

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT GRUTGEN,  
Appellant,  
vs.  
SHERYL L. FOSTER,  
Respondent.

No. 49484

**FILED**

OCT 15 2007

ORDER OF AFFIRMANCE

BY LANETTE M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying post-conviction petitions for writs of habeas corpus. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

On February 16, 2006, appellant filed two proper person post-conviction petitions for writs of habeas corpus in the district court. The State opposed the petitions. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On May 3, 2007, the district court denied appellant's petitions. This appeal followed.

In one of the two petitions, appellant challenged five prison disciplinary hearings that resulted in placement in disciplinary segregation, restitution, transfer to another institution, post-classification referrals and the forfeiture of statutory good time credits.<sup>1</sup> The prison

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<sup>1</sup>To the extent that appellant challenged his in placement in disciplinary segregation, restitution, transfer to another institution and post-classification referrals, 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 (1995) (holding that liberty interests protected by the Due Process Clause will

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disciplinary hearings were held relating to incidents occurring February 21, 2005, March 29, 2005, May 10, 2005, May 31, 2005, and June 6, 2005. In each of the disciplinary proceedings, appellant was found guilty of a violation MJ53 (possession, introduction, or sales of any narcotics, drugs, alcohol, or other intoxicants or possession of materials suitable for such manufacture). The unauthorized substance in each of the proceedings was "pruno" or prison-made alcohol.

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>2</sup> The United States Supreme Court has also recognized that due process requires an impartial decision maker.<sup>3</sup> The right to counsel is not required in prison disciplinary hearings; however, if an inmate is illiterate or the issues are complex, an inmate should be allowed to seek aid from another inmate or staff.<sup>4</sup>

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*... continued*

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 or action affecting the duration of a prisoner's sentence). The forfeiture of statutory good time credits may be reviewed as the forfeiture of such credits may affect the length of time served.

<sup>2</sup>Wolff v. McDonnell, 418 U.S. 539, 563-69 (1974).

<sup>3</sup>Id. at 571.

<sup>4</sup>Id. at 570; see also Baxter v. Palmigiano, 425 U.S. 308, 315 (1976).

Further, the requirements of due process are met if some evidence supports the decision by the prison disciplinary committee.<sup>5</sup>

First, appellant claimed that his due process rights were violated at the prison disciplinary hearing relating to the February 21, 2005 incident because there was no proof that the substance was in fact alcohol as chemical analysis results were not admitted at the hearing. Appellant further claimed that he was denied substitute counsel at the prison disciplinary hearing and that he should have been provided substitute counsel because he was unskilled. Finally, appellant claimed that he was coerced into pleading guilty because of fear of long term solitary confinement.

Appellant failed to demonstrate the violation of any protected due process right at the prison disciplinary hearing regarding the February 21, 2005 incident. The prison disciplinary hearing officer stated on the form that appellant requested a plea sanction agreement and that appellant agreed to have an additional charge dismissed and to have a reduced sanction imposed in exchange for his guilty plea. Appellant signed a form setting forth the negotiations and indicated that he waived his right to a hearing in the action. Appellant's guilty plea waived any challenge to errors in the proceedings as an inmate waives any appeal or subsequent challenge to the disciplinary process pursuant to the plea.<sup>6</sup> Appellant failed to demonstrate that his plea was not entered knowingly and voluntarily. Chemical analysis of the substance was not required for

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<sup>5</sup>Superintendent v. Hill, 472 U.S. 445, 455 (1985).

<sup>6</sup>See N.D.O.C. 707.04 (1.3.5.5).

a finding of guilt. Appellant further failed to demonstrate that substitute counsel was required as he did not demonstrate that he was illiterate or that the issues were complex. Under these circumstances, appellant failed to demonstrate a violation of any protected due process right at this hearing, and therefore, we conclude that the district court did not err in denying the claims relating to the February 21, 2005 incident.

Second, appellant challenged the prison disciplinary hearing relating to the March 29, 2005 incident. Appellant again claimed that the prison disciplinary hearing officer erred in refusing to admit the results of a chemical analysis. Appellant further claimed that the preliminary hearing officer was not impartial because he had escorted appellant from his cell to "medical" for testing after appellant was found sleeping in his cell in an unnatural position (his body was on the bed with his head resting on the floor).<sup>7</sup> He further claimed that his guilty plea to the charge arising from this incident was not knowing and voluntary.

Appellant failed to demonstrate the violation of any protected due process right at the prison disciplinary hearing regarding the March 29, 2005 incident. The prison disciplinary hearing officer stated on the form that appellant was entering a guilty plea. Under the prison regulations, when a prisoner enters a guilty plea, no further evidence, statements or witnesses are considered, and thus, no error occurred when the test results were not admitted.<sup>8</sup> Appellant failed to demonstrate that

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<sup>7</sup>Additionally, "pruno" was found in the cell, and appellant admitted that he had manufactured "pruno."

