IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN EUGENE LEPLEY,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON,
CRAIG FARWELL,
Respondent.

No. 49277

FILED

SEP 05 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART AND REMANDING IN PART

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

On April 7, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in which appellant challenged the loss of statutory good time credits, placement in disciplinary segregation, and referral to sexual classification committee for administrative segregation housing. These sanctions were imposed based upon a finding of guilt of MJ30 (sexually stimulating activities) at a prison disciplinary hearing. In his petition, appellant claimed: (1) due process and a Nevada administrative regulation required three impartial committee members whereas appellant had only one biased committee member; (2) due process rights violated by the use of a "mystery taped statement" which was unverified as to its veracity and that this was not "evidence" for the imposition of disciplinary sanctions; (3) his right to confrontation was violated; and (4) use of an unproven allegation is insufficient to impose administrative segregation HIV housing. The habeas corpus petition was filed in the Sixth Judicial District Court and

assigned to Judge Richard A. Wagner. On July 26, 2004, the State filed a motion to dismiss the petition. Appellant filed an opposition to the motion to dismiss in proper person.

It appears from the documents before this court that in addition to his post-conviction petition for a writ of habeas corpus appellant also filed a civil complaint for a violation of his civil rights as a result of the discipline imposed, a petition for a writ prohibition, a motion to proceed in forma pauperis to remove Jackie Crawford as Director of Nevada Department of Corrections, and a small claims action in the Lake Township Justice Court against Correctional Officer John Leonhardt for instigating the prison disciplinary hearing. It appears that these four matters were assigned to Judge John M. Iroz and/or Justice of the Peace Carol A. Nelson.[1] On February 2, 2005, Judges Wagner, Iroz and Nelson entered one order relating to the five matters. The February 2, 2005 order summarily denied the four documents set forth above. In relation to the habeas corpus petition, the February 2, 2005 order noted that a habeas corpus petitioner may not challenge the conditions of confinement, and any such claims would not be considered by the court. However, the February 2, 2005 order recognized that the loss of good time credits would be cognizable. The February 5, 2005 order noted that the evidence relied upon by the prison disciplinary hearing officer was presented in camera and not subject to appellant's cross-examination or scrutiny. The district court ordered the State to provide the court with the in camera evidence and the parties to provide legal argument as to whether the right to

[1]It is not clear if any of the documents referred to above, with the exception of the habeas corpus petition, was assigned to Judge Wagner.

confrontation as set forth in Crawford v. Washington[2] applied to a prison disciplinary hearing. On February 17, 2005, appellant filed a proper person supplement regarding the confrontation argument. On May 6, 2005, the State filed a response arguing that no due process rights had been violated and there was no right to confrontation at a prison disciplinary hearing.

On May 13, 2005, the district court appointed counsel to assist appellant and brief the issue regarding the confrontation clause. On January 30, 2006, post-conviction counsel filed a supplemental brief and argued that the right to confrontation as set forth in Crawford applied to prison disciplinary hearings. Appellant in a footnote, relying upon Salaiscooper v. Dist. Ct.,[3] also argued that the February 2, 2005 order was in excess of the jurisdiction of the various courts as the judges were not permitted to sit "en banc" or make collaborative findings. The State filed a response to the supplemental brief that reiterated its position that Crawford did not apply to prison disciplinary hearings.

On March 2, 2007, the district court entered a final order denying the post-conviction petition for a writ of habeas corpus in its entirety. The district court concluded that after a review of the in camera evidence there was evidence to support the hearing officer's finding of guilt. The district court further found that the disclosure of the in camera evidence would pose a threat to the other inmates and prison officials and there was good reason that the confidential informants remain

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[2]541 U.S. 36 (2004).

[3]117 Nev. 892, 900, 34 P.3d 509, 514 (2001).

confidential. The district court further found that there was no right to confrontation in prison disciplinary hearings. This appeal followed.

On appeal, appellant first argues that the February 2, 2005 order was entered in excess of jurisdiction. Appellant, relying upon Salaiscooper, argues that the February 2, 2005 order was in excess of the jurisdiction of the various courts as the judges were not permitted to sit "en banc" or make collaborative findings. Based upon our review of the documents before this court, we conclude that appellant is not entitled to any relief on this claim.

