

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM CATO SELLS, JR.,  
Appellant,  
vs.  
DIRECTOR, NEVADA DEPARTMENT  
OF CORRECTIONS, JACKIE  
CRAWFORD,  
Respondent.

No. 48615

**FILED**

**MAY 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 an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

On November 3, 2005, appellant filed a proper person petition for a writ of habeas corpus in the district court challenging two prison disciplinary hearings. The first hearing, took place on September 5, 2000, and resulted in 90 days' disciplinary segregation, 90 days' loss of phone privileges, and 90 days' loss of canteen privileges for giving false information about a staff member. The second hearing, took place on September 26, 2000, and resulted in 180 days' administrative segregation, 60 days' loss of phone privileges, 60 days' loss of canteen privileges, 30 days' loss of appliances, forfeiture of tennis shoes, and 120 days' loss of good time credits for possession of contraband. The State moved to dismiss the petition. On December 8, 2006, the district court dismissed 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."<sup>1</sup> Thus, appellant was not entitled to relief on his claims that he was unjustly moved into disciplinary segregation and lost other privileges. Accordingly, we only consider his claims as they related to the September 26, 2006, hearing and 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."<sup>2</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>3</sup>

First, appellant claimed that his due process rights were violated because the inmate regulations did not sufficiently notify him that possession of an envelope clasp violated the regulations. Due process does not require "impossible standards of specificity" in statutory language, especially when, if viewed in the context of the entire statutory provision, there are well-settled and ordinary meanings for the words

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<sup>1</sup>Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984).

<sup>2</sup>Wolff v. McDonnell, 418 U.S. 539, 556 (1974).

<sup>3</sup>Id. at 563-67.

used.<sup>4</sup> In the Nevada State Prison, possession of contraband is a major violation.<sup>5</sup> Contraband includes "[a]ny authorized property that has been altered."<sup>6</sup> The ordinary meaning of "alter" is "to make different."<sup>7</sup> As appellant admitted that he purchased the envelope containing the clasp from the inmate canteen, he could assume that it was authorized property.<sup>8</sup> The ordinary meaning of the regulation put him on notice that any change in the authorized product he purchased, the clasp as removed from the envelope, would render the resulting item or items contraband.<sup>9</sup> Therefore, the district court did not err in dismissing this claim.

Second, appellant claimed that his due process rights were violated because the hearing officer indicated that he pleaded guilty to the charge when he did not. Appellant's claim is belied by the record. Appellant admitted that he pleaded guilty in his disciplinary appeal. Accordingly, the district court did not err in dismissing this claim.

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<sup>4</sup>Woofter v. O'Donnell, 91 Nev. 756, 762, 542 P.2d 1396, 1400 (1975).

<sup>5</sup>Nev. Code of Penal Discipline § 707.05 (1.5) (MJ26).

<sup>6</sup>Id. § 707 (Definitions).

<sup>7</sup>Webster's New Riverside University Dictionary 96 (2d ed. 1988).

<sup>8</sup>See Nev. Code of Penal Discipline § 204.01(2).

<sup>9</sup>The notice of charges indicates that such a clasp is contraband because it is used to fabricate cuff keys. Further, the notice of charges also indicates that the clasp was discovered beneath the insole of appellant's shoe.

Third, appellant claimed that his due process rights were violated because the hearing officer did not permit him to call witnesses. 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 did not attempt to call witnesses. Moreover, appellant admitted that he possessed the envelope clasp and pleaded guilty to the offense. Therefore, we conclude that the district court did not err in dismissing this claim.

Fourth, appellant claimed that his equal protection rights were violated because his cell was searched and he was charged with a disciplinary violation because he reported guards for rule violations. A prisoner asserting a claim of retaliation "must allege that he was retaliated against for exercising his constitutional rights and that the retaliatory action does not advance legitimate penological goals, such as preserving institutional order and discipline."<sup>10</sup> Appellant did not allege that the search of his cell for contraband did not advance the legitimate penological goals of order and safety. Moreover, based on appellant's own admission, as well as the testimony of the searching officers, there is some evidence to support the disciplinary hearing officer's conclusion that appellant was guilty of the offense.<sup>11</sup> Therefore, appellant failed to

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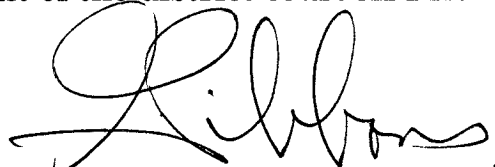
<sup>10</sup>See Barnett v. Centoni, 31 F.3d 813, 815-16 (9th Cir. 1994) (addressing a claim in action brought pursuant to 42 U.S.C. § 1983).

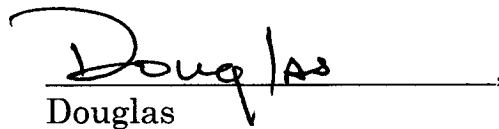
<sup>11</sup>See Superintendent v. Hill, 472 U.S. 445, 455 (1985); Nev. Code of Penal Discipline § 707.04(1.3.6.1).

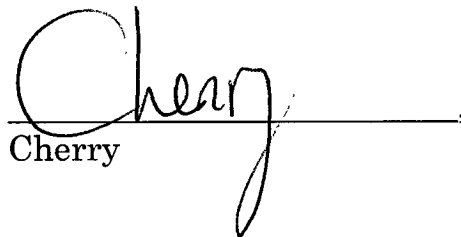
establish that the charge was brought against him for an improper purpose.

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.

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

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

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

cc: Hon. Steve L. Dobrescu, District Judge  
William Cato Sells Jr.  
Attorney General Catherine Cortez Masto/Carson City  
Attorney General Catherine Cortez Masto/Ely  
White Pine County Clerk