IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM CATO SELLS, JR.,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K. MCDANIEL,
Respondent.

No. 46454

FILED

MAR 31 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Ribarde
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. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

On May 12, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 December 7, 2005, the district court denied appellant's petition. This appeal followed.

In his petition, appellant challenged a prison disciplinary proceeding against him that occurred in October 2002, in which appellant was charged with possession of contraband, specifically, a paperclip bent into a handcuff key that was concealed in the hem of his coat. Appellant was judged guilty of this charge and penalized with loss of 180 days of statutory good time credits, 180 days of disciplinary segregation, and 90 days loss of privileges. Appellant claimed that the charge was retaliatory, he was not allowed to present a defense to this charge at the disciplinary hearing, and the hearing officer was biased. Appellant challenged this

hearing in a previous petition for a writ of habeas corpus.[1] This part of the petition is therefore successive, and is barred absent a showing of good cause and prejudice.[2] Appellant made no attempt to demonstrate either. We therefore conclude the district court did not err in denying this claim.[3]

Next, appellant challenged a prison disciplinary proceeding against him that resulted from a notice of charges written on January 7, 2003. The notice charged appellant with making threats against prison staff. Appellant pleaded guilty to this charge on January 9, 2003. On January 17, 2003, prison staff determined appellant would receive 180 days of disciplinary segregation and be referred for a determination on loss of good time credits.[4] Appellant claimed he was not allowed to be present at this determination. Under the Code of Prison Discipline, when an inmate pleads guilty to a charge, staff can proceed directly to the imposition of sanctions without holding a hearing.[5] Since no hearing was required, appellant had no right to be present at a hearing. We therefore conclude the district court did not err in denying this claim.

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[1]Sells, Jr. v. Warden, Docket No. 45492 (Order of Affirmance, August 24, 2005). This court affirmed the district court's order dismissing the petition, in which the district court ruled appellant had failed to state sufficient facts to entitle him to an evidentiary hearing.

[2]NRS 34.810(2); NRS 34.810(3).

[3]The district court dismissed this claim on its merits, but this court may affirm the district court's decision on grounds different from those relied upon by the district court. See Milender v. Marcum, 110 Nev. 972, 977, 879 P.2d 748, 751 (1994).

[4]Subsequently, appellant lost 120 days of good time credits.

[5]Code of Penal Discipline 707.04.1.2.4.4.

Finally, appellant challenged a prison disciplinary proceeding against him that resulted from a notice of charges written on January 13, 2003. Appellant was judged guilty of this charge on January 24, 2003, and was penalized with loss of 120 days of statutory good time credits, 180 days of disciplinary segregation, and 30 days loss of privileges. Appellant claimed he was being punished again for threats that were the basis of the January 7, 2003 charge, and that these hearings therefore constituted double jeopardy. Appellant also claimed the notice of charges did not contain a factual statement, i.e., that it did not identify the threats, and that his appeal of the determination was arbitrarily and capriciously denied.

The record reveals appellant was charged for a subsequent threat made on January 9, 2003. Since two separate threat incidents were involved, double jeopardy was not implicated. We therefore conclude the district court did not err in denying this claim.

The record reveals the document in which the threats were made was attached to the notice. Thus, we conclude this gave appellant sufficient notice of the charge, and the district court did not err in denying this claim.

Appellant also claimed his appeal of this proceeding was arbitrarily and capriciously denied. This court has long held that "a petition for writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof."[6] Thus, appellant's claim fell outside the scope of claims permissible in a habeas corpus petition. Appellant has an adequate legal remedy by way of a 42 U.S.C. § 1983

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[6]See Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984).

federal civil rights action. We therefore conclude this claim was properly denied.[7]

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.[8] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Steve L. Dobrescu, District Judge
William Cato Sells Jr.
Attorney General George Chanos/Carson City
White Pine County Clerk

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[7]The district court dismissed this claim on its merits, but this court may affirm the district court's decision on grounds different from those relied upon by the district court. See Milender, 110 Nev. at 977, 879 P.2d at 751.

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