

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN BRADLEY HODGES,  
Appellant,  
vs.  
SARGEANT RICK ROSE AND  
WARDEN BILL DONET,  
Respondents.

No. 48207

**FILED**

JUN 22 2007

WANNETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
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; William A. Maddox, Judge.

On April 25, 2006, appellant filed a proper person petition for a writ of habeas corpus in the district court challenging a prison disciplinary hearing that resulted in 60 days' "austere housing"<sup>1</sup> and forfeiture of 119 days of statutory credit.<sup>2</sup> The State moved to dismiss the

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<sup>1</sup>In his reply to the motion to dismiss, appellant indicated that he was not going to be placed in "austere housing," but instead was going to receive an institutional transfer due to the disciplinary action.

<sup>2</sup>To the extent that appellant challenged his placement in "austere housing" and/or his institutional transfer, appellant's challenges were 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); see also Sandin v. Conner,  
*continued on next page . . .*

petition. Appellant filed a reply to the motion to dismiss. On October 2, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that the prison disciplinary proceeding violated his due process rights. "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."<sup>3</sup> 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.<sup>4</sup> The requirements of due process are further met if some evidence supports the decision by the prison disciplinary committee.<sup>5</sup>

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*... continued*

515 U.S. 472, 486 (1995) (holding that liberty interests protected by the Due Process Clause will generally be limited to freedom from restraint which imposes an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life).

<sup>3</sup>Wolff v. McDonnell, 418 U.S. 539, 556 (1974).

<sup>4</sup>Id. at 563-69.

<sup>5</sup>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).

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant's due process rights were not violated.

First, appellant claimed that his due process rights were violated because he was never interviewed regarding the allegations against him. The record reveals that appellant was given an opportunity to make a statement on the date he received written notice of the charges against him, and appellant did not make a statement at that time. The record further reveals that appellant made a statement on his behalf during the disciplinary hearing. Accordingly, we affirm the district court's denial of this claim.

Second, appellant claimed that his due process rights were violated because he was not provided sufficient information regarding the alleged offense. Specifically, appellant claimed that he was unable to gather evidence to support his claim of innocence because he was not informed of the date the alleged offense occurred. Appellant failed to demonstrate that his due process rights were violated. The record reveals that appellant received advance written notice that he was being charged with a violation of MJ28 for "pressuring sex offenders for their paperwork." The notice informed appellant that the violation was reported to a caseworker on March 9, 2006. At the evidentiary hearing, appellant stated that he was at the library for most of the day on which the charged offense occurred, and appellant was prepared to call a witness who would have testified to the same information. The notice of charges

contained sufficient facts to inform appellant of the charges and allow him to marshal the facts and prepare a defense.<sup>6</sup> Accordingly, we affirm the district court's denial of this claim.

Third, appellant claimed that his due process rights were violated because he was not allowed to call witnesses at the disciplinary hearing to support his claim of innocence, and there was no demonstration of a safety need for denying him the opportunity to call witnesses. Appellant failed to demonstrate that his due process rights were violated. The Wolff court recognized that a witness may be refused for "irrelevance, lack of necessity," or where calling witnesses would be "unduly hazardous to institutional safety or correctional goals."<sup>7</sup> Here, the disciplinary committee refused to allow appellant to call a witness to corroborate his statement that he was in the library on most of the date on which the charged offense occurred because it was stipulated that the witness would provide the testimony offered. Because the stipulation rendered the witness' testimony unnecessary, the denial of appellant's request to have the witness testify did not violate appellant's due process rights. Accordingly, we affirm the district court's denial of this claim.

Fourth, appellant claimed that his due process rights were violated because insufficient evidence supported the finding that he was

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<sup>6</sup>See Wolff, 418 U.S. at 564.

<sup>7</sup>Id. at 566.

guilty of the offense. The summary of appellant's hearing indicated that appellant was found guilty of a violation of MJ 28 based on the notice of charges, a confidential document attached to the notice of charges, the inmate's statement and the inmate's history. Although a copy of the confidential document was not included in the record on appeal, the summary indicated that the confidential information was reliable and safety prevented the disclosure of the confidential information.<sup>8</sup> Because some evidence supported the prison disciplinary hearing officer's decision, appellant failed to demonstrate that his due process rights were violated. Accordingly, we affirm the district court's denial of this claim.

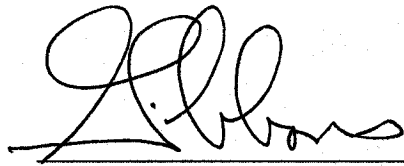
Fifth, appellant claimed that his due process rights were violated because a hearing officer turned the recorder off during the hearing and informed him that the officer had to find all inmates involved in the incident guilty regardless of any evidence or claims of innocence. Appellant failed to demonstrate that his due process rights were violated. As noted above, some evidence supported the prison disciplinary hearing officer's decision. Accordingly, we affirm the district court's denial of this claim.

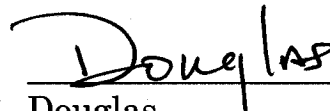
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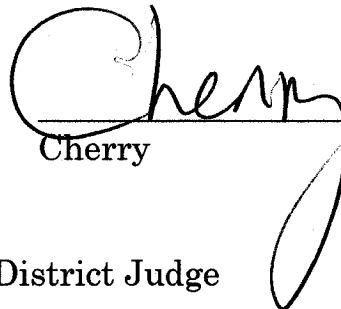
<sup>8</sup>See Zimmerlee v. Keeney, 831 F.2d 183, 186-87 (9th Cir. 1987) (holding that information received from a confidential informant may be used in prison disciplinary hearings when the record demonstrates that the information is reliable and necessary).

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.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. William A. Maddox, District Judge  
Steven Bradley Hodges  
Attorney General Catherine Cortez Masto/Carson City  
Carson City Clerk

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<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>10</sup>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.