IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBBY FARRINGTON, A/K/A ROBBY FAIRRINGTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47202

FILED

AUG 17 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. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On December 9, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The petition raised claims concerning a prison disciplinary hearing in which appellant was found guilty of violating MJ 31 (the unauthorized or inappropriate use of mail) and MJ 53 (possession, introduction or sale of any narcotic or drug). As a result of the disciplinary hearing, appellant received 180 days in disciplinary segregation, loss of visitation for one year, imposition of restitution for drug testing and forfeiture of 90 days statutory good time credit.[1] The State opposed the petition. Appellant

[1]To the extent that appellant challenged his disciplinary segregation, loss of visitation or imposition of 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").

filed a reply. On April 4, 2006, 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 in such 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) written statement of 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] The Wolff Court declined to require confrontation and cross-examination in prison disciplinary proceedings because these procedures presented "greater hazards to institutional interests."[4] The requirements of due process are further met if some evidence supports the decision by the prison disciplinary committee.[5]

First, appellant claimed that his due process rights were violated because the prison seized and opened legal mail addressed to him without following proper procedure. Specifically, appellant claimed the prison improperly opened his legal mail outside of his presence and he was not given an opportunity to decline the mail. Appellant failed to demonstrate that his basic due process rights were violated. This claim does not implicate the due process rights recognized in Wolff. Further,

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

[3]Id. at 563-69.

[4]Id. at 567-68.

[5]Superintendent v. Hill, 472 U.S. 445, 455 (1985); see also Nev. Dept. of Corrections AR 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).

this claim lacked merit. Although privileged mail, including legal mail, should be opened in the presence of the recipient, non-privileged mail need not be.[6] Further, procedures relating to the refusal to accept mail apply only to legal mail.[7] Appellant failed to demonstrate that the mail that was opened qualified as privileged legal mail and, therefore, failed to demonstrate that the prison did not follow proper procedure. Accordingly, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his due process rights were violated because the notice of charges did not allege a violation of any rules. This claim is belied by the record.[8] The notice of charges specifically indicated that appellant was being charged with a violation of MJ 31 and MJ 53 and provided a statement of facts upon which the charges were based. Accordingly, the district court did not err in denying this claim.

Third, appellant claimed that his due process rights were violated because his convictions for violations of MJ 31 and MJ 53 were not supported by any evidence. We conclude that there was some evidence to support the above violations. Specifically, the prison seized an envelope that was addressed to appellant. The envelope contained two sets of two copied pages that were glued together. Between the two sets of pages were three baggies that contained 1.4 grams of methamphetamine.

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[6]Compare Nev. Dept. of Corrections AR 722.06 (1.4.2) (providing all privileged mail should be opened in the presence of the inmate to whom it is addressed unless the inmate's presence is waived in writing) with Nev. Dept. of Corrections AR 750.03 (1.1) (providing all general correspondence will be opened for the inspection of contraband).

[7]See Nev. Dept. of Corrections AR 722.06 (1.4.5).

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

Accordingly, we conclude the district court did not err in denying this claim.

Fourth, appellant claimed that his due process rights were violated because he was denied inmate assistance at the hearing. Appellant did not have the right to counsel at the disciplinary hearing.[9] An inmate charged with a major violation can consult with an inmate counsel substitute prior to the hearing.[10] However, the inmate counsel substitute may not be present at the hearing unless the charged inmate's psychological or emotional state is so impaired that the charged inmate cannot understand or support his own defense.[11] If an inmate is illiterate or incompetent he should be able to seek the aid of a fellow inmate or adequate substitute aid to assist him.[12] Appellant failed to demonstrate that he was illiterate or incompetent or had a psychological or emotional impairment that prevented him from understanding or supporting his own defense and, therefore, failed to demonstrate that he was entitled to have inmate substitute counsel present at the hearing. Accordingly, we conclude that the district court did not err in denying this claim.

Fifth, appellant claimed that his due process rights were violated because he was denied the right to call witnesses to testify on his behalf. Appellant did not provide specific facts to support this claim.[13] Neither the witnesses nor what they would have testified to were identified in the petition. Further, the record on appeal reveals that

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[9]See Wolff, 418 U.S. at 570.

[10]See Nev. Dept. of Corrections AR 707.04 (1.3.5.3).

[11]See id.

[12]See Wolff, 418 U.S. at 570.

[13]See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

although appellant indicated on the notice of charges he wished to call witnesses, appellant indicated that the witnesses would be named at a later date. There is no indication in the record that, before his hearing, appellant ever informed the disciplinary committee of the names of any witnesses he wished to call on his behalf. Appellant failed to demonstrate that the prison improperly denied him the right to call witnesses during the prison disciplinary hearing. 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.[14] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Robby Farrington
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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