

IN THE SUPREME COURT OF THE STATE OF NEVADA

RYAN CODDINGTON,
Appellant,
vs.
E.K. MCDANIEL, WARDEN, ELY
STATE PRISON,
Respondent.

No. 53974

FILED

MAR 10 2010

PAUL K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court granting in part and denying in part a post-conviction petition for a writ of habeas corpus.¹ Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

Having reviewed the record on appeal, we conclude that substantial evidence supports the decision of the district court to deny relief, and that the district court did not err as a matter of law. See Riley v. State, 110 Nev. 638, 697, 878 P.2d 272, 278 (1994). We therefore affirm

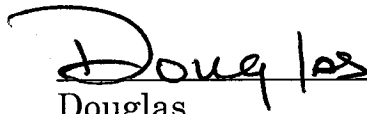
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

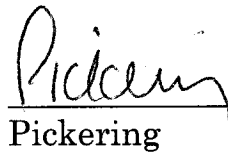
Further, the State did not cross-appeal in this case regarding the portion of the district court's order granting relief. Therefore, the only portion of the district court's order that is at issue is the portion that denied relief.

the denial of the petition for the reasons stated in the attached district court order. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Steve L. Dobrescu, District Judge
Ryan Coddington
Attorney General/Carson City
Attorney General/Ely
White Pine County Clerk

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IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

RYAN CODDINGTON,

Petitioner,

vs.

E.K. McDANIEL, Warden, Ely State Prison,

Respondent.

ORDER GRANTING IN PART, AND DISMISSING IN PART, PLAINTIFF'S AMENDED PETITION FOR WRIT OF HABEAS CORPUS

FACTUAL AND PROCEDURAL HISTORY

On March 25, 2007, Notice of Charges were written against Petitioner by Senior Correctional Officer (SC/O) Shepherd due to an investigation conducted on March 16, 2007, regarding the availability of narcotics for purchase in the prison yard at Nevada State Prison (NSP). According to the Notice of Changes, Petitioner was charged with MJ53 - possession, introduction, or sales of any narcotics, drugs, alcohol, or other intoxicants or possession of materials/items suitable for such manufacture and/or use because plastic bags, dental floss, rubber gloves, a plastic bag with precut foil strips, and 2 razor blades were discovered in his cell during a search. These items were identical to the packaging of amphetamine bundles recovered in the NSP yard and corroborated information SC/O

SEVENTH JUDICIAL DISTRICT COURT
STEVE L. DOBRESCU
DISTRICT JUDGE
DEPARTMENT 1
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



Shepherd collected during his investigation, that Petitioner was selling drugs at NSP.

1 On April 27, 2007, a disciplinary hearing was held at NSP and presided over by
2 Sargent Brian Henly. According to the Summary of Disciplinary Hearing Form, in finding
3 Petitioner guilty of MJ53, Sgt. Henly relied upon the Notice of Charges, an interview of
4 SC/O Shepherd, photographic evidence, statements made by Petitioner, his previous
5 disciplinary history and charge of MJ44 - failure to submit to a drug and/or alcohol
6 screening. Petitioner was sanctioned 540 days of disciplinary segregation and the incident
7 was referred for a forfeiture of statutory good time credits. Ultimately, Petitioner was
8 sanctioned twice for this incident, resulting in a total forfeiture of 512 statutory good time
9 credits. The first notification was received on November 16, 2007, for the forfeiture of 312
10 statutory good time credits. The second forfeiture of 200 statutory good time credits was
11 the result of a disciplinary hearing held on September 7, 2007. Petitioner pursued remedial
12 relief through the inmate grievance process and was denied relief.

