IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT GARCIA,
Appellant,
vs.
WARDEN, NORTHERN NEVADA CORRECTIONAL CENTER, DON HELLING,
Respondent.

No. 48253

FILED

MAY 11 2007

JANETTE 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 11, 2006, appellant filed a proper person petition for a writ of habeas corpus in the district court challenging a prison disciplinary hearing resulting in 180 days in "austere" and/or disciplinary segregation and forfeiture of good time credits. He also claimed that the conditions of his confinement in segregation violated the Eighth Amendment's prohibition against cruel and unusual punishment. The State moved to dismiss the petition, and appellant filed a response. On September 29, 2006, the district court denied appellant's petition. This appeal followed.

As an initial matter, "[w]e have repeatedly held that a petition for writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof."[1] Thus, appellant was not

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

entitled to relief on his claims that he was unjustly moved into disciplinary segregation or that the conditions of that segregation violated the Eighth Amendment's prohibition against cruel and unusual punishment. Accordingly, we only consider his claims as they relate to the loss of statutory good time credit.

"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."[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] Although an inmate has no right to counsel at a disciplinary hearing,

> "[w]here an illiterate inmate is involved, however, or whether the complexity of the issue makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case, he should be free to seek the aid of a fellow inmate, or if that is forbidden, to have adequate substitute aid in the form of help from the staff or from a sufficiently competent inmate designated by the staff."[4]

First, appellant claimed that his due process rights were violated because the notice of charges was ambiguous. The record reveals, however, the notice of charges adequately set forth the incident: that the

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

[3]Id. at 563-67.

[4]Id. at 570.

appellant communicated with a former staff member through the unauthorized use of the mail. It also provided the date of the alleged incident and the specific rules violated. Thus, the notice permitted appellant an adequate opportunity to present a defense to the charges.[5] Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed he was denied due process because the charges were based upon the statements of a confidential informant. This claim is without merit. The right to confront and cross-examine is not required in prison disciplinary proceedings because of the hazards to institutional interests.[6] Further, the disciplinary committee is allowed to consider hearsay statements.[7] The information was reliable: the investigating officer testified personally to the truthfulness of the information and an in camera review found that the documentation was reliable.[8] Moreover, appellant's statements at the disciplinary hearing corroborated the information obtained from the confidential informant. Finally, the record reflects that the disciplinary board found that safety

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[5]Id. at 564 (stating that the notice must be sufficient to "give the charged party a chance to marshal the facts in his defense and to clarify what the charges are, in fact").

[6]Id. at 567-68.

[7]See Zimmerlee v. Keeney, 831 F.2d 183, 186 (9th Cir. 1987); see also Nev. Code of Penal Discipline § 707.04 (1.3.6.1).

[8]See Zimmerlee, 831 F.2d at 186-87 (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).

prevented the disclosure of the identity of the confidential informant.[9] Therefore, appellant was not denied due process in this regard.

Third, appellant claimed that his due process rights were violated because the disciplinary hearing officer prevented him from producing witnesses.[10] However, as noted above, due process only requires a qualified right to present witnesses, and the summary of the preliminary disciplinary hearing indicates that appellant declined to call witnesses. Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that his due process rights were violated when he was prevented from making a statement at his hearing. However, this claim is belied by the record as the summary of the disciplinary hearing indicates that appellant made a statement in which he admitted that he corresponded with a former prison volunteer. Therefore, we conclude that the district court did not err in denying this claim.

Fifth, appellant claimed that he was denied his request for an inmate law clerk to assist at his hearing. While the Wolff Court recognized that some inmates may need assistance if they are illiterate or the facts of their case are overly complex,[11] such was not the case here. Appellant did not assert that he is illiterate, and the facts of his case, whether or not he contacted a former prison staff member, were not complex. Further, at the preliminary hearing, the form indicated that

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[9]See id. at 186.

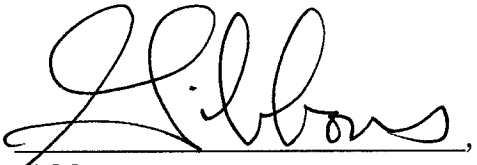
[10]Wolff, 418 U.S. at 566.

[11]Id. at 570.

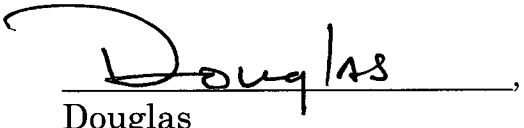
appellant was not requesting inmate substitute counsel for the formal disciplinary hearing. Therefore, appellant failed to demonstrate a violation of any protected due process right, and the district court did not err in denying this claim.

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. Accordingly, we

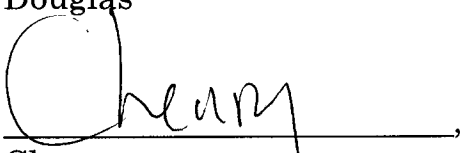
ORDER the judgment of the district court AFFIRMED.[12]



_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Cherry

cc: Hon. William A. Maddox, District Judge
Albert Garcia
Attorney General Catherine Cortez Masto/Carson City
Carson City Clerk

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[12]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.