

IN THE SUPREME COURT OF THE STATE OF NEVADA

RADFORD DARRELL SMITH,  
Appellant,  
vs.  
DIRECTOR, NEVADA DEPARTMENT  
OF CORRECTIONS,  
Respondent.

No. 50050

**FILED**

SEP 09 2008  
TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

Appellant Radford Darrell Smith is an inmate at Ely State Prison, serving a 20- to 60-month sentence on a judgment of conviction for theft. While incarcerated at the Northern Nevada Correctional Center (NNCC) on the same judgment in 2003, Smith was found hiding inside a trash compactor on trash collection day, wearing sweatpants and a sweatshirt underneath his prison-issue clothing.

As a result of the NNCC incident, Smith received notice of two disciplinary charges: a violation of MJ-32 (being in an unauthorized area or hiding on the prison grounds or hiding at a place of assignment or classification) and MJ-36 (an attempt or conspiracy to commit a major violation). In parenthesis next to the MJ-36 charge, but not indicated as a separate charge, was a reference to MJ-47 (escape). A summary of the disciplinary hearing reflects the same two disciplinary charges as the notice, with the parenthetical MJ-47 notation next to the MJ-36 charge. The findings section of the summary indicates guilty findings on two

charges—MJ-32 and MJ-36. As a result of the findings, Smith was transferred to Ely State Prison, was put in disciplinary segregation, lost canteen and telephone privileges for a period of time, and received a recommendation that he be classified as a high risk prisoner due to his “escape risk” and that he be referred for a category A forfeiture of good time credits. Based on the incident, Smith also was criminally charged with attempted escape. A jury acquitted him of that charge in 2005.

Sometime in 2005, Smith apparently became aware that his prison file indicated that he had been found guilty of violating MJ-47 (escape). Through the prison grievance procedures, Smith complained that he had not been notified of an MJ-47 charge and no hearing had been conducted or evidence presented on such a charge. Smith’s grievances were denied.

In 2006, Smith filed a proper person post-conviction petition for a writ of habeas corpus in the district court, challenging the prison disciplinary decision. Smith alleged that prison officials found him guilty of violating MJ-47 (escape) without giving him notice or a hearing on the violation and that, as a result, he was reclassified and transferred to a maximum security facility, given disciplinary segregation, denied parole, and referred for forfeiture of good time credits. The district court appointed counsel to represent Smith, and counsel supplemented the petition. The State eventually filed a response, which the district court declined to consider because it was not timely filed. Thereafter, the district court denied the petition, concluding that Smith had not demonstrated deprivation of a liberty interest. This appeal followed.

On appeal, Smith claims that the district court erred in denying the petition because he was found guilty of an escape violation without notice, a hearing, or evidentiary support. We disagree.

This court has held that “a petition for a writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof.”<sup>1</sup> Similarly, the minimal due process rights afforded to a prisoner in a prison disciplinary hearing generally arise only to protect the prisoner’s freedom from restraint that imposes an “atypical and significant hardship on the prisoner in relation to the ordinary incidents of prison life.”<sup>2</sup> Although the summary of Smith’s disciplinary hearing indicates that Smith received a referral for forfeiture of statutory good time credits, the record does not reveal, and Smith never clearly alleged, that any specific amount of credits were actually forfeited as a result of the prison disciplinary action. And the other sanctions imposed, such as the transfer to Ely, placement in administrative segregation, categorization as a high risk inmate, and loss of telephone and canteen privileges, go to the conditions of Smith’s confinement.<sup>3</sup> Consequently, Smith’s challenge was not cognizable in a petition for a writ of habeas corpus.

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<sup>1</sup>Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984).

<sup>2</sup>Sandin v. Cooper, 515 U.S. 472, 484 (1995).

<sup>3</sup>See Olim v. Wakinekona, 461 U.S. 238, 245 (1983) (observing that prisoner has no justifiable expectation of being housed in a particular correctional facility); Sandin, 515 U.S. at 486 (disciplinary segregation does not give rise to due process violation); McCord v. Maggio, 910 F.2d 1248, 1250-51 (5th Cir. 1990) (holding that inmate has no right to particular classification in prison system); Layton v. Wolff, 516 F. Supp. 629, 635 (D. Nev. 1981) (“There is no right to be classified at a certain

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Even assuming that Smith had lost credits, his claim lacks merit. When a prison disciplinary hearing results in the loss of statutory good time credits, the United States Supreme Court has held that minimal due process rights entitle a prisoner to: (1) advance written notice of the charges, (2) a qualified opportunity to call witnesses and present evidence, and (3) a written statement by the fact finders of the evidence relied upon.<sup>4</sup> In addition, some evidence must support the disciplinary hearing officer's decision.<sup>5</sup>

Here, despite the alleged information in Smith's inmate file, the records of the disciplinary action indicate that Smith was not charged with or found guilty of a violation of MJ-47 (escape). Rather, it appears that the notation referring to MJ-47 merely identified the major violation that Smith attempted for purposes of the charged violation of MJ-36 (an attempt or conspiracy to commit a major violation).<sup>6</sup> And the records of

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level in the prison system.”); Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 6-11 (1979) (explaining that prisoners have no liberty interest in parole).

<sup>4</sup>Wolff v. McDonnell, 418 U.S. 539, 563-69 (1974).

<sup>5</sup>Superintendent v. Hill, 472 U.S. 445, 455 (1985); see also Nevada Dep't of Corr., Admin. Reg. 707.1, Inmate Disciplinary Manual, § 2(B)(11)(a) (2008) (“A finding of guilt must be based on some evidence, regardless of the amount.” (emphasis added)).


<sup>6</sup>It appears that the infraction categories have been altered since Smith's disciplinary hearing such that an attempt to commit an infraction—which had been an MJ-36 infraction—is no longer a separate infraction and is now subsumed within the category for the primary infraction. See Nevada Dep't of Corr., Admin. Reg. 707, § 707.02(1) (2008)


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the disciplinary action indicate that Smith received the required due process protections with respect to the two charged infractions. To the extent that the disciplinary proceedings resulted in the loss of good time credits, Smith failed to demonstrate that the credits were forfeited because of the MJ-47 violation allegedly noted in his inmate file rather than the two infractions (MJ-32 and MJ-36) that clearly were noticed and found and that he has not challenged. Moreover, if Smith's inmate file does in fact include erroneous information that he was convicted of an MJ-47 violation, absent a resulting sanction specific to that violation and that goes to the validity of his confinement, he cannot seek relief through a habeas petition.<sup>7</sup>

Having considered Smith's arguments and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

... continued

("All offenses listed below will also include an attempt or conspiracy to commit that violation.").

<sup>7</sup>Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984).

cc: Hon. Dan L. Papez, District Judge  
State Public Defender/Carson City  
State Public Defender/Ely  
Attorney General Catherine Cortez Masto/Carson City  
Attorney General Catherine Cortez Masto/Reno  
White Pine County Clerk