

IN THE SUPREME COURT OF THE STATE OF NEVADA

NARVIEZ V. ALEXANDER,
Appellant,
vs.
NEVADA DEPARTMENT OF
CORRECTIONS; HOWARD SKOLNIK;
DWIGHT NEVEN; AND ANTHONY
SCILLIA,
Respondents.

No. 55689

FILED

SEP 10 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; Jessie Elizabeth Walsh, Judge.

In his post-conviction petition for a writ of habeas corpus filed on September 25, 2009, and amended on November 19, 2009, appellant raised five claims alleging that his due process rights were violated at a prison disciplinary hearing.²

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

²Appellant's claims are cognizable only to the extent that he challenged his loss of good time credits. To the extent appellant challenged his placement in administrative or disciplinary segregation,
continued on next page . . .

First, appellant claimed that his due process rights were violated because insufficient evidence existed to establish a finding of guilt. We disagree. The hearing officer's report indicated the finding of guilt was based on information given by a confidential informant. The report further indicated that institutional safety prevented disclosure of the confidential informant, and that the information given by the informant was reliable. Specifically, the hearing officer indicated that the investigating officer testified personally as to the truth of the confidential information, the disciplinary chair had firsthand knowledge of the source, and the source had been reliable in the past, and that an *in camera* review of the confidential documents indicated that they were reliable. Accordingly, the confidential informant's testimony was properly admitted. See Zimmerlee v. Keeney, 831 F.2d 183, 186-87 (9th Cir. 1987). Thus, some evidence existed to support the decision of the disciplinary hearing officer. See Superintendent v. Hill, 472 U.S. 445, 455 (1985) (noting that due process requirements are satisfied if some evidence supports the findings of the disciplinary officer). Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his due process rights were violated because he was not allowed to call witnesses or present other

... continued

this claim is not cognizable in a habeas corpus petition. See Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984).

evidence at the disciplinary hearing. While inmates enjoy a qualified right to call witnesses in prison disciplinary hearings, prison officials have broad discretion to “keep the hearing within reasonable limits,” and may refuse to call witnesses for reasons of institutional security, lack of necessity, or lack of relevance. Wolff v. McDonnell, 418 U.S. 539, 566 (1974). Here, the hearing officer noted in his report that any claims of sexual assault were denied by the victims and that there was no medical evidence indicating that a sexual assault had occurred. Accordingly, it was not necessary to call appellant’s proposed witnesses to testify to these facts. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his due process rights were violated because he was denied the opportunity to review the evidence presented against him. As indicated above, the testimony of the confidential informant was properly admitted pursuant to Zimmerlee, and appellant was not entitled to review this evidence. Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his due process rights were violated because the hearing officer failed to provide him with a written statement of the evidence relied upon. As indicated above, the hearing officer properly relied on the testimony of a confidential informant pursuant to Zimmerlee. The report of the hearing officer provided to appellant apprised him of this fact. See Wolff, 418 U.S. at 563-69. Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that the hearing officer was biased. Specifically, he claimed that prior to the hearing, the hearing officer informed appellant that he would find appellant guilty, and that he would

sentence him to a loss of 180 days' credit. Appellant failed to demonstrate that this statement rose to a level sufficient to indicate a due process violation. See Wolff, 418 U.S. at 571. Appellant only received a loss of 90 days' credit, indicating that the hearing officer had not predetermined the outcome of the case. Therefore, the district court did not err in denying this claim.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.³

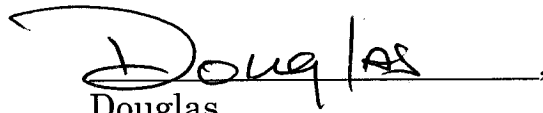
Hardesty, J.
Hardesty

Pickering, J.
Pickering

³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, 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.

DOUGLAS, J., concurring in part and dissenting in part:

I concur with the decision of the panel regarding appellant's first four claims. However, the alleged predisposition of appellant's case by the hearing officer, if true, may indicate that appellant was deprived of his due process right to a hearing by an impartial decision maker. See Wolff, 418 U.S. at 571 (stating that due process, at a minimum, requires a decision by an impartial decision maker). I would remand this claim to the district court for an evidentiary hearing.

 J.
Douglas

cc: Hon. Jessie Elizabeth Walsh, District Judge
Narviez V. Alexander
Attorney General/Las Vegas
Eighth District Court Clerk