IN THE COURT OF APPEALS OF IOWA

No. 4-519 / 94-16

FILED
JAN 23 1995
CLERK SUPREME COURT

MANTHA HENDERSON,

Appellant,

vs.

STATE OF IOWA,

Appellee.

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

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

Mary K. Hoefer of The Mears Law Office, Iowa City, for appellant.

Bonnie J. Campbell, Attorney General, and Suzie Berregaard Thomas and William A. Hill, Assistant Attorneys General, for appellee.

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

HUITINK, J.

During a routine search of Mantha Henderson's cell at the Iowa State Penitentiary, prison officials found an ink pen which had masking tape wrapped around one end. The officials believed the tape made a handle which would allow the pen to be used as a weapon. Henderson was charged with violating a prison rule which prohibits inmates from possessing dangerous contraband.

A hearing was held before a prison disciplinary committee. Henderson stated he had placed the tape around his pen and was going to use the tape to repair items in his cell. The committee found the altered pen could be used as a weapon and concluded Henderson had violated a prison rule. Henderson was given fifteen days disciplinary detention, loss of 180 days good conduct time, and was restricted to a cell in maximum security for six months.

Henderson appealed to the warden, and his appeal was denied. Instead of appealing that decision to the Iowa Department of Corrections, Henderson filed a supplementary appeal with the warden. The supplementary appeal was denied.

Henderson then filed an application for postconviction relief in district court. The district court found Henderson had failed to exhaust his administrative remedies and concluded it did not have jurisdiction to consider the case. The court dismissed Henderson's application for postconviction relief. Henderson appealed.

Our review in prison disciplinary actions is for the correction of errors of law. Giles v. State, 511 N.W.2d 622, 626 (Iowa 1994).

Under our law, postconviction relief is available to prisoners who challenge decisions of prison disciplinary committees. Bonds v. State, 447 N.W.2d 135, 136 (Iowa 1989). Before such relief is available, an aggrieved party must exhaust all administrative remedies. Richmond v. State, 464 N.W.2d 125, 126 (Iowa 1990). Iowa Code section 663A.2(6) (1991) (now section 822.2(6) (1993)) requires prisoners to exhaust both levels of examination in section 903.3(2) before seeking postconviction relief in the district court. Aschan v. State, 446 N.W.2d 791, 794 (Iowa 1989). A failure to do so deprives the court of jurisdiction of the case. Id. at 792.

Henderson admits he did not exhaust his administrative remedies, but claims his application should be considered because he had good reason for not exhausting his remedies. At the postconviction hearing he stated he did not know he could appeal to the department of corrections.

The district court found Henderson had been an inmate at the penitentiary for five years at the time of the disciplinary proceedings. He had a copy of the prison rule book since coming to the penitentiary. The rule book outlines appeal procedures and informs inmates they may appeal to the department of corrections. Henderson was able to cite many sections of the prison rule book in his

pro se application for postconviction relief. We conclude Henderson has failed to show lack of knowledge of appropriate appeal procedures.

Henderson also claims the notice of his right to appeal to the department of corrections was constitutionally insufficient. He states that the only notice he received of this part of the appeal process was in the prison rule book. He believes the disciplinary committee should have informed him he needed to complete this appeal step before he could file an application for postconviction relief in district court.

Where constitutional rights are implicated, our review is de novo. Bruns v. State, 503 N.W.2d 607, 609 (Iowa 1993). Inmates have limited due process rights. Id. at 611 (citing Wolff v. McDonnell, 418 U.S. 539, 556, 94 S. Ct. 2963, 2975, 41 L. Ed. 2d 935, 951 (1974)). In prison disciplinary matters inmates are entitled to only: (1) be given twenty-four hours advance notice of the charges against them; (2) be informed of the reason for the action taken; and (3) be informed of the evidence relied on by the committee in making its decision. Wolff, 418 U.S. at 564, 94 S. Ct. at 2978, 41 L. Ed. 2d at 951.

The Iowa Supreme Court has found inmates do not have a due-process right to notice of the time period for filing an application for postconviction relief in district court. Bruns, 503 N.W.2d at 612. In examining Wolff and Bruns, we conclude there is no due-process right to notice

of the time period for filing an appeal with the department of corrections.

We conclude Henderson has failed to show sufficient reason for failing to exhaust his administrative remedies. We affirm the decision of the district court finding his application for postconviction relief must be dismissed for lack of subject matter jurisdiction.

AFFIRMED.