

IN THE SUPREME COURT OF THE STATE OF NEVADA

LONNELL WEATHERS,
Appellant,
vs.
JIM BENEDETTI,
Respondent.

No. 51335

FILED

DEC. 18 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 dismissing appellant's post-conviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; James Todd Russell, Judge.

Following a Nevada Department of Corrections disciplinary hearing at the Southern Desert Correctional Center on August 9, 2005, pursuant to NDOC Administrative Regulation 707.05, appellant was found guilty of MJ10 (gang activities) and MJ53 (possession of narcotics). Appellant was sanctioned with 730 days in disciplinary segregation, a loss of visiting privileges, and a forfeiture of 90 days good time credits.

On November 15, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 February 20, 2008, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant contended that the disciplinary procedures violated his due process rights.¹ Specifically, appellant claimed that his due process rights were violated when he was prevented from cross-examining the prison investigator and from independently reviewing the mail and telephone communications that were used as evidence against him.

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.² The record reflects that appellant was not denied these rights. Appellant received advance written notice of the charges and a written statement of the evidence relied upon. Appellant did not specify what evidence or witnesses he was prevented from presenting.³ Appellant

¹To the extent that appellant challenged his placement in disciplinary segregation and the restriction of his visiting privileges, 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, 484 (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 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.

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

³See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

simply claimed that he should have been permitted to question the prison investigator and view the documentary evidence against him. Appellant's due process rights were not violated when he was precluded from questioning the investigator because a prisoner is not entitled to confrontation or cross-examination of the witnesses against him.⁴ And due process is not violated where, as here, prison administrators determine that legitimate security interests necessitate the denial of a prisoner's requests to view the evidence against him.⁵ Therefore, the district court did not err in denying this claim.

Appellant also claimed that there was insufficient evidence to support the charges against him. There must be some evidence to support the decision of a disciplinary hearing officer.⁶ In reviewing a claim based on insufficiency of the evidence, this court must determine whether there is any evidence in the record to support the disciplinary hearing officer's conclusion.⁷ Prison Investigator James Jones presented evidence that through the interception of mail and phone communications, and the interview of prison informants, he discovered that appellant was working

⁴Wolff, 418 U.S. at 567.

⁵See Wolff, 418 U.S. at 567-68; Zimmerlee v. Keeney, 831 F.2d 183, 186-87 (9th Cir. 1987); Mendoza v. Miller, 779 F.2d 1287, 1294-95 (7th Cir. 1985).

⁶Superintendent v. Hill, 472 U.S. 445, 455 (1985); see also Nevada Dep't of Corr., Admin. Reg. 707.1, Inmate Disciplinary Manual § 2(B)(3)(e)(11)(a) (2008) ("A finding of guilt must be based on some evidence, regardless of the amount.") (emphasis added).

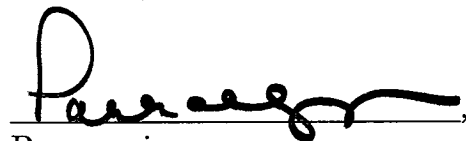
⁷Hill, 472 U.S. at 455-56.

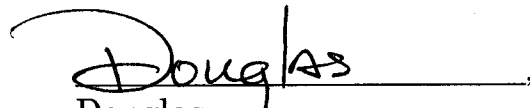
with the gang known as the "West Coast Bloods" in an effort to introduce and distribute narcotics at the Southern Desert Correctional Center. That evidence was sufficient to support the hearing officer's conclusions. Therefore, the district court did not err in denying this claim.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that 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. James Todd Russell, District Judge
Lonnell Weathers
Attorney General Catherine Cortez Masto/Carson City
Carson City Clerk

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