

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, JACK
PALMER,
Respondent.

No. 50853

FILED

APR 07 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. Sixth Judicial District Court, Pershing County; John M. Iroz, Judge.

On June 27, 2006, Volpicelli filed a proper person post-conviction petition for a writ of habeas corpus in the district court.¹ Volpicelli's petition raised claims concerning a prison disciplinary hearing in which he ultimately received 90 days in disciplinary segregation,

¹Volpicelli incorrectly filed his petition for a writ of habeas corpus in the Second Judicial District Court because a petition for a writ of habeas corpus challenging the result of a prison disciplinary proceeding must be filed with the clerk of the district court for the county in which the petitioner is incarcerated. See NRS 34.738. On January 26, 2007, the Second Judicial District Court granted the State's motion for an order transferring petition to the Sixth Judicial District Court.

suspended for 180 days, and forfeiture of 59 statutory good time credits.² The State opposed the petition. On December 18, 2007, the district court denied Volpicelli's petition. This appeal followed.

In his petition, Volpicelli claimed that there was insufficient evidence to find him guilty of MJ-9 (false pretenses), or MJ-31 (unauthorized use of telephone or mail). 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.³ In addition, some evidence must support the disciplinary hearing officer's decision.⁴ In reviewing a claim based on insufficiency of the evidence, this court must determine whether

²The Nevada Department of Corrections initially ordered the loss of 119 days of statutory good time credits. Subsequently, the director of the Nevada Department of Corrections reviewed the forfeiture referral of 119 days credit and ordered the restoration of 60 days credit. To the extent appellant challenged disciplinary segregation, we note 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 Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984); see also Sandin v. Conner, 515 U.S. 472 (1995).

³Wolff v. McDonnell, 418 U.S. 539, 563-69 (1974).

⁴Superintendent v. Hill, 472 U.S. 445, 455 (1985); see also Nevada Code of Penal Discipline § II(C)(4) ("[i]t is only necessary that a finding of guilt be based on some evidence, regardless of the amount"); see also N.D.O.C. AR §707.04 (1.3.6.1).

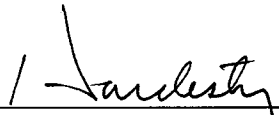
there is any evidence in the record to support the disciplinary hearing officer's conclusion.⁵


We conclude that there is some evidence to support the hearing officer's finding that Volpicelli committed the above violations. According to the summary of Volpicelli's hearing, the mail room sergeant found a return letter which bore Volpicelli's signature and was originally mailed from Santa Ana and not the Lovelock Correctional Center. The contents of the letter revealed that Volpicelli attempted to obtain a voucher purchase discount on publications without revealing his status as an inmate. While Volpicelli denied that he signed the letter, he admitted that he directed his sister to request information on his behalf and have that information sent directly to him at the prison. In fact, Volpicelli indicated that his sister would usually request such information via the telephone or the internet. Therefore, Volpicelli's own statements support the conclusion that Volpicelli's sister acted under his direction. Thus, some evidence in the record supported the conclusion that Volpicelli inappropriately used the mail in an attempt to gain a volume discount. In addition, there was sufficient evidence that Volpicelli's sister, acting under Volpicelli's direction, falsely represented his custodial status. Therefore, the district court did not err in denying this claim.

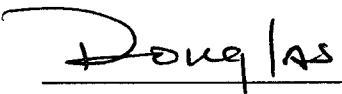
⁵Hill, 472 U.S. at 455-56.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. John M. Iroz, District Judge
Ferrill Joseph Volpicelli
Attorney General Catherine Cortez Masto/Carson City
Pershing County Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).