

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATEO HERNANDEZ-DELUNA,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, LENARD
VARE,
Respondent.

No. 45657

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Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, LENARD
VARE,
Respondent.

No. 45658

FILED

OCT 18 2005

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

ORDER OF AFFIRMANCE

These are proper person appeals from the district court's order denying appellant's post-conviction petitions for writs of habeas corpus. We elect to consolidate these appeals for disposition.¹ Sixth Judicial District Court, Pershing County; John M. Iroz, Judge.

On December 30, 2004, and on January 21, 2005, appellant filed proper person post-conviction petitions for writs of habeas corpus in the district court challenging two prison disciplinary hearings resulting in forfeiture of good time credits and medical restitution to be taken from his

¹NRAP 3(b).

inmate account.² The State opposed the petitions. On July 22, 2005, the district court denied both petitions. These appeals followed.

"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) a written statement by 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 The Wolff Court declined to require confrontation and cross-examination in prison disciplinary proceedings because these procedures presented "greater hazards to institutional interests."⁵ The requirements of due process are further met if some evidence supports the decision by the prison disciplinary committee.⁶

First, appellant claimed that his due process rights were denied by the failure to provide adequate notice. Appellant claimed

²Appellant's challenges as to restitution imposed as part of prison disciplinary hearings are not cognizable in a petition for a writ of habeas corpus. Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984) ("a petition for [a] writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof").

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

⁴Id. at 563-69.

⁵Id. at 567-68.

⁶Superintendent 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).

several inadequacies of notice: (1) the notices of charges failed to provide specific or approximate times when appellant committed the violations; (2) the notices failed to describe a single act by the appellant in relation to the charges of conspiracy of physical assault; (3) the notices failed to name a co-conspirator; (4) the notices failed to specify any details of appellant's involvement in the conspiracies; (5) the notices failed to provide information relating to the nature of the criminal activities; and (6) the notices did not contain allegations relating to attempt or conspiracy to commit murder.

The notices of charges adequately set forth the incidents, thus permitting appellant an adequate opportunity to present a defense to the charges. The notices identified the specific charges that appellant would need to defend against.⁷ The notices informed appellant of the severe physical assaults of two victim inmates, the dates the assaults took place, and the allegation identifying appellant as a "shot-caller" who ordered the assaults for an identified prison gang. It was irrelevant as to when the actual conspiracies took place. For safety and security considerations, specific gang members were not required to be identified in the notices. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that there was insufficient evidence to support the findings of guilt. The hearing officer stated that she relied on evidence presented at the hearing, evidence presented by a confidential informant, and in-camera review of the documents. Some evidence was

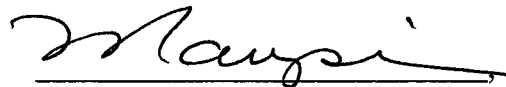
⁷MJ10: Gang activities; MJ16, MJ36: Conspiracy to commit murder.

presented to support the finding of guilt, and therefore, we conclude that the district court did not err in denying this claim.

Although appellant makes no specific claims, he mentions in his petition that he is a Mexican national with limited ability to understand English. However, he did not claim that he did not understand the notice or the disciplinary proceedings, nor did he request assistance, and the district court did not err in denying this claim.

Having reviewed the records 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

ORDER the judgments of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. John M. Iroz, District Judge
Mateo Hernandez-DeLuna
Attorney General Brian Sandoval/Carson City
Pershing County Clerk

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