

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ALLRED,  
Appellant,  
vs.  
WARDEN, ELY STATE PRISON, E.K.  
MCDANIEL,  
Respondent.

No. 48528

**FILED**

APR 06 2007

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court dismissing a petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

On March 11, 1996, appellant was convicted of one count of robbery in district court case number CR9711071 and sentenced to serve a term of 48 to 156 months in the Nevada State Prison. On September 22, 1998, appellant was convicted of one count of escape in district court case number CR9711075 and sentenced to serve a term of 24 to 60 months in the Nevada State Prison. The latter sentence was imposed to run consecutively to the former sentence. Effective October 1, 2003, appellant was paroled from the sentence in CR9711071 to the sentence in CR9711075. On April 20, 2005, appellant's parole in CR9711071 was revoked.

On February 8, 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 545 days in disciplinary segregation

and forfeiture of 162 good time credits.<sup>1</sup> Appellant also challenged the revocation of his parole. The State opposed the petition. Appellant filed a memorandum of points and authorities and renewed motions for the appointment of counsel and request for an evidentiary hearing. The State filed a motion to strike the memorandum and renewed motions. On November 14, 2006, the district court granted the State's motion to strike and dismissed appellant's petition. This appeal followed.<sup>2</sup>

February 15, 2005 Prison Disciplinary Hearing

At the February 15, 2005 prison disciplinary hearing, appellant was found guilty of assault, battery and gang activities for an incident involving the stabbing of another inmate.

In his petition, appellant claimed that his due process rights were violated at the prison disciplinary hearing because: (1) he was denied the right to confront and cross-examine the confidential informant at the prison disciplinary hearing; (2) he was denied the right to counsel at the prison disciplinary hearing; (3) the prison disciplinary hearing officer failed to evaluate the reliability of the confidential informant; and (4) he

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<sup>1</sup>To the extent that appellant challenged his placement in disciplinary segregation, appellant's challenges were not cognizable in a habeas corpus petition. See Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984); see also Sandin v. Conner, 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>2</sup>We conclude that the district court did not abuse its discretion in granting the State's motion to strike. See NRS 34.750(5).

was disciplined without any reliable evidence of misconduct and upon hearsay statements.

"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>

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 at the February 15, 2005 prison disciplinary hearing. Appellant received advance written notice of the charges and a written statement of the evidence relied upon. Appellant did not demonstrate that he was denied the ability to call witnesses or present evidence.<sup>6</sup> The Wolff Court declined to require confrontation and

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<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 NDOC 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).

<sup>6</sup>Notably, the summary of the prison disciplinary hearing indicates that appellant stood silent during the prison disciplinary hearing.

cross-examination in prison disciplinary proceedings because these procedures presented "greater hazards to institutional interests."<sup>7</sup> The right to counsel does not extend to prison disciplinary hearings, and thus, no protected due process right was violated because appellant was represented by inmate counsel substitute and not a lawyer.<sup>8</sup> The record belies appellant's claim that the reliability of the confidential informant was not evaluated.<sup>9</sup> Hearsay evidence may be considered by the prison disciplinary hearing officer and its consideration does not violate any protected due process right.<sup>10</sup> Some evidence supported the decision of the prison disciplinary hearing officer. Therefore, we conclude that the district court did not err in denying these claims.

#### Revocation of Parole

On February 18, 2005, a parole violation report was prepared by the Nevada Department of Corrections. The report listed prison disciplinary violations from 5 separate hearings, including the violations that were the subject of the February 15, 2005 prison disciplinary hearing. On April 20, 2005, appellant's parole was revoked for a violation of the cooperation and laws and conduct parole conditions. The parole board

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<sup>7</sup>Wolff, 418 U.S. at 567-68.

<sup>8</sup>See id. at 570.

<sup>9</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984); see also Zimmerlee v. Keeney, 831 F.2d 183, 188 (9th Cir. 1987).

<sup>10</sup>See NDOC AR 707.04 1.3.6.1 ("The formal rules of evidence do not apply in disciplinary hearings. Hearsay evidence may be accepted.").

stated that appellant's failure to follow institutional rules was the reason for the revocation.

In his petition, appellant claimed that his due process rights were violated because: (1) he was denied the right to confront and cross-examine the confidential informant at the parole revocation hearing; (2) the Parole Board failed to determine the reliability of the confidential informant from the February 15, 2005 prison disciplinary hearing; and (3) his parole was revoked without reliable evidence of misconduct and upon hearsay.

Similar to a prison disciplinary hearing, a parole revocation is not a criminal prosecution and does not require the full panoply of rights due a criminal defendant in a criminal proceeding.<sup>11</sup> Minimal due process at a parole revocation hearing requires: (1) written notice of the claimed violations of parole; (2) disclosure to the parolee of evidence against him; (3) opportunity to be heard in person and present witnesses and documentary evidence; (4) a qualified right to confront and cross-examine witnesses; (5) a neutral and detached hearing body; and (6) a written statement of the evidence relied upon and reasons for revoking parole.<sup>12</sup> A parolee may not relitigate issues determined against him in other forums.<sup>13</sup>

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to

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<sup>11</sup>See Morrissey v. Brewer, 408 U.S. 471, 480 (1972).

<sup>12</sup>Id. at 489 (1972); Anaya v. State, 96 Nev. 119, 606 P.2d 156 (1980).

<sup>13</sup>Morrissey, 408 U.S. at 490.

demonstrate that any protected due process rights were violated in the instant case. We note that appellant was represented by counsel at the parole revocation proceedings, and appellant failed to indicate that counsel wished to confront any adverse witnesses and was denied the ability to do so. On the form providing notice of rights for parole revocation proceedings, appellant did not indicate that he wished to present or question any witnesses, and he did not identify any witnesses that should be called for the parole revocation proceedings. The United States Supreme Court has recognized the right to confront and cross-examine is qualified and that if an informant would be subjected to risk of harm if his identity were disclosed, the informant need not be subjected to confrontation and cross-examination.<sup>14</sup> The risk of harm to the confidential informant was already determined at the February 15, 2005 prison disciplinary hearing. To the extent that appellant's claims relate to the February 15, 2005 prison disciplinary hearing, appellant may not relitigate that prison disciplinary violation. The reliability of the confidential informant had already been established at the February 15, 2005 prison disciplinary hearing, and thus, the parole board did not err in considering the violation established at the February 15, 2005 prison disciplinary hearing. Further, even assuming that there were any irregularities attached to the February 15, 2005 prison disciplinary hearing, appellant's parole was revoked because of his failure to follow institutional rules, which included four additional prison disciplinary violations for which he offered no argument disputing the validity of those

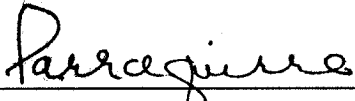
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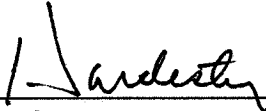
<sup>14</sup>See *id.* at 487; see generally NRS 213.1513(2)(d) (stating the right to confrontation in terms of the preliminary inquiry).


violations. Thus, any alleged error relating to the February 15, 2005 prison disciplinary hearing was harmless. Therefore, we conclude that the district court did not err in denying these claims.

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>15</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Hardesty

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

cc: Hon. Dan L. Papez, District Judge  
Michael Allred  
Attorney General Catherine Cortez Masto/Carson City  
Attorney General Catherine Cortez Masto/Ely  
White Pine County Clerk

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<sup>15</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).