IN THE SUPREME COURT OF THE STATE OF NEVADA

TYRONE PRATOR,
Appellant,
vs.
WARDEN, HIGH DESERT STATE PRISON, DWIGHT NEVEN,
Respondent.

No. 54643

FILED

APR 08 2010

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 a post-conviction petition for a writ of habeas corpus.[1] Eighth Judicial District Court, Clark County; Susan Johnson, 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, 647, 878 P.2d 272, 278 (1994). We therefore affirm 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.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

[1]This 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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Susan Johnson, District Judge
Tyrone Prator
Attorney General/Carson City
Attorney General/Las Vegas
Clark County District Attorney
Eighth District Court Clerk

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Jul 30 7 52 AM '09

CLERK OF

DISTRICT COURT

CLARK COUNTY, NEVADA

TYRONE PRATOR,

Petitioner,

Vs.

WARDEN, DWIGHT NEVEN, LT. ROBINSON, DISCIPLINARY HEARING OFFICER,

Respondents.

Case No. A-09-591309
Dept. No. XXII

A-09-591309-W
287795

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

This matter concerning Petitioner TYRONE PRATOR'S Petition for Writ of Habeas Corpus filed on or about May 29, 2009, seeking post-conviction relief under NRS 34.724, came before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, *in chambers*, on the 14th day of July 2009 at the hour of 9:00 a.m., with JUDGE SUSAN H. JOHNSON presiding; neither Petitioner nor Respondents made any appearance. Having reviewed the papers and pleadings on file herein and taken the matter under advisement, this Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. According to Petitioner's Memorandum of Points and Authorities filed May 29, 2009, TYRONE PRATOR was convicted of the crime of attempted murder with use of a deadly weapon on or about March 23, 2005. He was

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☐ Voluntary Dis	☐ Stip Dis	☐ Sum Jdgmt	FINAL DISPOSITIONS
☒ Involuntary (stat) Dis	☐ Stip Jdgmt	☐ Non-Jury Trial	☐ Time Limit Expired
☐ Jdgmt on Arb Award	☐ Default Jdgmt	☐ Jury Trial	☐ Dismissed (with or without prejudice)
☐ Min to Dis (by dsft)	☐ Transferred		☐ Judgment Satisfied/Paid in full

sentenced to serve a minimum of 34 and maximum of 144 months for that crime, along with a "deadly weapon" sentence enhancement of equal and consecutive time.[1]

2. On or about January 27, 2009, while he was serving his sentence at the High Desert State Prison in Indian Springs, Nevada, Petitioner TYRONE PRATOR was charged with disciplinary violations, stemming from a routine random search of a prison cell housing MR. PRATOR and another inmate, DONALD MITCHELL. Those charged violations included "unauthorized trading, bartering, lending," "threats," "abusive language," and "disobedience." These offenses or violations are described and itemized within the Nevada Department of Corrections Administrative Regulation 707, Inmate Disciplinary Process, as "MJ34," "MJ25," "G9," and "G1," respectively.

3. On or about February 8, 2009, MR. PRATOR was served with a "Notice of Charges" (Disciplinary Form I) by CORRECTIONS OFFICER CURTIS MURPHY. Petitioner PRATOR answered "Not Guilty" to the charges, noting, *inter alia*, "I'm not guilty. I didn't make any threats and the fan wasn't mine, I have a fan." Given MR. PRATOR'S response, the matter was referred to Disciplinary Hearing, which was scheduled before HEARING OFFICER CHARLES ROBINSON on or about March 1, 2009.

