

IN THE SUPREME COURT OF THE STATE OF NEVADA

CURTIS L. DOWNING,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49328

**FILED**

SEP 18 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 a petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On May 8, 2006, appellant filed a proper person petition for a writ of habeas corpus in the district court challenging a prison disciplinary violation of MJ42 (unauthorized contact, including harassment, of any on-duty or off-duty correctional employee or other private citizen) resulting in 180 days in disciplinary segregation and forfeiture of statutory good time credits.<sup>1</sup> The State opposed the petition. On April 5, 2007, the district court denied appellant's petition. This appeal followed.

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<sup>1</sup>To the extent that appellant challenged his placement in disciplinary segregation, appellant's challenge was 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). We note that it was recommended that appellant forfeit 119 statutory good time credits, but appellant had only 15 statutory good time credits to forfeit.

"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> The Wolff Court declined to require confrontation and cross-examination in prison disciplinary proceedings because these procedures presented "greater hazards to institutional interests."<sup>4</sup> The requirements of due process are further met if some evidence supports the decision by the prison disciplinary hearing officer.<sup>5</sup>

First, appellant claimed that his due process rights were violated because the notice of charges was too ambiguous. Appellant further claimed that the notice of charges was not factual or professional as it contained opinions and assumptions. He claimed that these defects prevented him from preparing and presenting a defense to the charge. Appellant failed to demonstrate a violation of any protected due process right. The notice of charges adequately set forth the incident in the

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

<sup>3</sup>Id. at 563-69.

<sup>4</sup>Id. at 567-68.

<sup>5</sup>Superintendent v. Hill, 472 U.S. 445, 455 (1985); see also N.D.O.C. A.R. 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).

library with the volunteer law student, thus permitting appellant an adequate opportunity to present a defense to the charges.<sup>6</sup> Therefore, we conclude that the district court did not err in denying this claim.<sup>7</sup>

Second, appellant claimed that his due process rights were violated because he was not allowed to call requested witnesses. Although appellant did not specifically identify the witnesses in the petition, it appears that at the disciplinary hearing appellant requested to call as witnesses Professor Jean Whitney and a student named Sabrina.<sup>8</sup> Appellant claimed that these witnesses had substantial knowledge of the issues. Appellant further claimed that he was denied the right to cross-examine witnesses. Appellant failed to demonstrate a violation of any protected due process right. A witness may be refused for a variety of reasons, including irrelevance, lack of necessity, or the hazards presented in individual cases, and the prison must balance the prisoner's interest in avoiding the loss of credits with the prison needs to keep the hearing within reasonable limits.<sup>9</sup> The prison disciplinary hearing officer indicated that these witnesses were refused as there was to be no personal

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<sup>6</sup>We note that the notice of charges described appellant's conduct in the library and set forth the contents of the note appellant gave to the volunteer law student.

<sup>7</sup>To the extent that appellant claimed a violation of a specific prison regulation, appellant failed to provide any cogent argument in relation to the regulation or demonstrate that any alleged violation required relief. See N.D.O.C. A.R. 707.01 (1.10).

<sup>8</sup>It appears that the student was the volunteer who appellant approached and to whom appellant gave the note.

<sup>9</sup>See Wolff, 418 U.S. at 566.

contact between appellant and volunteers pursuant to administrative regulations.<sup>10</sup> Further, as these witnesses did not appear to be staff or inmates at the correctional facility, it would not appear that the prison disciplinary hearing officer could compel their attendance at or participation in the prison disciplinary hearing. As noted above, due process does not require that a prisoner be permitted to confront and cross-examine his accuser. Due process further does not require that the prison set forth a reason for refusing to allow a prisoner to confront or cross-examine his accuser.<sup>11</sup> Finally, we note that appellant failed to identify the information that these witnesses would have provided that would have had a reasonable probability of altering the outcome of the prison disciplinary proceedings. A review of the record reveals some evidence supported the disciplinary finding in the instant case. Therefore, we conclude that the district court did not err in denying this claim.<sup>12</sup>

Third, appellant claimed that the prison disciplinary hearing officer utilized a document, Administrative Regulation 802, in finding him guilty that appellant was not allowed to view or research. Appellant failed to demonstrate that a protected due process right was violated in this

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<sup>10</sup>See N.D.O.C. A.R. 802 (discussing community volunteers).

<sup>11</sup>See Baxter v. Palmigiano, 425 U.S. 308, 322 (1976) (recognizing that the failure to set forth the reason for not allowing a prisoner to confront and cross-examine his accuser would not violate due process because Wolff did not require prisons to permit confrontation and cross-examination).

<sup>12</sup>To the extent that appellant claimed a violation of a specific prison regulation, appellant failed to provide any cogent argument in relation to the regulation or demonstrate that any alleged violation required relief. See N.D.O.C. A.R. 707.01 (1.10).

regard. Minimal due process requirements did not require that appellant be allowed to view the administrative regulations relating to community volunteers at the prison disciplinary hearing. Appellant further failed to demonstrate that a review of this document was required in order for appellant to marshal a defense to the charges that he enticed the law student volunteer away from the class and handed her a note inviting her to begin a personal relationship with appellant. The fact that appellant indicated in the note that he did not want to cause trouble for the law student volunteer or himself indicated that he understood his conduct was not authorized and provided some evidence of his violation of the charge of MJ42. Therefore, we conclude that the district court did not err in denying this claim.<sup>13</sup>

Fourth, appellant claimed that the prison disciplinary hearing officer improperly enlarged upon the facts set forth in the notice of charges. Appellant failed to demonstrate a violation of any protected due process right. Minimal due process requirements do not limit the facts that the prison disciplinary hearing officer may consider at the prison disciplinary hearing. Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant complained about the grievance process, the appeal process, and the failure to post Administrative Regulation 802. Appellant further claimed that he was retaliated against for filing grievances. These claims appear to challenge the conditions of his


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<sup>13</sup>To the extent that appellant claimed a violation of a specific prison regulation, appellant failed to demonstrate that any alleged violation required relief. See N.D.O.C. A.R. 707.01 (1.10); see also N.D.O.C. A.R. 707.04 (1.3.5.2) (discussing evidentiary documents).

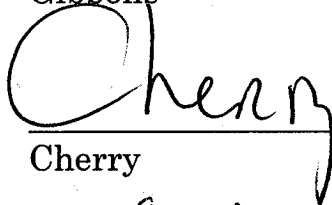
confinement—a challenge impermissibly raised in a habeas corpus petition.<sup>14</sup> Therefore, we conclude that the district court did not err in denying these claims.

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.

Gibbons

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

Cherry

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

Saitta

cc: Hon. Jackie Glass, District Judge  
Curtis Lundy Downing  
Attorney General Catherine Cortez Masto/Carson City  
Attorney General Catherine Cortez Masto/Las Vegas  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>14</sup>See Bowen, 100 Nev. at 490, 686 P.2d at 250; see also Sandin, 515 U.S. at 486.

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