

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAHIM MUHAMMAD,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,
Respondent.

No. 49392

FILED

SEP 18 2007

JUANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

On December 1, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court challenging a prison disciplinary hearing resulting in the forfeiture of 172 good time credits and two years in disciplinary segregation. The State opposed the petition. On April 18, 2007, the district court denied appellant's petition. This appeal followed.¹

"Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such

¹To the extent that appellant challenges 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).

07-20592

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 by the fact finders of the evidence relied upon and the reasons for the disciplinary action; and (3) a qualified right to call witnesses and present evidence.³

In his petition, appellant contended that the findings of the disciplinary committee were not supported by sufficient evidence. The requirements of due process are met if some evidence supports the decision by the prison disciplinary committee.⁴ The disciplinary committee concluded that appellant violated G-14 (failure to follow rules and regulations), MJ-3 (battery), and MJ-50 (sexual harassment).⁵ In reaching that conclusion, the committee relied on the Officer McCraney's written report, which stated that appellant fondled her buttocks with his hand.⁶ Thus, some evidence supported the finding. Therefore, the district court did not err in denying this claim.

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

³Id. at 563-67.

⁴Superintendent 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).

⁵Appellant had also been charged with MJ-2 (assault) and MJ-41 (impeding a correctional employee). The disciplinary committee found that these charges were unsubstantiated.

⁶The summary of the disciplinary hearing also indicated that the hearing officer considered appellant's plea and statement in which he
continued on next page . . .

Second, appellant claimed that he was not permitted to present evidence or call witnesses. Prison officials have wide discretion in allowing inmates to call a witness, and may refuse to do so for reasons of irrelevance, lack of necessity, or safety.⁷ Here, the disciplinary hearing officer refused to call Officer Hamilton and three inmates. The hearing officer found that Officer Hamilton's testimony was irrelevant because Hamilton could not have witnessed the incident. The hearing officer found the inmates' testimony redundant and stipulated that the inmates would have testified that they did not see appellant "do anything." Thus, as the hearing officer found Officer Hamilton's testimony irrelevant and the inmates' testimony unnecessary in light of the stipulation, the prison officials did not abuse their discretion in refusing to call the witnesses. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that the charges were improperly brought against him as a result of appellant filing a grievance against a correctional officer. However, as discussed above, there is some evidence to support the disciplinary hearing officer's conclusion that appellant was guilty of the offenses.⁸ Therefore, appellant failed to establish that the charge was brought against him for an improper purpose, and the district court did not err in denying this claim.

... continued


denied that the incident occurred and claimed that the charges were brought in retaliation for filing a grievance.

⁷Wolff, 418 U.S. at 566.

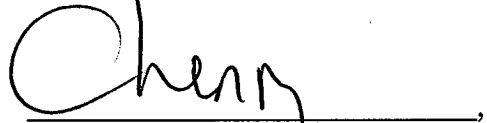
⁸See Hill, 472 U.S. at 455.

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.⁹ Accordingly, we


ORDER the judgment of the district court AFFIRMED.

 J.

Gibbons

 J.

Cherry

 J.

Saitta

cc: Hon. Steve L. Dobrescu, District Judge
Rahim Muhammad
Attorney General Catherine Cortez Masto/Carson City
White Pine County Clerk

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).