

IN THE COURT OF APPEALS OF IOWA

FILED

AUG 29 1985

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CLERK SUPREME COURT

Filed August 29, 1985

WILLIE LLOYD,

)

Petitioner-Appellant,

)

vs.

)

5-340

84-1653

STATE OF IOWA,

)

Respondent-Appellee.

)

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

The petitioner appeals from a denial of postconviction relief for review
of a prison disciplinary decision. AFFIRMED.

Charles J. Krogmeier, West Point, for the petitioner-appellant.

Thomas J. Miller, Attorney General, and Sarah Coats, Assistant Attorney
General, for the respondent-appellee.

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

On appeal from denial of postconviction relief, petitioner-prisoner inmate Lloyd contends the prison disciplinary committee: (1) denied him due process by refusing to consider the statements of witnesses supporting his allegations of self-defense, (2) denied him due process by permitting a prison investigator to speak at the hearing while the petitioner was absent, and (3) imposed an excessive punishment for a prison disciplinary violation.

We review de novo in light of the totality of the circumstances. Wagner v. State, 364 N.W.2d 246, 249 (Iowa 1985). Under Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974) and its application in Niday v. State, 353 N.W.2d 92 (Iowa 1984), there is a constitutional guarantee of some form of due process to a hearing for deprivation of a prisoner's good time because of misbehavior. Wagner v. State, 364 N.W.2d at 249.

The narrow range of protected liberty interests that are afforded a prisoner must be flexible and attuned to the setting by balancing and adjusting the prisoner's rights against the needs of the prison.

Id. (citing Niday v. State, 353 N.W.2d at 93-94). With this guidance, we address the issues appealed by petitioner Lloyd.

I. Statements of Witnesses

Lloyd was charged by the disciplinary report with assaulting a penitentiary instructor. Lloyd never denied that he did in fact assault the instructor. However, Lloyd contends that the instructor shoved him first and therefore he assaulted the instructor in self-defense. Lloyd asked the prison investigating officer to take statements of the other inmate students in the class to verify Lloyd's version of the incident. Although Lloyd asked the prison disciplinary committee to consider these written statements, the committee did not review them and stated in its findings of fact and decision:

No witnesses' statements from students were considered since inmate Lloyd indicated statements would be merely cumulative that inmate Lloyd was pushed by Mr. Schultz.

In testifying before the district court, the chairman of the disciplinary committee stated that such cumulative evidence would not be relevant to the disciplinary hearing because even if Lloyd was pushed first the assault on the instructor was not a proper reaction and could not be considered self-defense.

As stated in Wolff v. McDonnell, 418 U.S. at 566, 94 S.Ct. at 2980, 41 L.Ed.2d at 957, prison officials must have the necessary discretion to keep the hearing within reasonable limits. However, if a petitioner in a prison disciplinary hearing asks to present relevant written material, then he must be allowed to do so. Fichtner v. Iowa State Penitentiary, 285 N.W.2d 751, 759 (Iowa 1979). We believe in this instance that the prison disciplinary committee should have considered the written statements. The statements had already been obtained from the inmate witnesses by the prison investigator, and there was no risk to institutional safety or correctional goals if the committee were to consider the prepared statements. However, we believe that even if the statements had been considered by the committee, the outcome of Lloyd's disciplinary proceeding would have been the same. As the chairman of the disciplinary committee testified in district court:

Q. So if you had obtained every statement he wanted, and they said exactly what he said they would say—that the schoolteacher shoved first, would that have made any difference at all in the outcome? A. It still would not have justified his behavior.

Lloyd was not prejudiced by the committee's exclusion of the statements since it did not affect the outcome of their decision. See Kelly v. Nix, 329 N.W.2d 287, 292 (Iowa 1983). Lloyd's due process rights were not violated.

II. Prison Investigator Statement

Lloyd contends that he is entitled to be informed of the evidence to be heard by the disciplinary committee and have an opportunity to rebut that evidence if it is detrimental to him. Lloyd alleges he was denied this due process right when a prison investigator was allowed to give a statement to the disciplinary committee while Lloyd was absent from the hearing room. Lloyd acknowledges that he is not entitled to cross-examine witnesses, Wolff, 418 U.S. at 567, 94 S.Ct. at 2980, 41 L.Ed.2d at 957, and that he is not entitled to be present at all times when the disciplinary committee is interviewing witnesses. Fichtner, 285 N.W.2d at 759. Nonetheless, he argues that the 804 Policy disciplinary procedures of the Iowa State Penitentiary, section 804(c)(7) provides that an inmate has a right to "be advised prior to or at the hearing of the evidence against him." We find that Lloyd's due process rights were not violated nor was he prejudiced in any way due to the prison investigator's statements. The committee stated in its findings:

Capt. Burton informed the committee that Mr. Schultz was very seriously injured and was struck several times. Disposition based on serious nature of offense.

We cannot agree with Lloyd that he was not aware of this evidence prior to or at his disciplinary hearing. Lloyd admitted that he had assaulted the prison instructor and obviously knew he had inflicted injury. Additionally, at the time of the disciplinary hearing, the disciplinary record already contained witness statements indicating the seriousness of the instructor's injuries. Lloyd's due process rights were not violated.

III. Excessive Discipline

Lloyd contends that his loss of 2,447 days of "good time" was an unreasonable and arbitrary exercise of the discretion of the disciplinary committee and thus violates Lloyd's due process rights.

Prison disciplinary measures are clearly within the discretion of the prison disciplinary authorities but will be reviewed only if constituting an unreasonable or arbitrary exercise of discretion. Picard v. State, 339 N.W.2d 368, 374 (Iowa 1983); Glouser v. Parratt, 605 F.2d 419, 420-21 (8th Cir. 1979). We do not find any evidence of unreasonableness or arbitrary exercise of discretion in the committee's loss of good time recommendation. We therefore affirm the district court.

AFFIRMED.