

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTINEZ AYTCH,  
Appellant,  
vs.  
WARDEN, ELY STATE PRISON, E.K.  
MCDANIEL,  
Respondent.

No. 42894

FILED

NOV 15 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court dismissing a petition for a writ of habeas corpus in part. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

On September 17, 2002, appellant filed a proper person petition for a writ of habeas corpus challenging prison disciplinary proceedings that resulted in restitution, disciplinary segregation, and a transfer to the Nevada State Prison at Ely. The State opposed the petition. Appellant filed a response. On January 27, 2004, the district court granted appellant's petition as it related to the restitution sanction, but dismissed the petition as it related to the sanctions of disciplinary segregation and transfer. This appeal followed.<sup>1</sup>

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<sup>1</sup>The district court granted the petition as it related to the assessment of restitution and ordered the State to reimburse appellant for any funds taken as a result of the restitution sanction. The State does not appeal from this decision. Thus, we decline to reach whether the district court properly considered the restitution sanction. See generally NRS 34.360 ("Every person unlawfully committed, detained, confined or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint.").

Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing the petition in part. Because appellant challenged only the conditions of confinement, appellant's claims were not cognizable in a petition for a writ of habeas corpus.<sup>2</sup> Therefore, we affirm the order of the district court dismissing appellant's petition in part.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.<sup>3</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

Becker, J.  
Becker

Agosti, J.  
Agosti

Gibbons, J.  
Gibbons

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<sup>2</sup>See Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984) ("We have repeatedly held that a petition for writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof."); see also Sandin v. Conner, 515 U.S. 472 (1995).

<sup>3</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>4</sup>We have received appellant's proper person motion for leave to file a brief, and we deny the motion as moot.

cc: Hon. Steve L. Dobrescu, District Judge  
Martinez Aytch  
Attorney General Brian Sandoval/Carson City  
White Pine County Clerk