

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAMIRO CAMACHO, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52153

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Appellant,
vs.
THE STATE OF NEVADA,
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No. 52154

FILED

MAY 20 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from an order of the district court denying a post-conviction petition for a writ of habeas corpus filed in two district court cases. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. We elect to consolidate these appeals for disposition. NRAP 3(b).

Following a Nevada Department of Corrections disciplinary hearing at the Southern Desert Correctional Center on June 14, 2007, pursuant to NDOC Administrative Regulation 707.05, appellant was found guilty of MJ26 (possession of contraband) and MJ20 (possession of tattooing equipment). Appellant was sanctioned with forfeiture of 365 days of good time credits and was transferred to Ely State Prison.

On May 2, 2008, 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 July 18, 2008, the district court denied appellant's petition. This appeal followed.¹

In his petition, appellant contended that the disciplinary procedures violated his due process rights. Specifically, appellant claimed that his due process rights were violated when he was not allowed to call and confront Officer Del Campo, the charging officer, at the hearing and when the hearing was not recorded.

"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) written statement of 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. Id. at 563-69. The Wolff Court declined to require confrontation and cross-examination in prison disciplinary proceedings because these procedures presented "greater hazards to institutional interests." Id. at 567-68.

¹To the extent that appellant challenged his transfer to Ely State Prison and the conditions of his confinement, appellant's challenges were 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, 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).

Based upon our review of the documents before this court, we conclude that appellant's due process rights were not violated when he was denied the right to call Officer Del Campo. In providing a qualified right to call witnesses at a prison disciplinary hearing, the Supreme Court determined that a prisoner "should be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals" and noted that witnesses may be denied "for irrelevance, lack of necessity, or the hazards presented in individual cases." Wolff, 418 U.S. at 566. The Supreme Court determined that confrontation and cross-examination were not required because of the "considerable potential for havoc inside the prison walls" in terms of increasing the length of the hearings and engendering "resentment which may persist after confrontation." Id. at 567, 569. The Supreme Court limited this right to call witnesses, reasoning that the needs of the prison must be taken into consideration because hearings may become overly long, may undermine authority, and may create a risk of reprisal. Id. at 566. Appellant did not have the right to call as a witness Officer Del Campo, the author of the notice of charges, because appellant's sole stated purpose of calling Officer Del Campo would have been confrontation.² Therefore, we conclude that the district court did not err in denying this claim.

In addition, appellant's claim that he was denied due process because his disciplinary hearing was not recorded lacks merit. Due

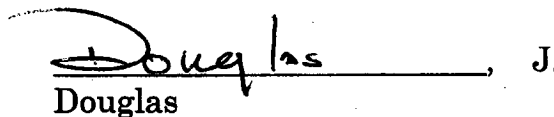
²In the proceedings below, appellant stated that the purpose of calling Officer Del Campo would have been to determine if he had been required by his supervisor to name appellant as the inmate charged.

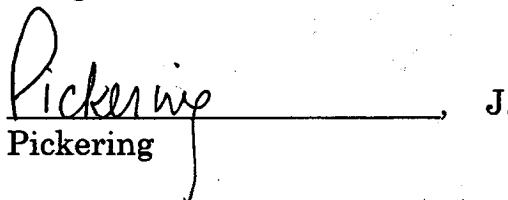
process does not require the hearing to be recorded. Wolff, 418 U.S. at 563-69. Moreover, this claim is belied by the record. The hearing was recorded and was identified as "Shuber 012A."³ Therefore, the district court did not err in denying this claim.

Having reviewed the records 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. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgments of the district court AFFIRMED.⁴


Parraguirre


Douglas


Pickering

³Shuber was the name of the disciplinary hearing officer.

⁴We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in these matters, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant 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.

cc: Hon. Donald M. Mosley, District Judge
Ramiro J. Camacho, Jr.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk