FILED
SEP 24 1991
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-339 / 90-1151

JEFFERSON L. CALHOUN,

Appellant,

33

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Lee County, Harlan W. Bainter, Judge.

Prison inmate appeals district court's denial of postconviction relief to challenge a prison disciplinary action. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Andi S. Lipman, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Gordon E. Allen, Deputy Attorney General, and Layne M. Lindebak, Assistant Attorney General, for appellee.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

SCHLEGEL, P.J.

Prison inmate Jefferson Calhoun allegedly spoke to other inmates while in the "exercise pen." He was accused of violating a prison rule which prohibits inmates from speaking to others in certain locations. Prison officials imposed a disciplinary action for this rule violation.

After exhausting his administrative remedies, Calhoun sought postconviction relief to challenge the disciplinary action. The district court denied postconviction relief, and Calhoun has appealed.

Calhoun's sole contention is that he was denied due process because prison personnel violated one of the prison's procedural rules: the correctional officer's disciplinary report on Calhoun's offense was not forwarded to the shift supervisor or signed by the shift supervisor as required by the rules. He claims had the procedural rule been followed, his offense may have been classified as a minor infraction rather than a major violation.

Ordinarily review of proceedings in postconviction relief is for errors at law. Bonds v. State, 447 N.W.2d 135, 136 (Iowa 1988); Kelly v. Nix, 329 N.W.2d 287, 291 (Iowa 1983). When fundamental constitutional rights are involved, however, review is de novo in the light of the totality of the circumstances. Kelly, 329 N.W.2d at 291.

While the State admits the omission violated a prison procedural rule, it argues petitioner has not shown by a preponderance of the evidence that but for the prison's

violation, his offense would have been classified differently. We agree. Petitioner has not shown he was prejudiced by the violation. Without showing prejudice, Calhoun is not entitled to relief. We affirm the trial court.

AFFIRMED.