

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC TODD DOUGLAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49945

FILED

JUL 10 2008

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On April 3, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The petition raised claims concerning a prison disciplinary hearing in which appellant was found guilty of violating MJ 53 (possession, introduction or sale of any narcotic or drug). At that hearing, appellant pleaded guilty to violating MJ 29 (collecting a fee for legal services). As a result of the disciplinary hearing, appellant received 18 months in disciplinary segregation, loss of visitation for one year, imposition of restitution for

¹This court used the record on appeal filed in Douglas v. State, Docket No. 49346 in the disposition of this appeal. Accordingly, we rescind our September 17, 2007, order to transfer the record on appeal.

drug testing and forfeiture of 90 days statutory good time credit.² The State opposed the petition. Appellant filed a reply. On June 6, 2007, the district court denied appellant's petition. This appeal followed.

“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.”³ The United States Supreme Court in Wolff v. McDonnell held that minimal due process in a prison disciplinary hearing requires: (1) advance written notice of the charges; (2) a written statement by 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.⁴ The Wolff Court declined to require confrontation and cross-examination in prison disciplinary proceedings because these procedures presented “greater hazards to institutional interests.”⁵ The

²To the extent that appellant challenged his disciplinary segregation, or loss of visitation, we note that such challenges are not cognizable in a petition for a writ of habeas corpus. See Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984) (providing that this court has “repeatedly held that a petition for [a] writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof”); 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.

³Wolff v. McDonnell, 418 U.S. 539, 556 (1974).

⁴Id. at 563-69.

⁵Id. at 567-68.

requirements of due process are further met if some evidence supports the decision by the prison disciplinary committee.⁶

In his petition, appellant raised four grounds for relief. First, appellant claimed that his due process rights were violated because his convictions for violations of MJ 53 were not supported by some evidence. We disagree. Specifically, an investigating officer's statement revealed that the prison seized an envelope labeled "legal mail" that was addressed to appellant and from an unknown source who was alleged to be a Nevada attorney.⁷ The envelope contained legal documents as well as heroin. Further investigation revealed that the mail log demonstrated that appellant had previously received mail from the same unknown source. Because there is some evidence that appellant attempted to possess drugs, we conclude that his claim lacked merit. Accordingly, we conclude the district court did not err in denying this claim.

Further, to the extent appellant claimed that there was not some evidence to support finding him guilty of a violation of MJ-53 because he never actually possessed or sought to introduce drugs into the prison population, we conclude this argument lacked merit. Significantly, possession, for the purposes of an MJ-53 violation, includes both attempts and conspiracies pursuant to AR 707.05 1.1. Because there is some

⁶Superintendent v. Hill, 472 U.S. 445, 455 (1985); see also Nev. Dept. of Corrections AR 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).

⁷In his petition, Douglas admitted receiving mail from a "James Cook" on May 17, 2006, and September 11, 2006.

evidence that appellant attempted to possess drugs when he signed for the legal mail containing the drugs, we conclude that appellant's claim lacked merit.

Second, appellant contends that he was denied the right to present evidence at the hearing because he was not allowed to inspect the legal documents which contained the heroin and therefore, he could not prepare a defense and marshal facts on his behalf. We conclude that appellant's claim lacked merit. In his petition, appellant discussed the contents of those documents in detail and even argued that the fact that the documents did not match his case was further proof of his innocence. Appellant failed to allege how a further inspection of the documents would have assisted him in preparing a defense. Because appellant viewed the evidence against him prior to his hearing and knew its contents, we conclude that the district court did not err in denying this claim.

Third, appellant contends that the Warden inappropriately used a telephone recording where appellant told an unknown female to "send it in." Specifically, appellant contends that because the notice did not contain any mention of this evidence, he was unable to prepare a defense. Preliminarily, we observe that this evidence was not relied upon at the disciplinary hearing, therefore it was not required to be provided to appellant prior to the disciplinary hearing. To the extent that the Warden relied on the phone conversation, we conclude that he was entitled to do so pursuant to AR 707.04 section 1.5.4 which provides, "[W]hen reviewing an appeal, the Warden may enlist the assistance of an impartial staff member. The review may include fact-finding related to the violation and/or inquiry related to the disciplinary process." (emphasis added). Thus, the Warden was permitted to engage in additional fact-finding to

reach a determination regarding appellant's appeal so long as the Warden could conclude that even in the absence of that additional evidence the disciplinary committee's decision was based on some evidence. As discussed above, there was some evidence to support the disciplinary committee's decision. Accordingly, the district court did not err in denying appellant's claim.

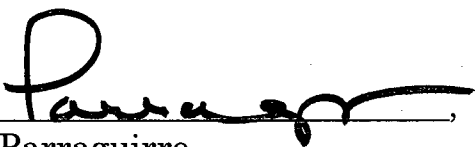
Fourth, appellant claimed that he was not advised of the evidence relied upon at the disciplinary hearing. Specifically, appellant claimed that the Warden erred in considering evidence that was withheld from him at the disciplinary hearing. This claim lacked merit. As noted above, it was permissible for the Warden to engage in additional fact-finding so long as he could conclude, in the absence of those additional facts, that the decision below was supported by some evidence. Here, the evidence presented at the disciplinary hearing provided some evidence that appellant violated MJ-53 by attempting to possess drugs. Therefore, appellant's claim lacked merit.

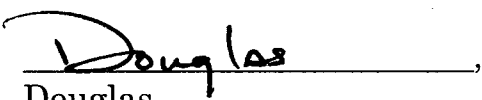
Finally, appellant pleaded guilty to violating MJ-29 and readily admitted that he had previously received cash in exchange for providing legal services. Appellant's admission to violating MJ-29 provides an independent basis for his loss of good time credits. Therefore, appellant has failed to demonstrate that he would be entitled to the restoration of good time credits even if the disciplinary proceedings regarding his violation of MJ-53 were found to be constitutionally deficient. Therefore, the district court did not err in denying appellant's 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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Jennifer Togliatti, District Judge
Eric Todd Douglas
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).