

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 47861

FILED

MAR 22 2007

ORDER OF AFFIRMANCE

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

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

On February 27, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus, or in the alternative, a writ of mandamus, in the district court challenging a prison disciplinary hearing resulting in 120 days of disciplinary segregation and loss of good time credits.¹ On August 2, 2004, the district court ordered the petition and writ of mandamus dismissed. This appeal followed.

¹Appellant asserted he lost good time credits, but did not set forth the amount. The prison disciplinary forms indicated he was referred for the loss of credits.

Petition for a writ of habeas corpus

In his petition, appellant raised a claim concerning a prison disciplinary hearing in which he was found guilty of violating MJ-25 (threats) and G-9 (abusive language) and received 120 days disciplinary segregation and lost good-time credits.²

Appellant claimed that he was improperly charged with making threats because (1) the violation for which he was charged was not in the incident report; (2) there was no evidence to support a conviction for making threats; and (3) the evidence was manufactured in order to keep him in disciplinary segregation.

"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) written statement by the fact finders of the evidence relied upon and the reasons for disciplinary action;

²To the extent that appellant challenges his placement in disciplinary segregation, a challenge to a condition of confinement is not cognizable in a post-conviction petition for a writ of habeas corpus. See 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).

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

Here, appellant was given notice of the charges against him, and specifically, notice that he was being charged with violating MJ-25 (threats) and G-9 (abusive language). Appellant signed and verified service on February 28, 2005 at 1:48 p.m. Appellant made a statement requesting a plea bargain to the charges. Additionally, there was some evidence supporting the decision by the prison disciplinary committee. The disciplinary committee relied on the written report of the incident, and the inmate's plea and statement. The district judge found that there was sufficient evidence in support of the hearing's officer's findings of the correctional officer's credibility. Therefore, the district court reached the

⁴Id. at 563-69.

⁵Id. at 567.

⁶Superintendent 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).

correct result in dismissing appellant's petition, and we affirm the decision of the district court to dismiss the petition.

Writ of Mandamus

In his petition for a writ of mandamus, appellant argued that this court should direct the department of corrections to expunge from its records and reverse and vacate the disciplinary conviction discussed above.

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station or to control an arbitrary or capricious exercise of discretion.⁷ A writ of mandamus will not issue, however, if petitioner has a plain, speedy, and adequate legal remedy.⁸ We review a district court order denying a petition for extraordinary writ for abuse of discretion.⁹ We conclude that the district court did not abuse its discretion in denying appellant's petition. Our review of the record on appeal reveals that appellant had a plain, speedy, and adequate remedy at law by way of a 42 U.S.C. § 1983 federal civil rights action. Further, for reasons discussed above, appellant did not demonstrate any violation of a protected due

⁷See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

⁸NRS 34.170.


⁹See County of Clark v. Doumani, 114 Nev. 46, 53, 952 P.2d 13, 17 (1998).


process right at the prison disciplinary hearing. Accordingly, we conclude that the district court did not abuse its discretion in denying appellant's petition for a writ of mandamus.

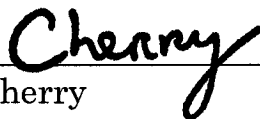
Conclusion

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: First Judicial District Court Dept. 1, District Judge
Mayfield Allen Kiper
Attorney General Catherine Cortez Masto/Carson City
Carson City District Attorney
Carson City Clerk

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