

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOWARD LEE WHITE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58188

**FILED**

NOV 16 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *T. Malone*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court summary judgment in a civil rights action. First Judicial District Court, Carson City; James Todd Russell, Judge.

Appellant filed a complaint in the district court alleging that he was denied due process and the freedom to exercise his religion and that he was cruelly and unusually punished when respondent seized certain items of his property, including his Koran. The district court granted respondent summary judgment on all of the appellant's claims. On appeal, appellant argues that the district court erred by failing to recognize the existence of factual issues precluding summary judgment. In particular, appellant states that there were genuine issues of material fact regarding whether he had excess property and whether he was provided the opportunity to choose what property he would be allowed to retain when it was determined that he had excess property.

As to whether appellant had excess property, the record includes an unauthorized property notification that identifies what property was considered excess property, and appellant did not submit any evidence demonstrating that the notification was inaccurate. Additionally, during discovery, appellant admitted that he possessed more

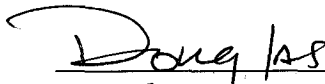
books than permitted by the prison regulations. See NDOC AR 711.08(1.5) (effective September 6, 2003) (limiting the number of books an inmate can possess to ten). Thus, appellant did not identify a genuine issue of material fact as to whether he possessed excess property.


With regard to appellant's ability to determine what property he was allowed to retain, respondent does not dispute that appellant, who was not present when his excess property was discovered, was not given the opportunity to choose which property would be removed from his cell. Nevertheless, the record demonstrates that he was given the chance to decide what would happen to the property that was found to be excess, and there is no indication in the record that appellant is not free to exchange the property he has in his possession with other authorized property, within the limitations set by the prison's regulations.

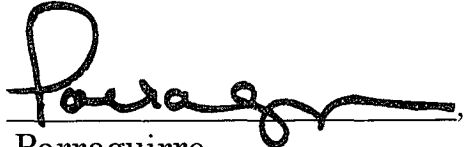
Thus, on consideration of the undisputed facts, we conclude that respondent was entitled to judgment as a matter of law on each of appellant's claims. See Board of Regents v. Roth, 408 U.S. 564, 569 (1972) (explaining that, to establish a due process violation, one must show that there is a property interest created by an independent source, such as a state law, and that he or she has been deprived of that property interest); Nevada Dept. of Corrections v. Greene, 648 F.3d 1014, 1019 (9th Cir. 2011) (providing that, while a person may have a right to own property, that right is not impinged when he or she is not permitted to possess the property in prison and has been provided with an opportunity to send the property home or make other arrangements for the disposition of the property); see also Turner v. Safley, 482 U.S. 78, 89 (1987) (explaining that, to establish a claim for a violation of the freedom to exercise one's religion, an inmate must show that the prison impinged his religious

practice without any justification reasonably related to a legitimate penological interest); Farmer v. Brennan, 511 U.S. 825, 837 (1994) (providing that, in order to succeed on a cruel and unusual punishment claim, an inmate must show that an official knowingly disregarded a serious risk to the inmate's health or safety). As such, the district court properly granted summary judgment to respondent in this case. See Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (explaining that after a de novo review, this court will affirm summary judgment if the record, viewed in the light most favorable to the nonmoving party, shows that there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. James Todd Russell, District Judge  
Howard Lee White  
Attorney General/Carson City  
Carson City Clerk