4. The hearing took place in the afternoon of March 1, 2009, and was audio-taped. The taping and transcription was provided to the Court as Exhibit 6 to Respondents' Response. The evidence presented to the hearing officer

[1]According to Respondents' Response to Petition for Writ of Habeas Corpus, p. 2, the only active sentence is the first 34-144 month term. Petitioner's equal and consecutive sentence still is pending.

included a reading of the written statement provided by CORRECTIONS OFFICER MURPHY and MR. PRATOR'S response, which are provided as follows:

> On January 27th, 2009 at approximately 1130 hours while working as a floor officer at [High Desert State Prison] unit 7A/B, [Corrections Officer] Murphy was involved in the following incident. I was performing routine, random cell compliance checks on 7 A pod. Upon entering cell 7A9, inmate Donald Mitchell #94796 informed me that their cell had just been searched 3 previous times in the past. I mentioned to inmate Mitchell that the reason that I was searching his cell was because it was not in compliance because of a clothesline hanging and a towel draped over the bottom bunk obscuring the view of the bottom bunk. At that point the inmate Tyrone Prator told me this is harassment and I want to talk to your supervisor. I then notified Sgt. Scally of the situation via telephone and he informed me to continue with the cell compliance check. Upon arriving back at 7A9, I escorted bothe (sic) inmate Mitch (sic) and inmate Prator out of their celll (sic) and asked them to produce their ID's. Inmate Mitchell informed me that he did not have an ID. I then informed inmate Mitchell that it was against policy to not have an ID. At that time inmate Mitchell then notified me that his ID was back inside his cell. After a brief search of the cell looking for inmate Mitchell's ID without success. (sic) I asked inmate Mitchell where his ID was again. He then said, I can go in there and show you but you won't want me in there with you. I then exited the room and instructed inmate Mitchell to go inside his cell and produce his ID. He complied. Upon exiting the cell inmate Mitchell said under his breath, you bitch cracker, I then asked inmate Mitchell to sit at the tier table. He did not comply and replied "I don't have to sit. (sic) I then repeated my order to inmate Mitchell. He again did not comply and said "I am not going to sit down. (sic) At this point inmate Mitchell refused 2 director orders to sit, so I ordered him to get on the wall and cuff up. Inmate Mitchell complied at this point. I then placed inmate Prator and inmate Mitchell in restrains for my safety, and place both inmates on their knees and had them cross their legs and rest their heads on the wall in front of them. At this point, I proceeded to complete a cell compliance check.
>
> During the cell compliance check, I found a fan belonging to inmate Bishop #41762, an adaptor that the wires had been cut. When I first entered the room earlier, I noticed a beard trimmer belonging to another inmate. Upon completing my cell compliance check, the trimmers were not found. I then asked inmate Mitchell where the trimmers went and he laughed and replied, "you (sic) just flushed it for us, it was in the toilet." The toilet was full of soap obscuring my view. At that point I escorted both inmates back into their cell, secured the door and

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> unrestrained them. Inmate Prator then asked, so you gonna write up a bunch of NOSC on that shit or what? (sic) I then informed inmate Prator, yes, both of you will receive a notice of charges for the contraband. At that time inmate Prator said, you don't know who you are fucking with. I then ended the conversation with both inmates.

After Petitioner PRATOR formally pled "not guilty" to the four charges, he provided the following statement:

> My statement is he came to the door and said you both are getting written Notice of Charges. I asked him why am I getting wrote up and he said because of the contraband found in our room. I told him the contraband wasn't mine, and he said it doesn't matter, you both are getting written up, and I stated "why are you fucking with me." Exact word for word.

HEARING OFFICER ROBINSON then inquired "Is that it?" Petitioner responded, "That's it." At that point, the hearing officer indicated he was dismissing MJ34 (bartering, trading), but finding Petitioner guilty of MJ25 (threats), G9 (abusive language), and GI (disobedience).

5. It was not until after the hearing officer rendered his decision that Petitioner requested "witnesses." He did not request the presence or testimony of witnesses prior to the decision.[2]

6. As a result of the hearing, Petitioner PRATOR was sentenced to 280 days of disciplinary segregation and Stat Forfeiture Referral. Petitioner PRATOR now claims the disciplinary process violated his Constitutional (Due Process) rights.[3]

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[2]According to Petitioner PRATOR, he was never asked if he wanted to call witnesses.

[3]The specific grounds identified by Petitioner are (1) denial of due process when he was "denied" the "right to call upon the charging employee and other meaningful witnesses;" (2) failure to provide him a written statement "as to the evidence relied upon and the reason to support the disciplinary finding;" (3) the hearing officer's "intentional[]" and "arbitrar[]y" deprivation of his state-created liberty interest; (4) the hearing officer's "arbitrar[]y" revocation of Petitioner's good time/stat time without due process; and (5) arbitrary and intentional deprivation of Petitioner's right to "fundamental requirements of due process."

