

IN THE COURT OF APPEALS OF IOWA

No. 3-711 / 12-1395
Filed September 18, 2013

KENNETH OAKLEY,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,
Judge.

A postconviction relief applicant asks us to decide whether an administrative parole judge has a constitutional obligation to inform a parolee of a statutory right to call witnesses at a parole revocation hearing. **AFFIRMED.**

Jonah Hammer Dyer of JHD Law, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Tyler J. Buller, Assistant Attorney General, John P. Sarcone, County Attorney, and Stephanie Cox, Assistant County Attorney, for appellee State.

Considered by Eisenhauer, C.J., and Vaitheswaran and Doyle, JJ.

VAITHESWARAN, J.

Kenneth Oakley asks us to decide whether an administrative parole judge has a constitutional obligation to inform a parolee of a statutory right to call witnesses at a parole revocation hearing.

I. Background Proceedings

Kenneth Oakley was on parole for a felony when he was charged with child endangerment as well as domestic abuse assault causing bodily injury. The board of parole issued a parole violation report alleging a breach of his obligation to obey all laws and ordinances.

Oakley's girlfriend subsequently recanted her complaint of domestic abuse, and the State elected not to prosecute Oakley. Nonetheless, the parole board proceeded with a parole revocation hearing grounded on those charges. In doing so, the administrative parole judge explained that a parole violation only had to be proven by a preponderance of the evidence, whereas the criminal complaint required proof by the higher "beyond a reasonable doubt" standard.

Oakley chose to represent himself at the parole revocation hearing. Following the hearing, the administrative parole judge revoked his parole. That decision was affirmed on intra-agency appeal.

Oakley filed a postconviction relief application challenging the probation revocation decision. The district court held an evidentiary hearing at which Oakley asserted the administrative parole judge deprived him of due process by failing to inform him of his "right to present evidence in the form of witnesses to support his claim that he did absolutely nothing wrong." The district court rejected this assertion, reasoning as follows:

Applicant has cited no authority in support of such proposition, and the Court is aware of none. Applicant clearly understood his statutory and constitutional right to present evidence on his own behalf as he did so during the hearing. His complaint now appears to be that he would have called the alleged victim of the domestic abuse incident in person at the parole violation hearing, instead of presenting only her affidavit and the dismissal of the domestic abuse charge, if only the APJ had advised him personally of his right to call witnesses on his own behalf. The Court concludes that the APJ had no legal duty to advise Applicant of such a right. Furthermore, the Court finds that Applicant has failed to prove that he would have called the alleged victim as a live witness had he been so advised.

The court dismissed the postconviction relief application.

On appeal, Oakley reiterates the argument he made before the district court. The State responds that Oakley should have challenged the revocation decision via a petition for judicial review of agency action under Iowa Code chapter 17A (2009) rather than a postconviction relief application. Because he did not, the State contends this court lacks jurisdiction.

The State raised the identical jurisdictional argument in a motion to dismiss. The Iowa Supreme Court considered and summarily denied the motion before transferring the case to this court for disposition. Accordingly, we proceed to the merits.

II. Analysis

Iowa Code section 908.4(2) affords parolees the following rights at revocation hearings:

The alleged violator shall be informed of the evidence against the violator, shall be given an opportunity to be heard, shall have the right to present witnesses and other evidence, and shall have the right to cross-examine adverse witnesses, except if the judge finds that a witness would be subjected to risk or harm if the witness's identity were disclosed.

The Iowa Supreme Court has concluded these protections meet the minimum standards required by the Due Process Clause of the United States Constitution. *Larsson v. Iowa Bd. of Parole*, 465 N.W.2d 272, 274 (Iowa 1991).

Oakley concedes that “no Iowa case law” requires the judge to take the additional step of informing a parolee about the statutory right to call witnesses. He asks us to make this leap based on precedent in the guilty plea context. See Iowa R. Crim. P. 2.8(2)(b)(4) (requiring court to personally advise defendant of “the right to present witnesses in the defendant’s own behalf”). In the absence of authority supporting such an extension, we decline his invitation.

The district court did not err in concluding Oakley lacked a due process right to have the administrative parole judge inform him of his statutory right to call witnesses at the parole revocation hearing. Accordingly, we affirm the court’s dismissal of Oakley’s postconviction relief application.

AFFIRMED.