13 On May 12, 2008, Petitioner, now an inmate at Ely State Prison, filed in pro per an
14 Application to Proceed *In Forma Pauperis* along with an accompanying Affidavit and
15 Financial Certificate, Motion for Appointment of Counsel, Request for Evidentiary Hearing,
16 and a Petition for Writ of Habeas Corpus. The Court issued an Order to Respond on May
17 20, 2008. Respondent filed a Motion to Dismiss on September 12, 2008. On September
18 24, 2008, Petitioner filed an Opposition and Motion for Leave to File Amended Petition.¹

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20 A Status Hearing was held on October 27, 2008. On October 29, 2008, Respondent
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22 ¹Petitioner included his Amended Petition with this Opposition and Motion. The Court
23 granted Petitioner leave to file the Amended Petition during a Status Hearing on
24 October 27, 2008, however due to a clerical error, it was not filed at that time. The
25 Court remedied this by filing Petitioner's Amended Petition on May 20, 2009. As
26 Respondent previously received a copy of this Amended Petition and filed an Answer in
response to it on October 29, 2008, the Court finds no prejudice has been suffered by
the delayed filing.





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filed a Motion to Strike, Answer, and Motion to Supplement the Record. Petitioner filed an Opposition to Motion to Strike and Motion to Supplement the Record, and Reply to Answer on November 19, 2008. On November 18, 2008, Respondent filed a Reply to the Opposition to Motion to Strike and Motion to Supplement the Record. On February 10, 2009, Respondent filed a Request for Submission. Upon reviewing the file, the Court finds additional briefing or argument is not necessary.

DISCUSSION

A. APRIL 27, 2007 DISCIPLINARY HEARING

Summarized below are the four grounds upon which Petitioner bases his prayer for habeas relief as stated in his Amended Petition.

1. GROUND ONE

Petitioner argues that the Hearing Officer who presided over his disciplinary hearing violated his due process rights by not relying upon any evidence in reaching a finding of guilt. Petitioner alleges that Sgt. Henly failed to rely on the Notice of Charges, the evidence seized from the prison yard at NSP, or statements made by the confidential informant. Petitioner argues that, since no evidence was relied upon, he is therefore entitled to habeas relief.

Respondent argues that relief should be denied because Sgt. Henly stated that he relied upon the Notice of Charges in addition to viewing photographs of the evidence received and sufficient evidence was presented to uphold a finding of guilt. Respondent supports this argument with the evidence seized by SC/O Shepherd in the yard and in Petitioner's cell, and states that while rubber gloves, foil and dental floss are common items, they were found in a manner that supports a charge of MJ53, therefore Petitioner's claim for relief in Ground One should be denied.

While due process requirements must be flexible, minimal due process in a prison disciplinary hearing requires: 1) advance written notice of the charges; 2) written statement



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by 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.² The United States Supreme Court has also recognized that due process requires an impartial decision maker.³ Further, the requirements of due process are met if some evidence supports the decision of the disciplinary hearing officer.⁴

In reviewing the Summary of Disciplinary Hearing attached to the Amended Petition as Exhibit A, Sgt. Henly states on page 2, that he relied upon the Notice of Charges, an interview with SC/O Shepherd, viewed photographs of the seized evidence, statements made by Petitioner, and Petitioner's disciplinary history and previous charge of MJ44. Petitioner's claim that Sgt. Henly failed to rely on any evidence, therefore, is belied by the record. Furthermore, as the standard of evidence in prison disciplinary hearings is "some evidence", the burden has been met and Petitioner should be denied relief as to this claim.

2. GROUND TWO

Petitioner argues that he is entitled to habeas relief because his procedural due process rights were violated in the disciplinary hearing when he was found guilty of MJ53 without the charging officer meeting the "some evidence" standard. Petitioner bases this argument upon the fact that photographs of the evidence seized, rather than the actual physical evidence, were used at the hearing. He also argues that the "some evidence" standard was not met because statements made by confidential informants were not relied upon in reaching a finding of guilt.

Respondent argues that relief should be denied because there was sufficient evidence presented to support a finding of guilt. Respondent argues that even without

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

³*Id.*

⁴472 U.S. at 455.



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reliance upon statements of confidential informants, photographs of the physical evidence were adequate to meet the "some evidence" standard because they showed that the drugs and materials seized in the yard tested presumptively positive for methamphetamine, therefore relief should be denied.

As stated above, the Summary of Disciplinary Hearing indicates the evidence Sgt. Henly relied upon in reaching a finding of guilt. There is no law supporting Petitioner's claim that the "some evidence" standard cannot be met unless actual physical evidence is submitted at a disciplinary hearing. Reliance upon SC/O Shepherd's investigation and photographs of evidence seized in searching the prison yard and Petitioner's cell meets the "some evidence" standard. The search of his cell revealed gloves, dental floss and strips of foil, all similar to the packaging of the drugs found in the yard. Furthermore, in addition to this evidence, the packages found in the yard tested presumptively positive for methamphetamine. The Court previously found that the "some evidence" standard was met, therefore, relief should be denied as to this claim.