CONCLUSIONS OF LAW

1. NRS 34.724 specifically provides the following:

> 1. Any person convicted of a crime and under sentence of death or imprisonment who claims that the conviction was obtained, or that the sentence was imposed, in violation of the Constitution of the United States or the constitution or laws of this state, or who claims that the time he has served pursuant to the judgment of conviction has been improperly computed, may, without paying a filing fee, file a post-conviction petition for a writ of habeas corpus to obtain relief from the conviction or sentence or to challenge the computation of time that he has served.
>
> 2. Such a petition:
> (a) Is not a substitute for and does not affect any remedies which are incident to the proceedings in the trial court or the remedy of direct review of the sentence or conviction.
> (b) Comprehends and takes the place of all other common law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them.
> (c) Is the only remedy available to an incarcerated person to challenge the computation of time that he has served pursuant to a judgment of conviction.

Also see Article 6, Section 6 of the Nevada Constitution (the district courts have the power to issue all other writs proper and necessary to the complete exercise of their jurisdiction); Marshall v. Warden, Nevada State Prison, 83 Nev. 442, 434 P.2d 437 (1967); *also see* Pangallo v. State, 112 Nev. 1533, 1535, 930 P.2d 100, 102 (1996)(defendant's request for jail time credits was a challenge to the computation of time served, and thus, a proper subject for a petition for post-conviction habeas relief).

2. The 14th Amendment to the United States Constitution provides no state shall deprive any person of life, liberty or property without due process of law. While the "Due Process Clause" itself does not create a liberty or property

interest in credits a prison inmate is awarded for good behavior, it is clear NRS 209.4465 does bestow a protected interest when the state's Department of Corrections (NDOC) awards "good time credits." NDOC, therefore, cannot deprive an inmate of awarded credits unless it complies with certain minimum due process requirements. *See* Wolff v. McDonnell, 418 U.S. 539, 557, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974); *also see* Superintendent, Massachusetts Correctional Institution v. Hill, 472 U.S. 445, 454, .Ct. 2768, 2773, 86 L.Ed.2d 356 (1985). Those minimum requirements require the inmate receive (1) advance written notice of the disciplinary charges; (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense; and (3) a written statement by the fact finder of the evidence relied on and the reasons for the disciplinary action. *Wolff*, 418 U.S. at 563-567, 94 S.Ct. 2978-2980.

3. Although the high court in *Wolff* did not require either judicial review or a specified quantum of evidence to support the fact finder's decision, the justices did note "the provision for a written record helps to assure that administrators, faced with possible scrutiny by state officials and the public, and perhaps even the courts, where fundamental human rights may have been abridged, will act fairly." *Wolff*, 418 U.S. at 565, 92 S.Ct. at 2979. When faced with the issue at a later time, the U.S. Supreme Court held the revocation of good time does not comport with "the minimum requirements of procedural due process," unless the findings of the prison disciplinary board are supported by

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"some evidence in the record." *Superintendent*, 472 U.S. at 454, 105 S.Ct. at 2773, *quoting Wolff*, 418 U.S. at 565, 94 S.Ct. at 2979.

4. The requirement there be "some" evidence in the record does not imply the disciplinary board's factual findings or decisions with respect to appropriate punishment are subject to second-guessing upon review. Likewise, ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or the weighing of the evidence. Instead, the relevant question is whether there is *any* evidence in the record that could support the conclusion reached by the disciplinary board. *Superintendent*, 472 U.S. at 455-456, 105 S.Ct. at 2774. Notably, the high court declined to adopt a more stringent evidentiary standard as a constitutional requirement. Indeed, it recognized prison disciplinary proceedings take place in a highly charged atmosphere, and prison administrators must often act swiftly on the basis of evidence that might be insufficient in less exigent circumstances. *Id.*, *citing Wolff*, 418 U.S. 562-563, 567-569, 94 S.Ct. at 2977-2978, 2980-2981. The fundamental fairness guaranteed by the Due Process Clause does not require courts to set aside decisions of prison administrators that have some basis in fact. Revocation of good time credits is not comparable to a criminal conviction, and neither the amount of evidence necessary to support a conviction nor any other standard greater than some evidence applies in this context. *Id.*

