

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOUGLAS MEDLAR,
Appellant,
vs.
DWIGHT NEVEN; AND THE STATE OF
NEVADA,
Respondents.

No. 58185

FILED

DEC 07 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angersal*
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 Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

In his petition, appellant challenged prison disciplinary hearings which resulted in placement in disciplinary segregation and the loss of statutory good time credits.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 Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²To the extent that appellant challenged the adequacy of medical care (ground 1), the fact, conditions and duration of disciplinary segregation (grounds 2, 7, 8), and raised a claim of retaliation (ground 9), these claims were not cognizable in a petition for a writ of habeas corpus filed in state court because they challenged the conditions of confinement.

continued on next page . . .

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 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). In addition, some evidence must support the disciplinary hearing officer's decision. Superintendent v. Hill, 472 U.S. 445, 455 (1985). In reviewing a claim that the "some evidence" standard was not met, 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. Significantly, reviewing courts are not required to examine the entire record, independently assess the credibility of witnesses or weigh the evidence. Id. at 456.

The record demonstrates that appellant received advance written notice of the charges, was provided a qualified opportunity to present evidence, and the disciplinary hearing officer set forth brief statements of the facts relied upon in finding him guilty. Appellant's claim (ground 3) that the charges were duplicative is belied by the record as the disciplinary documentation indicates that the contraband involved in the two disciplinary hearings was discovered at different times and

... continued

Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984); see also Sandin v. Conner, 515 U.S. 472, 484 (1995).

written up as separate charges.³ Appellant's claim (ground 4) that the syringe was excluded from the definition of contraband was without merit as nothing prevents the prison from treating a syringe found in absence of other indications of drug use as simple contraband and not drug paraphernalia.⁴

Two of the remaining claims raised by appellant (grounds 5 and 6) challenge whether there was some evidence to support the finding of the disciplinary hearing officer that appellant: (1) in disciplinary case number 208782 committed a violation of MJ26 (possession of contraband) and G14 (failure to follow posted rules) for possessing an envelope with the name of another inmate, and the envelope contained a syringe; and (2) in disciplinary case number 209942 committed a violation of MJ26 (possession of contraband) for possessing legal work not permitted because it contained the names of individuals not in the custody of the Nevada Department of Corrections, or individuals in the "system currently, paroled, expired, or deceased."

In finding appellant guilty of the contraband charges, the disciplinary hearing officer found: (1) that appellant already admitted that he possessed the legal paperwork wherein the syringe was found so he was responsible for the syringe; and (2) for disciplinary case number 209942 that appellant admitted to having the legal documents at question.

³Appellant's claim that the two disciplinary hearings violated double jeopardy is patently without merit.

⁴It is false logic to suggest that a syringe is always and only drug paraphernalia.

Appellant asserted in his petition that he did not admit that the legal paperwork was his and that the legal paperwork was not contraband in any event as it related to his assistance of other inmates.

Having considered the record before this court, we conclude that the record does not contain support for the findings of the prison disciplinary hearing officer. No transcript or audio recording of the prison disciplinary proceedings were presented for the district court's consideration, and a factual dispute remains present in this case—whether appellant admitted to possessing the legal paperwork. The form filled out by the prison disciplinary hearing officer, when setting forth the offender's statement in disciplinary case 209942, is prefaced by an entry that states "No statement," and is followed up by a statement that appellant admitted to having the legal paperwork, but that he was permitted to do so.⁵ Although a court reviewing prison disciplinary hearings is not required to review the entire record, the record in this case contains only the hearing officer's summary notes and does not actually contain a transcript or audio recording of the hearing. Because the findings in this case were reliant upon the alleged admission, a transcript or audio recording of the prison disciplinary hearing is necessary for

⁵The form in disciplinary case 208782 states "No statement," which is followed by a statement questioning the time of the search. As the timing of the search has no bearing on whether some evidence was presented, this factual dispute is irrelevant. However, of relevance in disciplinary case 208782 is the fact that the disciplinary hearing officer seemingly relied upon the admission in disciplinary case 209942 in the finding of guilt.

review. Therefore, we reverse the order of the district court denying the claims challenging the quantum of evidence (grounds 5 and 6) and remand for consideration of the transcript or audio recording of the prison disciplinary proceedings.⁶ 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.⁷

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

cc: Hon. Jennifer Togliatti, District Judge
Douglas Medlar
Attorney General/Las Vegas
Eighth District Court Clerk

⁶We conclude that the district court did not err in denying appellant's claim of cumulative error (ground 10).

⁷This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.