

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH BEAUDETTE,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL AND DIRECTOR, NEVADA
DEPARTMENT OF CORRECTIONS,
JACKIE CRAWFORD,
Respondents.

No. 44287

FILED

FEB 03 2005

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

Petitioner was charged with and found guilty of the following violations of the Nevada Code of Penal Discipline: (1) G-14 (failure to follow a posted rule); (2) G-1 (disobeying an order); (3) G-3 (gambling violation); (4) MJ-2 (assault); (5) MJ-3 (battery); and (6) MJ-20 (tattoo violation).¹ On February 11, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court challenging a prison disciplinary hearing resulting in 1095 days in disciplinary segregation, 15 days disciplinary detention, 90 days loss of

¹Appellant claimed that he was improperly found guilty of G-20 (giving false or misleading information to staff). However, it is clear from the record that the inclusion of G-20 on the form summarizing the disciplinary hearing was a mistake and that the hearing officer intended a finding of guilt for the offense of MJ-20.

certain privileges, and forfeiture of 260 good time credits. The State opposed the petition. On November 4, 2004, the district court dismissed appellant's petition. This appeal followed.²

In his petition, appellant claimed that he was innocent of the charges of assault and battery because he was justified in striking the correctional officer due to the correctional officer's physical contact and provocative behavior. Appellant further claimed that he was denied the right to present two inmate witnesses. Appellant listed nine items that he believed were required for the purposes of due process.

"Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply."³ 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.⁴ Prison

²To the extent that appellant challenged his placement in disciplinary segregation, disciplinary detention and the loss of privileges, we conclude that the district court properly determined that appellant's challenge was 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).

³Wolff v. McDonnell, 418 U.S. 539, 556 (1974).

⁴Id. at 563-69.

officials have the "necessary discretion to keep the hearing within reasonable limits and to refuse to call witnesses that may create a risk of reprisal or undermine authority"5 The Wolff court recognized that a witness may be refused for "irrelevance, lack of necessity," or where calling witnesses would be "unduly hazardous to institutional safety or correctional goals."6 The requirements of due process are further met if some evidence supports the decision by the prison disciplinary committee.7

Having reviewed the record on appeal, we conclude that appellant received minimal due process at the prison disciplinary hearing. Appellant was provided with advance written notice of the charges. The prison disciplinary hearing was recorded and appellant was provided a written summary of the hearing setting forth the evidence relied upon and the reasons for the disciplinary actions. Appellant's qualified right to call witnesses was not abridged at the hearing. One of the witnesses refused to testify. The second witness was denied on the ground of redundancy. A complete review of the prison disciplinary hearing supports this decision as the purported testimony of the witness would not have altered the outcome of the proceedings due to appellant's admission that he struck the correctional officer. Some evidence was presented to support the charges. Therefore, we affirm the order of the district court.

⁵Id. at 566.

⁶Id.

⁷Superintendent v. Hill, 472 U.S. 445, 455 (1985).

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, C.J.
Becker

Rose, J.
Rose

Hardesty, J.
Hardesty

cc: Hon. Dan L. Papez, District Judge
Joseph Beaudette
Attorney General Brian Sandoval/Carson City
Attorney General Brian Sandoval/Las Vegas
White Pine County Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).