IN THE SUPREME COURT OF THE STATE OF NEVADA

NAHUM JOSHUA BROWN,
Appellant,
vs.
WARDEN, LOVELOCK CORRECTIONAL CENTER, LENARD VARE,
Respondent.

No. 46336

FILED

MAR 31 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from the district court's order dismissing appellant's post-conviction petition for a writ of habeas corpus. Sixth Judicial District Court, Pershing County; John M. Iroz, Judge.

On July 21, 2005, 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 forfeiture of good time credits and disciplinary segregation.[1] On November 1, 2005, the district court dismissed the petition. This appeal followed.

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

[1]Appellant's challenge as to disciplinary segregation is not cognizable in a petition for a writ of habeas corpus. Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984) (holding that "a petition for [a] writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof").

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) 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.[3]

First, appellant claimed that his due process rights were denied by the failure to provide adequate notice. Appellant claimed several inadequacies of notice: (1) the notice of charges failed to claim that appellant was a "validated security threat group member"; (2) the notice failed to identify what gang appellant was allegedly a member of; (3) the notice failed to identify a victim; and (4) the notice failed to claim that appellant was exhibiting behavior which was reported as rioting or inciting others to riot.

The notice of charges, which was read to appellant on December 7, 2004, and which he signed, adequately set forth the incident, thus permitting appellant an adequate opportunity to present a defense to the charges. The notice identified the specific charges that appellant would need to defend against.[4] The notice informed appellant of the riot that took place on November 12, 2004, between Black and Hispanic

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

[3]Id. at 563-69.

[4]MJ2: Assault; MJ10: Gang activities; and MJ27: Rioting or inciting others to riot.

inmates, in retaliation for an earlier assault on another inmate. Appellant was identified as "being involved in the gang-related assault that caused inmates to assault one another, thus causing the Unit 4B Control Officer to fire four live rounds from his shotgun to stop the assault." After the riot, several weapons used in the incident were found on the tier and were placed into evidence. For safety and security considerations, specific gang members and victims were not required to be identified in the notices. Appellant was provided adequate notice of the charges against him. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that he was improperly charged with MJ10: Gang activities, by an employee not authorized by regulation to do so.[5] This claim is belied by the record.[6] The Assistant Warden of Operations (AWO) charged the MJ10 pursuant to regulation and initialed the charge. Even if appellant was not properly charged with gang activities, he failed to demonstrate that this violated his basic due process rights. The provisions of the Nevada Code of Penal Discipline do not "create any right or interest in life, liberty or property, or establish the basis for any cause of action against the State of Nevada . . . or [its]

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[5]Nev. Code of Penal Discipline § 707.05.1.5 (directing that a violation of MJ10 may only be charged by the AWO).

[6]Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

employees."[7] Consequently, the district court did not err in denying this claim.

Third, appellant claimed that he was improperly denied the opportunity to review the evidence considered by the hearing officer. Specific content of evidence may not be disclosed to the charged inmate if the evidence is confidential or poses a threat to safety or security.[8] The Warden's findings specifically stated that appellant would not be allowed to see investigation reports due to safety, security and confidentiality issues. Thus, the district court did not err in denying this claim.

Last, appellant claimed that there was no evidence which supported the hearing officer's finding of guilt. The requirements of due process are met if some evidence supports the decision by the prison disciplinary committee.[9] The hearing officer reported that he based his findings of guilt on the officer's report and an officer's statement. There was some evidence that demonstrated appellant's guilt of the charges. Thus, the district court did not err in denying this claim.

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[7]See Nev. Code of Penal Discipline § 101.01.1.8.

[8]Nev. Code of Penal Discipline § 707.04.1.3.7.2.

[9]Superintendent 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).

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.[10]

ORDER the judgments of the district court AFFIRMED.[11]

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. John M. Iroz, District Judge
Nahum Joshua Brown
Attorney General George Chanos/Carson City
Pershing County Clerk

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

[11]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.