

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHARRONE COLEMAN,
Appellant,
vs.
HOWARD SKOLNIK,
Respondent.

No. 56048

FILED

SEP 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

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 First Judicial District Court, Carson City; James E. Wilson, Judge.

In his petition filed on April 1, 2009, appellant challenged the loss of statutory good time credits as the result of a prison disciplinary hearing in which he was found guilty of battery and rioting or inciting others to riot. The district court denied the petition, finding no due process violation had been proven.

When a prison disciplinary hearing results in the loss of statutory good time credits, the United States Supreme Court has held that minimal due process rights entitle a prisoner to: (1) advance written notice of the charges, (2) a qualified opportunity to call witnesses and

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).

present evidence, and (3) a written statement by the fact finders of the evidence relied upon. Wolff v. McDonnell, 418 U.S. 539, 563-69 (1974). Confrontation and cross-examination in prison disciplinary proceedings are not required because these procedures present “greater hazards to institutional interests.” Id. at 567-68. In using information from a confidential informant, the prison disciplinary hearing officer must make a finding of reliability and a finding that safety requires the information be kept confidential. Zimmerlee v. Keeney, 831 F.2d 183, 186 (9th Cir. 1987). In addition, some evidence must support the disciplinary hearing officer’s decision. Superintendent v. Hill, 472 U.S. 445, 455-56 (1985); see also N.D.O.C. A.R. 707.1(2)(B)(3)(e)(11)(a). In reviewing a claim based on insufficiency of the evidence, the court must determine whether there is any evidence in the record to support the disciplinary hearing officer’s conclusion. Hill, 472 U.S. at 455-56.

Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate the violation of any protected due process right for the following reasons: (1) he received adequate notice of the charges; (2) he had no right to call the victim as a witness because the right to cross-examination and confrontation does not extend to prison disciplinary proceedings and the disciplinary hearing officer denied this request because of his concern that the victim was acting under duress, (3) he received a written statement of the evidence relied upon, and (4) appellant was not entitled to examine the confidential informant documents and the disciplinary hearing officer made an express finding of

reliability and danger if the information was disclosed. Therefore, we affirm the denial of these claims.²

However, we cannot affirm the district court's decision to deny appellant's claim that some evidence supported the charge of battery based on the record before this court.³ Although the burden of proof at a prison disciplinary hearing is minimal, there must be some evidence to support the charge. Battery, as defined by prison regulations, is "any willful use of force or violence upon the person of another." N.D.O.C. A.R. 707.02(5). The only evidence of battery is set forth in the recitation of facts in the notice of charges, and the notice of charges does not clearly demonstrate that appellant committed battery. While the notice of charges indicates that appellant confronted the victim and was "a participant . . . to commit assault and battery," the record indicates that the victim was stabbed twice by another inmate and does not describe any conduct by appellant. This statement fails to demonstrate that appellant used actual force or violence in the incident.⁴ The record does not contain a transcript or an audio-recording of the disciplinary hearing, and it does not appear that these documents were presented to the district court in

²A violation of procedures set forth in the regulations which are not required by minimal due process as outlined in Wolff does not provide a cognizable claim for relief.

³Some evidence supports the charge of rioting or inciting others to riot.

⁴Appellant was found not guilty of assault and fighting. In documents relating to the institutional appeal, it appears that this finding does not equate to innocence, but to a discretionary act of the disciplinary hearing officer.

the proceedings below.⁵ Meaningful review is simply not possible with the record as it exists at this time. Thus, we reverse the denial of this claim and remand this matter to the district court for further consideration of this claim after a review of the transcript or recorded disciplinary hearing proceedings and the in-camera evidence. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. James E. Wilson, District Judge
Sharrone Coleman
Attorney General/Carson City
Carson City Clerk

⁵Further, it does not appear that the district court ever reviewed, in camera, the confidential informant documents.