<sup>8</sup>See id.

his guilty plea was not entered knowingly and voluntarily. Appellant's guilty plea waived any challenge to errors in the proceedings as an inmate waives any appeal or subsequent challenge to the disciplinary process pursuant to the plea.<sup>9</sup> Under these circumstances, appellant failed to demonstrate a violation of any protected due process right at this hearing, and therefore, we conclude that the district court did not err in denying this claim.

Third, appellant challenged the prison disciplinary hearing relating to the May 10, 2005 incident. Appellant again claimed that the prison disciplinary hearing officer erred in refusing to admit results of a chemical analysis. Appellant further claimed that he was denied substitute counsel at the hearing and that he only entered a plea to avoid a loss of privileges.

Appellant failed to demonstrate the violation of any protected due process right at the prison disciplinary hearing regarding the May 10, 2005 incident. Appellant entered a guilty plea, and thus, pursuant to his guilty plea no further evidence, witnesses or statements were required to be considered.<sup>10</sup> Appellant further failed to demonstrate that his guilty plea was not entered knowingly and voluntarily. Appellant failed to demonstrate that substitute counsel was required as he did not demonstrate that he was illiterate or that the issues were complex. Appellant's guilty plea waived any challenge to errors in the proceedings.<sup>11</sup>

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<sup>9</sup>See id.

<sup>10</sup>See id.

<sup>11</sup>See id.

Under these circumstances, appellant failed to demonstrate a violation of any protected due process right at this hearing, and therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant challenged the prison disciplinary hearing relating to the May 31, 2005 incident. Appellant claimed that the prison disciplinary hearing officer failed to disclose the results of any chemical analysis and he was denied substitute counsel. Appellant further claimed that the fact that he had four charges in a short period of time demonstrated harassment.

Appellant failed to demonstrate the violation of any protected due process right at the prison disciplinary hearing regarding the May 31, 2005 incident. Chemical analysis of the substance was not required for a finding of guilt. The prison disciplinary hearing officer indicated that he relied upon the officer's report, which detailed a foul and mysterious odor coming from appellant's cell and the discovery and disposal of a bag of "pruno," the photograph of the evidence and appellant's statement that the bag contained Kool Aid and water. Some evidence supported the finding of the prison disciplinary hearing officer. Appellant failed to demonstrate that substitute counsel was required as he did not demonstrate that he was illiterate or that the issues were complex. Under these circumstances, appellant failed to demonstrate a violation of any protected due process right at this hearing, and therefore, we conclude that the district court did not err in denying this claim.

Fifth, appellant challenged the prison disciplinary hearing relating to the June 6, 2005 incident. Appellant claimed that the prison disciplinary hearing officer failed to disclose the results of any chemical analysis and he was denied substitute counsel. Appellant further claimed

that he was harassed by a change in his feeding status and the numerous cell searches.

Appellant failed to demonstrate the violation of any protected due process right at the prison disciplinary hearing regarding the June 6, 2005 incident. Chemical analysis of the substance was not required for a finding of guilt. The prison disciplinary hearing officer indicated that he relied upon the officer's report, which detailed the discovery of "pruno" after a search of the cell and contraband used to manufacture "pruno," the photograph of the evidence and appellant's statement that the bag contained Kool Aid and water. Some evidence supported the finding of the prison disciplinary hearing officer. Appellant failed to demonstrate that substitute counsel was required as he did not demonstrate that he was illiterate or that the issues were complex. Under these circumstances, appellant failed to demonstrate a violation of any protected due process right at this hearing, and therefore, we conclude that the district court did not err in denying this claim.

Therefore, the district court did not err in denying the first petition challenging the loss of credits resulting from prison disciplinary hearings.

In the second habeas corpus petition, appellant claimed that he was retaliated against for filing institutional appeals, he was improperly classified and placed in disciplinary confinement, which denied him the ability to participate in a substance abuse program and the ability to earn additional credits. Appellant claimed that he should be compensated \$300 a day for each day spent in disciplinary confinement. These claims challenged the conditions of confinement, and thus, were

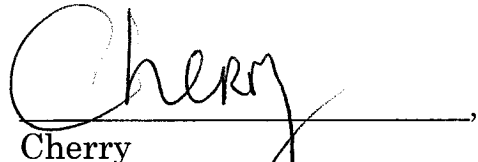
improperly raised in a petition for a writ of habeas corpus.<sup>12</sup> Therefore, the district court did not err in denying the second petition.

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>13</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.

Gibbons

 J.

Cherry

 J.

Saitta

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Robert Grutgen  
Attorney General Catherine Cortez Masto/Carson City  
Eighth District Court Clerk

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<sup>12</sup>See Bowen, 100 Nev. 489, 686 P.2d 250.

<sup>13</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).