

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES KENTON WARDELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50152

FILED

MAR 26 2009

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant James Kenton Wardell's petition for a writ of habeas corpus. First Judicial District Court, Carson City; James Todd Russell, Judge.

On July 5, 2007, Wardell filed a proper person petition for a writ of habeas corpus in the district court challenging a prison disciplinary proceeding.¹ The State opposed the petition. On August 28, 2007, the district court denied Wardell's petition. This appeal followed.

In his petition, Wardell challenged a November 8, 2006, prison disciplinary hearing resulting in the forfeiture of 31 good time credits, loss of canteen privileges, 18 months disciplinary segregation, and forfeiture of

¹Wardell's petition also raised claims related to a then pending criminal proceeding, however, this court held that the denial of the pretrial claims was not independently appealable. See Wardell v. State, Docket No. 50152 (Order Denying Motion and Redesignating Appeal, December 24, 2007).

personal property. The disciplinary hearing followed a search of Wardell's cell during which a "prison made weapon" was discovered under his mattress. As a result, the hearing officer found Wardell guilty of G14 (failure to follow rules and regulations) and MJ26 (possession of contraband).

As an initial matter, "[w]e have repeatedly held that a petition for writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof." Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984); see also Sandin v. Conner, 515 U.S. 472, 484, 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"). Thus, to the extent that Wardell's claims challenge the loss of canteen privileges, disciplinary segregation, and forfeiture of personal property, those claims are not cognizable in his petition for a writ of habeas corpus. Accordingly, we only consider his claims as they related to the loss of statutory good time credit.

"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." Wolff v. McDonnell, 418 U.S. 539, 556 (1974). 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) a 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. Id. at 563-67. Further, the requirements of due process are met if some evidence supports the

decision by the prison disciplinary committee. Superintendent v. Hill, 472 U.S. 445, 455 (1985).

First, Wardell claimed that he was not properly advised of his rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), before guards questioned him. He also asserted that he was not present at the disciplinary hearing during the time that the hearing officer indicated that Wardell was advised of his Miranda rights. As established by the United States Supreme Court, prison disciplinary proceedings are civil, not criminal in nature. Baxter v. Palmigiano, 425 U.S. 308, 316 (1976). Therefore, the full panoply of rights provided by the Fifth Amendment and the interpreting case law, such as Miranda, do not apply. Id. While any non-Mirandized statements made in a disciplinary hearing are likely not admissible in an ensuing criminal proceeding, prison officials are not required to advise inmates of their full Miranda rights prior to a disciplinary hearing. Id. at 315 (noting that “[t]he Court has never held, and we decline to do so now, that the requirements of [Miranda] must be met to render pretrial statements admissible in other than criminal cases”). In this case, the proceeding against Wardell was a prison disciplinary hearing, and civil in nature. Further, the record indicated that Wardell did not make any incriminating statements at the hearing and apparently waived his presence at the hearing by stating, “You can do it without me.” Moreover, the decision of the hearing officer was based on evidence beyond Wardell’s admission to the guards. Specifically, the hearing officer also relied on the notice of charges in which Officer Jones stated that he recovered a “prison made weapon” during a search of

Wardell's bunk. Accordingly, we conclude that the district court did not err in denying this claim.

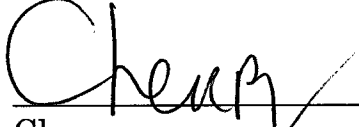
Second, Wardell claimed that he was denied his Sixth Amendment right to counsel at the disciplinary hearing. The right to counsel is not required in prison disciplinary hearings unless an inmate is illiterate or the issues are complex, in which case the inmate should be allowed to seek aid from another inmate or staff. Wolff, 418 U.S. at 570; Baxter, 425 U.S. at 315. Based on his petition and other filings before the district court, it appears that Wardell fluently reads and writes the English language. The charges in this case involved simple possession of contraband and the failure to follow rules prohibiting the possession of contraband and were not overly complex. Therefore, we conclude that the district court did not err in denying this claim.

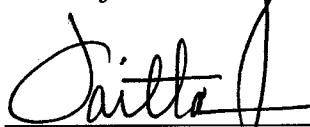
Third, Wardell claimed that he was improperly denied the right to present witnesses at the disciplinary hearing. While inmates enjoy a qualified right to call witnesses in prison disciplinary hearings, prison officials have broad discretion to "keep the hearing within reasonable limits," and may refuse to allow witnesses to be called for reasons of institutional security, lack of necessity, or lack of relevance. Wolff, 418 U.S. at 566. The record indicates that Wardell wanted Officer Cochran to testify at his disciplinary hearing but did not identify the facts to which Officer Cochran would testify if called. Given the evidence presented against Wardell and his failure to allege facts to which Officer Cochran might have testified, we cannot state that the hearing officer abused his discretion in finding that Officer Cochran's testimony was

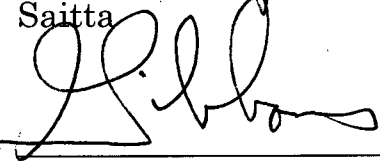
redundant and unnecessary. Therefore, we conclude that the district court did not err in denying this claim.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Wardell is not entitled to relief and that briefing and oral argument are unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. James Todd Russell, District Judge
James Kenton Wardell
Attorney General Catherine Cortez Masto/Carson City
Carson City District Attorney
Carson City Clerk

²We have reviewed all documents that Wardell has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that Wardell has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.