

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD L. CARMICHAEL,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 67223

FILED

MAY 20 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF 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.¹ Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

In his petition filed on May 14, 2014, appellant Richard L. Carmichael 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 minimal due process rights entitle a prisoner to: (1) advance written notice of the

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude 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).

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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 decision. *Superintendent v. Hill*, 472 U.S. 445, 455 (1985). In reviewing a claim 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.*

First, Carmichael claimed the disciplinary hearing officer improperly denied his request to call witnesses or to postpone the hearing to permit him time to obtain affidavits from those witnesses. Carmichael's claim lacked merit. Prison officials have the discretion to keep a disciplinary hearing within reasonable limits and may properly decline to permit witness testimony for many reasons. *Wolff*, 418 U.S. at 566-67. Here, the disciplinary officer stipulated to Carmichael's assertion the witnesses would have supported Carmichael's position. The officer also permitted Carmichael to place the purported testimony on the record of the disciplinary hearing. Accordingly, Carmichael failed to demonstrate his limited right to call witnesses was violated. *See id.* Therefore, the district court did not err in denying this claim.

Second, Carmichael claimed he was denied the opportunity to present evidence in support of his defense. Carmichael also claimed there was insufficient evidence to support the offenses because the telephone call allegedly containing discussion of the drug sale was not recorded. Carmichael's claim lacked merit. The disciplinary hearing officer gave Carmichael the opportunity to present his defense. In addition, there was sufficient evidence of Carmichael's participation in a conspiracy to smuggle drugs into the prison presented at the hearing even without a telephone recording. The disciplinary hearing officer relied upon an Inspector General investigation that discovered Carmichael and two other inmates planned to complete a drug purchase and then have the spouse of an inmate smuggle the drugs into High Desert State Prison. The investigator discovered the three inmates used coded conversations during the phone calls to facilitate the drug sale and, during a phone call, Carmichael arranged to have money sent to the spouse. When the inmate's spouse arrived at the prison, she was stopped and admitted to possessing drugs for delivery to her husband in the prison. Based on this evidence, the disciplinary hearing officer properly found Carmichael was guilty of unauthorized use of equipment and possession or sale of narcotics. *See Hill*, 472 U.S. at 455.

Third, Carmichael claimed the disciplinary hearing officer was biased against him. Carmichael's claim lacked merit. Due process

requires an impartial decision maker. *Wolff*, 418 U.S. at 571. There was no support in the record that the hearing officer was biased against Carmichael and the officer's adverse decisions towards Carmichael at the hearing did not demonstrate improper bias. Therefore, the district court did not err in denying this claim.


Fourth, Carmichael claimed the disciplinary hearing officer did not provide him with the presumption of innocence or properly explain the burden of proof required for a finding of guilt at the hearing. Carmichael's claim lacked merit. The presumption of innocence that accompanies criminal matters does not attach to a prison disciplinary proceeding and prison officials need only comply with a prisoner's due process rights as discussed in *Wolff* and its progeny. 418 U.S. at 563-69. Moreover, there must only be some evidence of guilt presented at the hearing, *see Hill*, 472 U.S. at 455, and that minimal standard was met here. Therefore, the district court did not err in denying this claim.


Fifth, Carmichael claimed he is entitled to relief due to cumulative error. As there were no errors committed during the disciplinary proceedings, there are no errors to cumulate. Therefore, the district court did not err in denying this claim.

Sixth, Carmichael claimed he was retaliated against for exercising his First Amendment rights, the warden and deputy director failed to properly review his grievances, and the Department of

Corrections' officials and the Inspector General's officer committed misconduct during their investigation of this matter. These claims are challenges to the conditions of confinement and are not properly raised in a post-conviction petition for a writ of habeas corpus. See *Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984). Therefore, the district court did not err in denying relief for these claims.

Having concluded that Carmichael is not entitled to relief, we ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

²We have reviewed all documents that Carmichael has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Carmichael has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.

cc: Hon. Steve L. Dobrescu, District Judge
Richard L. Carmichael
Attorney General/Carson City
Attorney General/Ely
White Pine County Clerk