

DONIELSON, C.J.

Milton Weir is an inmate at the Iowa State Penitentiary. On May 6, 1992, a prison official saw Weir kicking the fence in the exercise area. The official told Weir to stop kicking the fence. A short time later, the official saw Weir strike the fence with his fist. The official informed Weir he was on report. According to the prison official, Weir then stated, "Fuck you, son of a bitch. I'm going to catch up to you someday."

Weir came before a prison disciplinary committee. Weir admitted he had struck the fence after being told not to kick the fence. He claimed he had stated only, "This will catch up with you." Five other inmates submitted statements which supported Weir's claim he had not sworn at the prison official. The disciplinary committee found Weir had disobeyed a lawful order and had engaged in verbal abuse. Weir was given ten days disciplinary detention, loss of ninety days good time, and restriction to a maximum security cell for ninety days. This discipline was suspended to encourage good conduct.

Weir appealed to the warden and the department of corrections. His appeals were denied. Weir then filed an application for postconviction relief. Weir received appointed counsel for his postconviction action, and raised for the first time a claim that his discipline was improper because the department of corrections had not developed procedural and policy rules, as required by Iowa Code

sections 903A.4 and 246.505, in order to ensure fair and uniform sanctions.

The district court determined the fact Weir had represented himself without the assistance of counsel during the administrative process was not a sufficient reason for failing to raise his claim concerning the implementation of rules. The court concluded Weir had failed to exhaust his administrative remedies on this claim and therefore the court was unable to address it. The court denied the application for postconviction relief. Weir appealed.

Weir contends the disciplinary committee lacked the authority to impose sanctions without the guidance of the department of corrections rules. He claims the disciplinary committee's action violated his due process rights. He claims that because there is no departmental specification of the range of sanctions, the imposition of sanctions is arbitrary.

When constitutional issues are implicated our review is de novo. Bruns v. State, 503 N.W.2d 607, 609 (Iowa 1993). We consider the case in light of the totality of the circumstances and the record upon which the postconviction court ruling was made. Id.

Before seeking review of an administrative decision, an aggrieved party must exhaust all administrative remedies. Aschan v. State, 446 N.W.2d 791, 792 (Iowa 1989). A

failure to do so deprives the court of jurisdiction of the case. Id.

Under section 663A.8 (now section 822.8 (1993)) before a prisoner may assert a ground for relief in a postconviction application, the prisoner must have asserted it in the administrative process. Bonds v. State, 447 N.W.2d 135, 136 (Iowa 1989). A court may consider a ground no previously raised if there is sufficient reason for not previously raising it. Id.

Weir claims he did not previously raise his due process challenge to the disciplinary committee's action because he was not represented by an attorney. However, as the district court pointed out, there is ordinarily no right to retained or appointed counsel during a disciplinary proceeding. If the fact that the applicant represented himself without the assistance of counsel itself constituted "sufficient reason" for failing to raise a claim or issue during administrative appeals, the general rule requiring exhaustion of claims would have no viability.

We conclude Weir has not shown sufficient reason for failing to raise his due process issue during the administrative process. Because Weir has failed to exhaust his administrative remedies as to the issue he raises on appeal, we are without jurisdiction to consider this issue. We affirm the action of the district court in denying Weir's application for postconviction relief.

AFFIRMED.