3. GROUND THREE

Petitioner argues that his procedural due process rights were violated because physical evidence was not available for review during the disciplinary hearing, and therefore no evidence was presented to support a finding of guilt. As stated above, the Summary of Disciplinary Hearing indicates the evidence Sgt. Henly used to reach a finding of guilt. The Court has found that the "some evidence" standard was met, therefore, relief should be denied as to this claim.

4. GROUND FOUR

Petitioner argues that his procedural due process rights were violated, therefore entitling him to habeas relief, because the hearing officer was not impartial. Petitioner asserts that Sgt. Henly reached his finding of guilt prior to hearing the case because he did not rely upon the Notice of Charges, evidence seized from Petitioner's cell or the prison



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yard, and any confidential information gathered during SC/O Shepherd's investigation. Respondent argues that, because AR707.1(2)(B)(3)(c)(12)(b) permits a hearing officer to review evidence prior to a disciplinary hearing, Petitioner's claim is meritless and should be denied.

As stated above, minimum due process requirements demand that a hearing officer be sufficiently impartial. The impartiality of the hearing officer is discussed in AR 707.1(2)(A)(8)(c), which requires that, "[a]ll supervisors involved in the disciplinary process should be impartial in that they:

- Did not witness or investigate the alleged violation.
- Were not a victim of the alleged violation.
- Did not participate in the writing of the Notice of Charges.
- Did not sit as a member of the classification committee, which authorized pre-disciplinary segregation for the same offense.
- Were not the Preliminary Hearing Officer for the same offense.

In reviewing the Notice of Charges, Preliminary Hearing Officer's Inquiry and Disposition, and the Summary of Disciplinary Hearing, there is no indication that Sgt. Henly witnessed or investigated the violation, was the victim of the violation, participated in writing the Notice of Charges, sat on a classification committee concerning these charges, or was the preliminary hearing officer. Sargent Henly, therefore was an impartial hearing officer, and Petitioner's claim should be denied.

B. PETITIONER'S CLAIMS RELATING TO PAROLE ELIGIBILITY

Throughout Petitioner's Amended Petition he makes an argument that the finding of guilt at the disciplinary hearing extended his period of confinement and resulted in a denial of parole. In *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, the Supreme Court stated that "[t]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence. . . . [T]he conviction, with all its procedural safeguards, has extinguished that liberty right: [Given] a



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valid conviction, the criminal defendant has been constitutionally deprived of his liberty.⁵ Further, in *Severance v. Armstrong*, the Nevada Supreme Court held that there was no legitimate expectation to parole and, therefore, no constitutionally cognizable liberty interest sufficient to invoke due process.⁶ Because there is no liberty interest in parole, claims Petitioner makes regarding the denial of his parole are not entitled to relief.

C. SEPTEMBER 7, 2007 DISCIPLINARY HEARING


In answering the Amended Petition, Respondent states that Coddington should be credited 200 days of statutory good time because the disciplinary hearing held on September 7, 2007 was a duplicate hearing of the April 27, 2007 proceedings. As there is no opposition to the restoration of these 200 days, and to the extent that these days have not previously been credited, the Amended Petition for Writ of Habeas Corpus should be granted as to this disciplinary hearing, and 200 days of statutory good time reinstated.

Good Cause Appearing,

IT IS HEREBY ORDERED that this Amended Petition for Writ of Habeas Corpus is **GRANTED IN PART AND DISMISSED IN PART** as follows:

- As to the April 27, 2007 Disciplinary Hearing, no relief is granted;
- As to the duplicate disciplinary hearing held on September 7, 2007, 200 days of statutory good time credits are reinstated.

DATED this 2^d day of June, 2009.



DISTRICT JUDGE

⁵442 U.S. 1, 7 (1979) (internal citation omitted).

⁶96 Nev. 836, 839, 620 P.2d 369 (1980).