IN THE SUPREME COURT OF THE STATE OF NEVADA

MAYFIELD ALLEN KIPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46402

FILED

MAR 16 2006

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; Michael R. Griffin, Judge.

On June 3, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus, challenging a prison disciplinary proceeding resulting in forfeiture of 365 days of good time credit.[1] The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On November 15, 2005, the district court denied appellant's 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]The proceeding resulted from a Notice of Charges dated November 25, 2004, in which Officer Williams reported appellant struck and verbally abused him. Appellant was charged with MJ3 (battery), G-1 (disobedience of an order from a correctional employee), and G-9 (abusive language or actions toward another person).

proceedings does not apply."[2] 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]

In his petition, appellant first contended that a charge of battery (MJ3) cannot stand alone without another charge, such as assault (MJ2). Appellant claimed the MJ3 definition of battery, which requires "willful use of force or violence upon the person of another," was unconstitutional because it did not match the NRS 200.481 definition of battery, which requires "willful *and unlawful* use of force or violence upon the person of another" (emphasis added). Appellant further contended that MJ3 requires an accompanying charge, such as MJ2, which adds the "unlawful" element. Appellant cited no authority for the proposition that prison disciplinary charges must match statutory definitions. Further, appellant failed to demonstrate any violation of a protected due process right.[4] Accordingly, we conclude the district court did not err in denying this claim.

Second, appellant contended the hearing officer refused to record the disciplinary hearing. This claim is belied by the record.[5] In

---

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

[3]Id. at 563-69.

[4]See id.

[5]See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (a petitioner is not entitled to an evidentiary hearing on claims that are belied by the record).

reviewing appellant's grievance relating to this claim, the warden found the hearing was recorded, with the exception of appellant's request to discuss a plea negotiation. Further, as a separate and independent ground for denying relief, this claim lacked merit. Even if the hearing was not recorded, a state's failure to comply with its own procedures is not a due process violation so long as the requirements of Wolff are met.[6] The requirements of Wolff were met in this case, and therefore, the district court did not err in denying this claim.

Third, appellant contended the evidence was insufficient as there was no evidence he intended to strike the officer. Along with requirements set out in Wolff, the requirements of due process are met if some evidence supports the decision by the prison disciplinary committee.[7] In this case, the notice of charges clearly indicated appellant intended to strike Officer Williams. Further, appellant changed his explanation of the incident at least three times, once claiming he accidentally brushed against Officer Williams because he was in a hurry, then claiming he accidentally brushed into him because he was dizzy due to low blood pressure, and once stating he may have brushed into the officer because he was trying to alert the officer to his dizziness. We therefore conclude there was some evidence to support the finding, and the district court did not err in denying this claim.

---

[6]See Walker v. Sumner, 14 F.3d 1415, 1420 (9th Cir. 1994).

[7]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).

Finally, appellant contended Officer Williams fabricated the charges in order to retaliate against appellant. Officer Williams had previously written a notice of charges against appellant. Appellant filed a grievance relating to those charges, and the charges were dismissed on November 23, 2004, two days before the incident at issue in this case. Other than his assertion that the dismissal "upset" Officer Williams, appellant stated no facts to support this allegation.[8] There is no indication in the record that Officer Williams, or appellant, were even aware the charges had been dismissed. Accordingly, we conclude the district court did not err in denying this claim.

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.[9] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

---

[8]See Hargrove, 100 Nev. at 502, 686 P.2d at 225 (holding that a petitioner is not entitled to an evidentiary hearing on "bare" or "naked" claims for relief that are unsupported by any specific factual allegations).

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

cc: Hon. Michael R. Griffin, District Judge
Mayfield Allen Kiper
Attorney General George Chanos/Carson City
Carson City Clerk