

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESLEY ANTHONY SOARES,  
Appellant,  
vs.  
WARDEN, NEVADA DEPARTMENT OF  
CORRECTIONS, DON HELLING,  
Respondent.

No. 44451

FILED

MAR 22 2005

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant Wesley Soares' post-conviction petition for a writ of habeas corpus. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

On September 20, 2004, Soares filed a proper person post-conviction petition for a writ of habeas corpus in the district court. In his petition, Soares raised claims concerning a prison disciplinary hearing in which he was found guilty of G-14 (failure to follow posted rules and regulations), G-25 (purchasing, selling, trading, giving, receiving, or possessing any item of property with a value equal to or greater than \$50 in a manner that is not permitted), MJ-29 (charging or collecting a fee or favors as a legal assistant), and MJ-36 (an attempt or conspiracy to commit a major violation).<sup>1</sup> As a result of the disciplinary hearing, Soares received 90 days of disciplinary segregation, 10 days' loss of canteen and

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<sup>1</sup>We note that Soares pleaded guilty to the G-14 and G-25 charges.

phone privileges, and forfeited 40 days of statutory good time credit.<sup>2</sup> The State opposed Soares' petition. Soares filed a reply. On November 24, 2004, the district court denied Soares' petition. This appeal followed.<sup>3</sup>

When a prison disciplinary hearing results in the loss of statutory good time credits, the United States Supreme Court has held that minimal due process rights entitle a prisoner to: (1) advance written notice of the charges, (2) a qualified opportunity to call witnesses and present evidence, and (3) a written statement by the fact finders of the evidence relied upon.<sup>4</sup> In addition, some evidence must support the disciplinary hearing officer's decision.<sup>5</sup>

First, Soares contended that there was insufficient evidence to find him guilty of MJ-29. Specifically, Soares argued that although he received money from other inmates, there was no evidence that this was payment for legal services. We must determine whether there is any evidence in the record to support the disciplinary hearing officer's conclusion that Soares violated MJ-29.<sup>6</sup> The record reveals that Soares

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<sup>2</sup>Soares filed an institutional appeal, and the Warden dismissed his MJ-36 charge and reduced his disciplinary segregation to 30 days.

<sup>3</sup>To the extent that Soares challenged his placement in disciplinary segregation and the loss of privileges, we note that such challenges are not cognizable in a petition for a writ of habeas corpus. See Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984) (providing that this court has "repeatedly held that a petition for a writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof").

<sup>4</sup>Wolff v. McDonnell, 418 U.S. 539, 563-69 (1974).

<sup>5</sup>Superintendent v. Hill, 472 U.S. 445, 455 (1985);

<sup>6</sup>See id. at 455-56.

held a position as an inmate law clerk. Prison officials noticed suspicious deposits into Soares' inmate account from other inmates and their families. Soares' personal property was inventoried and numerous legal documents belonging to other inmates were discovered. We therefore conclude that there is some evidence to support the hearing officer's finding that Soares committed the above violation, and the district court did not err in denying this claim.

Second, Soares claimed that his due process rights were violated because he was denied the right to present evidence. Soares argued that he requested his monthly inmate account statements, but the request was denied. We conclude that this claim is without merit. The record reveals that the disciplinary hearing officer reviewed Soares' 2003 inmate account statements in camera. Because the hearing officer reviewed this evidence, Soares failed to demonstrate that his qualified right to present evidence was violated.

Third, Soares contended that his due process rights were violated because his institutional appeal was arbitrarily denied. Soares further argued that his appeal was denied "based upon erroneous conclusions of fact and law." Soares failed to adequately articulate how his basic due process rights were violated with respect to his institutional appeal.<sup>7</sup> As such, the district court did not err in denying this claim.

Fourth, Soares argued that the instant charges were brought against him in retaliation for his assistance to other inmates in legal matters. However, Soares pleaded guilty to the G-14 and G-25 charges, and there is some evidence to support the disciplinary hearing officer's


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<sup>7</sup>See Wolff, 418 U.S. at 563-69.

conclusion that Soares violated MJ-29. Therefore, he failed to establish that the charges were brought against him for an improper purpose.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that Soares is not entitled to relief and that briefing and oral argument are unwarranted.<sup>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

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

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

cc: Hon. Richard Wagner, District Judge  
Wesley Anthony Soares  
Attorney General Brian Sandoval/Carson City  
Pershing County Clerk

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