

IN THE SUPREME COURT OF THE STATE OF NEVADA

ISAIAH SMITH,
Appellant,
vs.
DWIGHT NEVEN,
Respondent.

No. 58277

FILED

DEC 07 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *A. Anderson*
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; Joanna Kishner, Judge.

In his petition, filed on December 8, 2010, appellant challenged a prison disciplinary hearing that resulted in his placement in disciplinary segregation and the loss of statutory good time credits.

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-finder 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

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).

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. Id. 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.

Appellant first claimed that his due process rights were violated because he was denied the opportunity to be represented by a lay advocate at the disciplinary hearing. An inmate is not generally entitled to assistance from an advocate on their behalf unless the inmate is illiterate or the issues presented at the hearing are complex. Wolff, 418 U.S. at 570. Appellant’s claim that he is illiterate is belied by the record, as appellant admitted at his district court arraignment that he can read, write, and speak the English language. Further, the issues presented at the disciplinary hearing were not complex. Accordingly, the district court did not err in denying this claim.

Next, appellant claimed that the hearing officer’s findings of guilt on MJ10 (gang activities), MJ27 (rioting or inciting a riot), and G6 (fighting) were not supported by some evidence. We conclude that the evidence in the record was sufficient to support the finding of the disciplinary hearing officer. A correctional officer’s report presented at the disciplinary hearing established that appellant, a “security threat group” member, was discovered near an area where a group of inmates had “brawled” in a “major disturbance.” Appellant had blood smeared on his lower back. Given this evidence, we conclude that the district court did not err in denying these claims.

Next, appellant claimed that he was denied the opportunity to present evidence. Specifically, he claimed that he should have been allowed to present evidence of the prison shirt he was wearing, medical records, and videotaped footage taken by a correctional officer immediately after the riot. We conclude that the exclusion of this evidence did not violate appellant's due process rights. First, based on the transcript of the disciplinary hearing, it does not appear that appellant requested to present any of this evidence at the hearing. Second, presentation of much of this evidence would have been redundant, as the hearing officer stated at the hearing that a medical evaluation of appellant after the incident revealed "no results." Finally, presentation of the videotape evidence allegedly demonstrating that appellant was found in a different area of the incident scene than the area originally reported would have had little bearing on the outcome, especially when weighed against the institutional needs of efficiency during disciplinary proceedings. See Wolff, 418 U.S. at 566. Therefore, the district court did not err in denying this claim.

Next, appellant claimed that his due process rights were violated because charges were not written against him until a day after the incident, and were only filed after appellant was unable to identify all of the other participants in the incident. Appellant failed to demonstrate any due process violation. Nothing in Wolff requires charges to be written immediately following a disciplinary incident. Regardless of the motivation behind the charges, appellant received proper notice and some evidence existed to support a finding of guilt. Accordingly, the district court did not err in denying this claim.

Finally, appellant claimed that he did not receive a written statement of the evidence relied upon. This claim is patently belied by the record, as the Summary of Disciplinary Hearing provided to appellant clearly contained a statement of the evidence relied upon. Therefore the district court did not err in denying this claim.

For the reasons stated above, we

ORDER the judgment of the district court AFFIRMED.²

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

²We further conclude that the district court did not err in denying appellant's request for the appointment of counsel in this matter. Despite appellant's claim that the district court failed to rule on his motion to proceed in forma pauperis, it appears that appellant was allowed to proceed in forma pauperis without issue.

We 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.

cc: Hon. Joanna Kishner, District Judge
Isaiah Smith
Attorney General/Las Vegas
Eighth District Court Clerk