In Salaiscooper, seven judges of the Las Vegas Justice Court entered a collaborative order over a misdemeanor matter pending in front of one of the judges because identical issues had been raised in cases pending in all seven departments and it was more efficient to reach a collaborative decision in a "test" case.[4] This court disapproved of this practice because the justice courts are courts of limited jurisdiction and the legislature had not vested the justice courts with the jurisdiction or authority to sit "en banc" or make collaborative findings.[5] Although the technical procedure exceeded the jurisdiction of the courts, this court noted that the justice court to which the matter had been assigned properly exercised jurisdiction over the issue raised because it arose from a criminal misdemeanor case pending before that judge.[6] Similarly, the habeas corpus petition was assigned to Judge Wagner, and Judge Wagner

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[4]Id. at 899, 34 P.3d at 514.

[5]Id.

[6]Id. at 900, 34 P.3d at 514.

properly exercised jurisdiction over the pending habeas corpus petition.[7] Therefore, we conclude that the district court did not err in denying this claim.[8]

Next, appellant argues that the district court erred in concluding the right to confrontation does not apply in a prison disciplinary setting. Appellant argues that the United States Supreme Court's decision in Crawford should apply in prison disciplinary hearings and that a prison disciplinary hearing was the functional equivalent of a trial. We disagree.

"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."[9] The Wolff Court recognized that prison disciplinary hearings occur in a "closed, tightly controlled environment peopled by those who have chosen to violate the criminal law and who have been lawfully incarcerated for doing so" and that it was "against this background that disciplinary hearings must be structured."[10] In view of this, the Wolff Court held that minimal due process pursuant to the Fourteenth Amendment, in a prison disciplinary hearing requires: (1) advance written notice of the charges; (2) written statement of the fact

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[7]See Nev. Const. art. 6, § 6 (1).

[8]We need not reach the issue of whether the February 2, 2005 order properly resolved the other matters as those matters are not part of this appeal. Any challenges to the denial of the other matters should have been appealed separately.

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

[10]Id. at 561-62.

finders of the evidence relied upon and the reasons for disciplinary action; and (3) a qualified right to call witnesses and present evidence.[11] The Wolff Court also recognized that due process requires an impartial decision maker.[12] Further, the requirements of due process are met if some evidence supports the decision by the prison disciplinary committee.[13] However, the Wolff Court declined to require confrontation and cross-examination in prison disciplinary proceedings as part of the minimal due process required because these procedures presented "greater hazards to institutional interests."[14] The prison environment described by the Wolff Court as not requiring the right to confrontation is the same environment that exists today—an environment "where prison disruption remains a serious concern to administrators."[15] Nothing in Crawford, which relies upon the Sixth Amendment right to confrontation, requires the application of the right of confrontation and cross-examination to a prison disciplinary setting.[16] The Sixth Amendment right to confrontation

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[11]Id. at 563-69.

[12]Id. at 571.

[13]Superintendent v. Hill, 472 U.S. 445, 455 (1985).

[14]Wolff, 418 U.S. at 567-68.

[15]Id. at 568.

[16]See U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."); see also Summers v. State, 122 Nev. 1326, 148 P.3d 778

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applies to those facing criminal prosecutions and not those facing a prison disciplinary hearing and subsequent disciplinary sanctions. Further, the United States Supreme Court has held that the revocation of credits is not the functional equivalent of a criminal conviction.[17] Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant argues that the district court erred in concluding that within the material presented to the hearing officer there was evidence to support the disciplinary hearing officer's conclusion. We disagree. The United States Supreme Court has stated that due process is met where there is "some evidence" of the violation.[18] The relevant inquiry is whether there is any evidence in the record to support the hearing officer's conclusion.[19] Notably, due process does not require the reviewing court to examine the entire record, independently assess the credibility of witnesses or weigh the evidence.[20] The in camera evidence presented to the disciplinary hearing officer, which was determined to be reliable by the disciplinary hearing officer as marked on the form and which was determined necessary to remain confidential for safety and

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(2006) (holding that Crawford and the confrontation clause do not apply to a capital penalty hearing); Sheriff v. Witzenburg, 122 Nev. 1056, 145 P.3d 1002 (2006) (holding that Crawford and the confrontation clause do not apply to a preliminary hearing).

