IN THE SUPREME COURT OF THE STATE OF NEVADA

ELIZABETH A. TRASCHETTI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62646

FILED

DEC 12 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On appeal from the denial of her November 7, 2012, petition, appellant argues that the district court erred in denying her claims that her right to due process was violated at her prison disciplinary hearing, resulting in 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 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); *see also* Nevada Dep't of Corr., Admin. Reg. 707.1, *Inmate Disciplinary Manual* § 2(B)(3)(e)(11)(a) (2009) ("A finding of guilt must be based on *some evidence*, regardless of the amount." (emphasis added)). A petitioner is entitled to an evidentiary hearing if she

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raises claims that are not belied by the record and, if true, would entitle her to relief. *See Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

Appellant argues that she was deprived of due process because she was not provided with copies of the evidentiary documents against her so that she could prepare a defense. First, the opportunity to preview the evidence against an inmate is not one of the rights set forth in *Wolff* and *Hill*. Second, the district court's finding that appellant was allowed to examine the evidence against her at the disciplinary hearing is supported by substantial evidence in the record, and we defer to that finding. *See Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). The disciplinary hearing transcript reveals not only that appellant was given the opportunity to review telephone transcripts and written correspondence, but also that she did in fact review them and discuss the contents with the hearing officer. Appellant told the hearing officer that the telephone transcripts had been taken apart and reordered to make them seem something that they were not, and throughout her hearing, appellant referred to "this letter," "that letter," and parts thereof when discussing the evidence with the hearing officer, all of which clearly indicates that she was looking at transcripts and various letters. We therefore conclude that the district court did not err in denying this claim without an evidentiary hearing.[1]

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[1]Appellant also argues that her due-process claims challenging her placement in punitive segregation and the effect of her disciplinary proceedings on her chances of parole were within the scope permissible in a post-conviction habeas petition. First, appellant's claims are not cognizable in a post-conviction habeas petition. *See* NRS 213.10705 ("[P]arole . . . is an act of grace."); *Bowen v. Warden*, 100 Nev. 489, 686

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Appellant also argues that the hearing officer did not explain how the evidence supported the charges and his findings were not supported by some evidence. In determining whether the "some evidence" standard was met, the district court needed only to determine "whether there [was] any evidence in the record that could support the conclusion" of the hearing officer and was not required to examine the entire record, make any credibility assessments, or weigh any of the evidence. *Hill*, 472 U.S. at 455-56. First, "some evidence" supported the hearing officer's findings. Appellant admitted to receiving letters from an out-of-state inmate with whom she is not allowed to correspond via a third-party intermediary who mailed the inmate's letters to her, which is some evidence that she violated MJ 31, the unauthorized or inappropriate use of telephone, mail, etc. Further, the hearing officer's finding that appellant's use of cryptic phrases regarding sending "N," "nuts," "white wifey a white dress," and "Diamond" were references to drugs and that appellant's explanations were not credible is some evidence that she violated MJ 53, the possession, introduction, or sales of any narcotics, drugs, etc., or conspiracy to do so. Second, although *Wolff* provides an inmate with the right to a written statement of the evidence relied on, it does not require that the statement detail how that evidence supports the charges. We

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P.2d 250 (1984) (holding that placement in punitive segregation is a condition of confinement and thus not cognizable in a post-conviction habeas petition); *Severance v. Armstrong*, 96 Nev. 836, 839, 620 P.2d 369, 370 (1980) (holding that because a Nevada inmate has no legitimate expectation of parole release, he has no "constitutionally cognizable liberty interest sufficient to invoke due process"). Second, as a separate and independent ground to deny relief, even if her claims were cognizable, we have concluded that appellant received all the process she was due.

therefore conclude that the district court did not err in denying this claim without an evidentiary hearing.

For the foregoing reasons, we find appellant's claims without merit, and we

ORDER the judgment of the district court AFFIRMED.[2]

Pickering, C. J.
Pickering

Hardesty, J.
Hardesty

Cherry, J.
Cherry

cc: Hon. Michelle Leavitt, District Judge
Julie Raye Law, LLC
Attorney General/Carson City
Attorney General/Las Vegas
Clark County District Attorney
Eighth District Court Clerk

[2]Appellant had also claimed below that she was denied due process because she was not allowed to cross-examine a confidential informant. Because appellant did not challenge the district court's denial of this ground in her opening brief, the claim is abandoned on appeal.