5. In the case at hand, Petitioner PRATOR admits he received advance written notice of the disciplinary charges on February 8, 2009, with

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notice the hearing would take place on March 1, 2009. Thus, there is no issue the first requirement of *Wolff* was present.

The evidence also demonstrated MR. PRATOR had the opportunity to present his version of what transpired at the March 1, 2009 hearing. While MR. PRATOR now claims he was denied the right to present witnesses to testify,[4] there was nothing offered by him to show he asked to call witnesses or he was denied that opportunity before the hearing officer's decision was made.[5] If anything, the record suggests MR. PRATOR'S strategy only was to state his defense at the disciplinary hearing to counter the report of CORRECTIONS OFFICER MURPHY. Further, after Petitioner presented his statement, the hearing officer specifically inquired if that was all he was offering,[6] to which MR. PRATOR said "that's it." It was not until after the hearing officer dismissed one charge, and found him guilty with respect to three others that Petitioner finally asked to call witnesses. Such a request, however, comes too late. In short, the second requirement of *Wolff* is met.

Lastly, MR. PRATOR signed for and received Disciplinary Form III, which set forth the Summary of Disciplinary Hearing. That form indicated the evidence relied upon by the fact finder that included the written statement by

[4]He requested the opportunity to present witnesses with respect to a hearing to change his incarceration classification to administrative segregation in January 2009. There was nothing presented to suggest Petitioner requested, and was denied the opportunity to present witnesses at the disciplinary hearing on March 1, 2009.

[5]Notably, Petitioner claims in "Ground One," page 13 of his Memorandum he was denied "the right to call upon the charging employee and other meaningful witnesses." The audio-tape and transcription indicates MR. PRATOR asked for "witnesses" *after* the decision was rendered. He never identified what witnesses he wanted to call.

[6]Arguably, the hearing officer should have specifically asked Petitioner if he was presenting witnesses or documentary evidence to support his defense, rather than simply inquiring, "Is that it?" However, there is nothing in *Wolff* or *Superintendent* that requires the hearing officer to be more specific, or to encourage the inmate to present a better defense by way of calling witnesses or showing evidentiary documentation.

CORRECTIONS OFFICER MURPHY and MR. PRATOR'S defensive position, and the charges dismissed and sustained. MR. PRATOR received a copy of an additional report, i.e. Statutory Forfeiture/Restoration Referral Report, which provided the reasons for the disciplinary action, which included him threatening and making verbally abusive comments to the corrections officer. In short, the third factor set forth in *Wolff* is present.

6. As noted above, in addition to assessing whether the *Wolff* factors are present, this Court must inquire whether there is *any* evidence in the record that could support the conclusion reached by the hearing officer. *Superintendent*, 472 U.S. at 455-456, 105 S.Ct. at 2774. In this case, given the analysis above, this Court concludes there was some evidence to support the hearing officer's decision, and thus, it declines to set it aside.

Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Petitioner TYRONE PRATOR'S Petition for Writ of Habeas Corpus is denied.

DATED and DONE this 28th day of July 2009.

SUSAN H. JOHNSON, DISTRICT COURT JUDGE

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CERTIFICATE

I hereby certify that, on the date filed, I either placed within the attorney's folder with the Court Clerk's Office, or mailed a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING WRIT OF HABEAS CORPUS to the following party and counsel of record, and that first-class postage was fully prepaid thereon:

TYRONE PRATOR, HDSP #855503
P.O. Box 650
Indian Springs, Nevada 89070

ADAM L. WOODRUM, Deputy Attorney General
Attorney General's Office, Bureau of Criminal Justice
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

Laura Banks
Laura Banks, Judicial Executive Assistant

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT TWENTY TWO
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