[17]Hill, 472 U.S. at 456.

[18]Id. at 455.

[19]Id. at 455-56.

[20]Id. at 455.

institutional reasons as expressed at the hearing, provided some evidence that appellant had violated MJ30 (sexually stimulating activities). Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant argues that the district court erred in failing to specifically address the remaining claims raised in the proper person petition regarding the composition and impartiality of the prison disciplinary hearing committee, the veracity of the taped statement, and the violation of appellant's due process rights as a result of the administrative segregation HIV housing conditions.

In relation to the administrative segregation claim, appellant's claim is belied by the documents before this court. In the February 2, 2005 order, the district court concluded that those claims challenging the conditions of confinement were improperly raised in the post-conviction petition for a writ of habeas corpus. Because a challenge to the conditions of confinement may not be raised in a petition for a writ of habeas corpus, the district court properly limited its consideration only to those claims relating to the loss of good time credits.[21] Therefore, appellant is not entitled to any relief on this claim.

In relation to the veracity of the taped statement, we conclude that the district court's order adequately addressed this claim. Notably, it is not clear to what taped statement appellant is referring, but to the extent that he referred to the in camera evidence, the district court examined the in camera evidence and found there was some evidence to support the prison disciplinary hearing officer's testimony. The

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

documents before the district court in reaching this conclusion included the summary of the prison disciplinary hearing which indicated that the in camera evidence had been determined to be reliable. The district court further specifically found that safety and institutional concerns prevented the in camera evidence from being disclosed. Therefore, appellant is not entitled to any relief on this claim.

However, as to the claim relating to the composition and impartiality of the prison disciplinary hearing, neither of the district court's orders addresses appellant's claim that the prison disciplinary hearing committee was deficient in number and that the prison disciplinary hearing officer was biased. As stated above, Wolff recognized that due process requires an impartial decision maker.[22] A prison disciplinary hearing that presented "a hazard of arbitrary decisionmaking" would violate due process.[23] Further, the fact that the record reveals that some evidence supported the decision of the hearing officer is irrelevant to appellant's claim that his due process rights were violated by a hearing in front of a partial or biased decision maker.[24] It is clear that the district court denied the habeas corpus petition in its entirety. However, the failure of the district court to make a specific finding of fact and conclusion of law regarding this claim prevents this court from conducting

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[22]418 U.S. at 571.

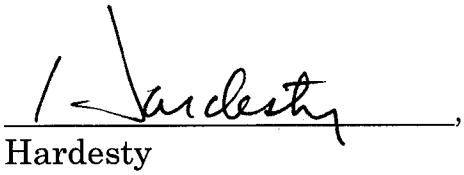
[23]Id.

[24]See Edwards v. Balisok, 520 U.S. 641, 647-48 (1997) (recognizing that the some evidence standard for a finding of guilt was a factor in addition to due process requirements).

meaningful appellate review.[25] Therefore, we remand this claim to the district court for further proceedings.

Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[26]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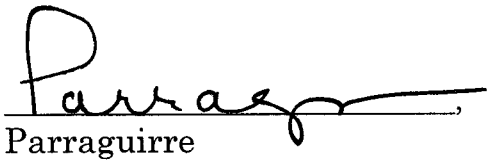
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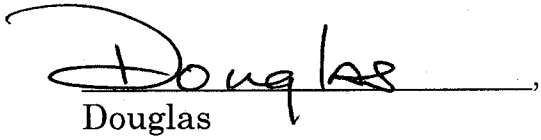
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cc: Hon. Richard Wagner, District Judge
State Public Defender/Carson City
Attorney General Catherine Cortez Masto/Carson City
Attorney General Catherine Cortez Masto/Reno
Pershing County Clerk

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[25]See NRS 34.830.

[26]This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.