IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY THOMAS CHERNETSKY,
Appellant,
vs.
HOWARD SKOLNIK, DIRECTOR,
NEVADA DEPARTMENT OF
CORRECTIONS,
Respondent.

No. 52308

FILED

JUN 25 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; James Todd Russell, Judge.

On June 15, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court, challenging a prison disciplinary hearing in which he was found guilty of MJ28 and MJ25 (disruptive behavior and issuing threats) and sanctioned to 30 days of disciplinary segregation. 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 April 25, 2008, the district court dismissed appellant's petition. No appeal was taken.

On May 1, 2008, appellant filed an "amended petition for writ of habeas corpus," again challenging the same prison disciplinary hearing in which he was found guilty of MJ28 and MJ25 (disruptive behavior and issuing threats) and sanctioned to 30 days of disciplinary segregation. 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 24, 2008, the district court dismissed appellant's petition. This appeal followed.

Preliminarily, we note that the label of "amended petition for writ of habeas corpus" was a misnomer. There was no pending post-conviction petition for a writ of habeas corpus in the district court for appellant to amend.

In his petition, appellant claimed that his due process and equal protection rights were violated during the disciplinary hearing. He further claimed that his punishment violated double jeopardy and the prohibition against cruel and unusual punishment.

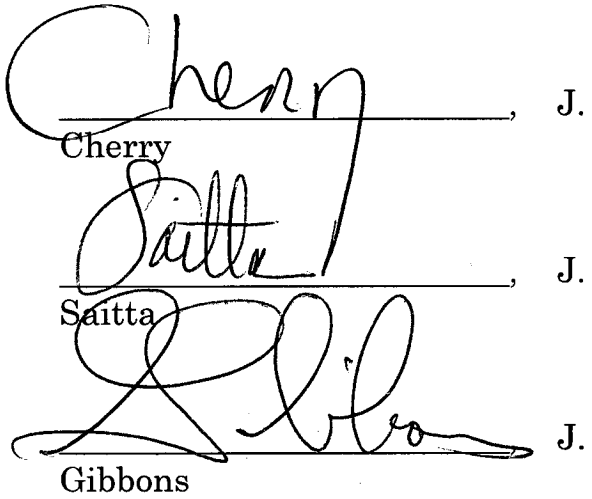
Appellant's petition was successive because the June 15, 2007 post-conviction petition for a writ of habeas corpus raised the same claims as the instant petition and that petition was decided on the merits. See NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.810(3). Prejudice can be shown by demonstrating that the errors worked to a petitioner's actual and substantial disadvantage. Hogan v. Warden, 109 Nev. 952, 959-60, 860 P.2d 710, 716 (1993).

Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing appellant's petition. Appellant did not attempt to demonstrate good cause for raising the same claims in the instant petition as he did in the June 15, 2007 petition. Moreover, appellant failed to demonstrate actual prejudice because the claims improperly challenge the conditions of confinement. Appellant was unable to demonstrate prejudice because he failed to demonstrate the loss of credits. 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." 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"). Appellant did not allege and the record does not reveal that any credits were actually forfeited in the instant case. Appellant's challenges to the disciplinary segregation and his transfer to a different facility were challenges to the condition of his confinement. Consequently, appellant's challenge to the condition of his confinement was not cognizable in a petition for a writ of habeas corpus. Thus, appellant failed to demonstrate good cause and prejudice sufficient to overcome the procedural bar. Therefore, we affirm the order of the district court dismissing the petition.

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. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

cc: Hon. James Todd Russell, District Judge
Anthony Thomas Chernetsky
Attorney General Catherine Cortez Masto/Carson City
Carson City Clerk