

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER A. JONES,  
Appellant,  
vs.  
WARDEN, NEVADA STATE PRISON,  
E.K. MCDANIEL; STATE OF NEVADA;  
JACKIE CRAWFORD; ARTHUR  
BOYNTON; GILBERT CUNNINGHAM,  
Respondents.<sup>1</sup>

No. 43453

**FILED**

DEC 12 2005

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
*J. Richards*

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court summary judgment order. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

Appellant filed a pleading entitled "State Tort Action," alleging that his "[s]tate imposed mailing and correspondence rights," were violated when respondents censored his mail without providing him with the notice required by a prison administrative regulation (AR). According to appellant, the AR "created a State liberty interest in enunciation of substantial predicates that outlined how the censorship process shall be invoked." Appellant later filed a motion for summary judgment, arguing that respondents had violated the AR's notice requirements and no factual issues were disputed, requiring judgment in

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<sup>1</sup>We direct the clerk of this court to amend the caption on this court's docket to conform with the caption on this order.

his favor. Respondents opposed the motion and filed a cross-motion for summary judgment arguing, among other things, that the AR did not create a cognizable liberty interest in being immediately notified of mail censorship, thus entitling respondents to judgment as a matter of law. The district court granted respondents' cross-motion after agreeing that the AR did not create such a liberty interest.

On appeal, appellant argues that the district court abused its discretion by applying federal standards to analyze his tort action, which was grounded in "state common law," and by "sua sponte champion[ing] an issue that [respondents] failed to raise."<sup>2</sup> Appellant also argues that the AR was "implemented with the force of statutory authority," and respondents' "arbitrary and capricious violation" of the AR deprived him of his due process rights under Nevada Constitutional article 1, § 8(5). Contrary to the contention set forth in his own summary judgment motion, appellant now argues that "genuine issues of material fact abound" to preclude summary judgment.

We review orders granting summary judgment de novo.<sup>3</sup> "Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of

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<sup>2</sup>Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from him and direct the clerk of this court to file his opening brief, provisionally submitted on November 1, 2004.

<sup>3</sup>Wood v. Safeway, Inc., 121 Nev. \_\_\_, \_\_\_, 121 P.3d 1026, 1029 (2005).

material fact exists, and the moving party is entitled to judgment as a matter of law.”<sup>4</sup>

Both the United States and Nevada Constitutions provide that no person shall be deprived of life, liberty, or property without due process of law.<sup>5</sup> Due process protections attach only when there is a deprivation of a protected property or liberty interest.<sup>6</sup> Prison regulations primarily are “designed to guide correctional officials in the administration of a prison” and not to “confer rights on inmates.”<sup>7</sup> In Sandin v. Conner, the U.S. Supreme Court “reexamine[d] the circumstances under which state prison regulations afford inmates a liberty interest protected by the Due Process Clause,”<sup>8</sup> and concluded that state-created liberty interests “will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.”<sup>9</sup>

Here, appellant argues that the district court improperly applied Sandin v. Conner in determining that the AR did not create a

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<sup>4</sup>Id. at \_\_\_, 121 P.3d at 1031.

<sup>5</sup>U.S. Const. amend XIV; Nev. Const. art. 1, § 8.

<sup>6</sup>Pressler v. City of Reno, 118 Nev. 506, 510, 50 P.3d 1096, 1098 (2002) (citations omitted).

<sup>7</sup>Sandin v. Conner, 515 U.S. 472, 481-482 (1995).

<sup>8</sup>Id. at 474.

<sup>9</sup>Id. at 484 (internal citations omitted).

liberty interest protected by due process requirements. We conclude that there was no error in the district court's decision to look to federal case law for guidance. Indeed, Sandin v. Conner is particularly instructive here. Additionally, no significant textual differences exist between the parallel provisions of the Nevada and the United States Constitutions, and state constitutional and common law history indicate that Nevada's due process guarantees mirror those provided for under the U.S. Constitution.<sup>10</sup>

After reviewing the record and considering appellant's arguments, we conclude that the district court properly granted summary judgment to respondents. The AR at issue here sets forth procedures to be employed when a prisoner's mail is censored. To implicate due process protection for an inmate, a prison must have engaged in an "atypical and significant deprivation of a protected interest in relation to the ordinary incidents of prison life."<sup>11</sup> Construing the pleadings and other proof in a light most favorable to appellant, we conclude that the AR at issue does not confer a protected liberty interest such that strict adherence to the AR's written notice procedures would be required. To conclude otherwise would result in the "undesirable effects" contemplated in Sandin v. Conner, namely, disincentives for prison management to codify procedures, and the involvement of courts in the day-to-day management

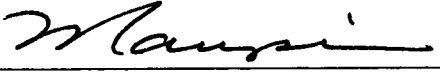
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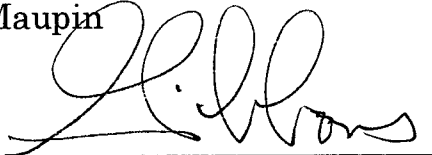
<sup>10</sup>See U.S. Const. amend. XIV, § 1 ("[n]o [s]tate shall . . . deprive any person of life, liberty, or property, without due process of law"); Nev. Const. art. 1, § 8(5) ("[n]o person shall be deprived of life, liberty, or property, without due process of law"); see also, e.g., Reinkemeyer v. Safeco Ins. Co., 117 Nev. 44, 50, 16 P.3d 1069, 1072 (2001).

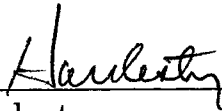
<sup>11</sup>Sandin, 515 U.S. at 484.

of prisons, resulting in a waste of judicial resources. Thus, because appellant did not have a protected liberty in being immediately notified that his mail was being monitored, his due process violation claim fails as a matter of law. Accordingly, the district court properly granted summary judgment to respondents, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Steve L. Dobrescu, District Judge  
Christopher Anthony Jones  
Attorney General George Chanos/Carson City  
White Pine County Clerk