

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN X. HIGH,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON,
MICHAEL BUDGE,
Respondent.

No. 44235

FILED

FEB 15 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; Michael R. Griffin, Judge.

On August 11, 2004, appellant filed a proper person petition for a writ of habeas corpus in the district court challenging transfer to a different institution and a prison disciplinary hearing resulting in 120 days in disciplinary segregation and forfeiture of good time credits.¹ The State opposed the petition, and appellant filed a response. On October 13, 2004, the district court denied appellant's petition. This appeal followed.

¹To the extent that appellant challenges his transfer to a different institution and placement in disciplinary segregation, appellant's challenges were not cognizable in a habeas corpus petition. See Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984); see also Sandin v. Conner, 515 U.S. 472, 486 (1995) (holding that liberty interests protected by the Due Process Clause will generally be limited to freedom from restraint which imposes an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life).

"Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due in such proceedings does not apply."² The United States Supreme Court has held that minimal due process in a prison disciplinary hearing requires: (1) advance written notice of the charges; (2) written statement of the fact finders of the evidence relied upon and the reasons for disciplinary action; and (3) a qualified right to call witnesses and present evidence.³ The Wolff Court declined to require confrontation and cross-examination in prison disciplinary proceedings because these procedures presented "greater hazards to institutional interests."⁴ The requirements of due process are further met if some evidence supports the decision by the prison disciplinary committee.⁵

First, appellant claimed that his due process rights were violated because the notice of charges was too ambiguous. Appellant further claimed that the notice of charges was in retaliation for his numerous grievances and lawsuits and his practice of Islam. The notice of charges adequately set forth the incident, thus permitting appellant an adequate opportunity to present a defense to the charges. Appellant failed

²Wolff v. McDonnell, 418 U.S. 539, 556 (1974).

³Id. at 563-69.

⁴Id. at 567-68.

⁵Superintendent v. Hill, 472 U.S. 445, 455 (1985); see also Nev. Code of Penal Discipline § 707.04 (1.3.6.1) (providing that it is only necessary that the disciplinary committee's finding of guilt be based upon some evidence, regardless of the amount).

to establish that the notice of charges was in retaliation for any constitutionally protected activity. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his due process rights were violated because the disciplinary hearing officer prevented him from confronting the charging employee and failed to provide him with a reason for denying him the right to confront his accuser. However, as noted above, due process does not require that the prisoner be permitted to confront and cross-examine his accuser. Due process further does not require that the prison set forth a reason for refusing to allow a prisoner to confront or cross-examine the charging employee.⁶ Moreover, the summary of the disciplinary hearing indicates that appellant waived the charging employee's testimony. The Code of Penal Discipline does not provide relief for the alleged violation.⁷ Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that his due process rights were violated because the disciplinary record does not establish that "some evidence" was presented. The record belies this claim.⁸ The prison

⁶See Baxter v. Palmigiano, 425 U.S. 308, 322 (1976) (recognizing that the failure to set forth the reason for not allowing a prisoner to confront and cross-examine his accuser would not violate due process because Wolff did not require prisons to permit confrontation and cross-examination).

⁷Nev. Code of Penal Discipline §707.01 (1.10).

⁸See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

disciplinary hearing officer was presented with the notice of charges prepared by victim and appellant's written statement regarding the incident. Some evidence was presented to support the finding of guilt, and therefore, we conclude that the district court did not err in denying this claim.


Fourth, appellant claimed that his due process rights were violated because the prison disciplinary hearing officer set forth an inadequate statement of the evidence relied upon and the reasons for disciplinary action. The prison disciplinary hearing officer indicated that the evidence relied upon for disciplinary action was the caseworker's report. Thus, we conclude that the district court did not err in denying this claim.

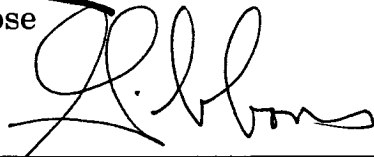
Finally, appellant claimed that there was not a preliminary review of the notice of charges before the matter was referred for a prison disciplinary hearing. The record belies this claim.⁹ The preliminary hearing officer served notice of charges on appellant on June 18, 2004. The summary of the preliminary hearing officer's inquiry states that appellant indicated that he would make a statement at the disciplinary hearing and that he wished to call "Allah" as a witness. Appellant's signature appears on the document setting forth the summary of the preliminary hearing officer's inquiry. Therefore, we conclude that the district court did not err in denying this claim.

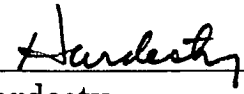
⁹See id.

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Michael R. Griffin, District Judge
Juan X. High
Attorney General Brian Sandoval/Carson City
Carson City Clerk

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).