

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARVIN JAMAR JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44924

FILED

JUN 01 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 Marvin Johnson's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

On September 8, 2004, Johnson filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Johnson's petition raised claims concerning a prison disciplinary hearing in which he was found guilty of MJ 45 (possession, introduction, sales or use of any narcotics, drugs, alcohol, or other intoxicants). As a result of the hearing, Johnson received 90 days in disciplinary segregation, indefinite loss of contact visits, forfeiture of 110 statutory good time credits, and was ordered to pay restitution from his inmate account for the urinalysis.¹

¹To the extent that Johnson challenged his placement in disciplinary segregation, loss of privileges, and restitution, 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").

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.² In addition, some evidence must support the disciplinary hearing officer's decision.³

First, Johnson argued that he was denied the right to a hearing before the full disciplinary committee. Instead, his hearing was conducted before a single disciplinary hearing officer. We conclude that this claim is without merit. Administrative Directive 8-98 modified the Code of Penal Discipline and replaced the disciplinary committee, comprised of three members, with a disciplinary hearing officer.⁴ The directive sets forth that the modification "is to increase the accountability for the disciplinary process." Nothing in this modification presents such a "hazard of arbitrary decisionmaking that it should be held violative of due process of law."⁵ Therefore, we affirm the district court's denial of this claim.

Second, Johnson contended that he was denied the right to appear at his disciplinary hearing. As a result, Johnson was unable to

²Wolff v. McDonnell, 418 U.S. 539, 563-69 (1974).

³Superintendent v. Hill, 472 U.S. 445, 455 (1985); see also Nevada Code of Penal Discipline § 707.04(1.3.6.1) ("A finding of guilt must be based on some evidence, regardless of the amount").

⁴See also Nevada Code of Penal Discipline § 707.04(1.3).

⁵Wolff, 418 U.S. at 571.

present a defense. The summary of Johnson's disciplinary hearing, however, states that Johnson refused to appear at the hearing; Johnson failed to establish that this was inaccurate. We therefore conclude that Johnson did not establish that his fundamental due process rights were violated, and we affirm the order of the district court in this regard.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that Johnson is not entitled to relief and that briefing and oral argument are unwarranted.⁶

ORDER the judgment of the district court AFFIRMED.

Becker, C.J.
Becker

Douglas, J.
Douglas

Parraguirre, J.
Parraguirre

cc: Hon. Nancy M. Saitta, District Judge
Marvin Jamar Johnson
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).