

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANDRE A. BRELAND,  
Appellant,  
vs.  
RENEE BAKER, WARDEN,  
Respondent.

No. 70225

**FILED**

OCT 18 2016

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from orders of the district court dismissing and denying a postconviction petition for a writ of habeas corpus.<sup>1</sup> Seventh Judicial District Court, White Pine County; Gary Fairman, Judge.

Appellant Andre Breland claims the district court erred by denying his postconviction petition for a writ of habeas corpus that was filed on March 17, 2014. In his petition, Breland challenged a prison disciplinary hearing, which resulted in a finding of guilt of MJ2 (assault) and MJ3 (battery), and the forfeiture of 365 days of credit. Breland claims the district court erred by dismissing and denying his claims that he was deprived of due process. Breland argues he should have been given a new notice of charges, he should have been given a written statement of the evidence relied on, the officer was required to file her report before the end of her shift, counsel should have been appointed, the disciplinary hearing officer did not factor in exculpatory evidence, and the disciplinary hearing

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<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

officer was not impartial because he had reviewed Breland's co-offender's hearing.<sup>2</sup>

The district court determined Breland was not entitled to relief because he received advance written notice of the charges prior to his previous disciplinary hearing, he was not entitled to the appointment of counsel, and there was some evidence to support the disciplinary hearing officer's finding of guilt.<sup>3</sup> We conclude substantial evidence supports the decision of the district court and the district court did not err by dismissing and denying these claims.

To the extent Breland claims the officer was required to file her report by the end of her shift, this claim does not implicate due process. *See Wolff*, 418 U.S. at 563-69. To the extent Breland claims he was not given a written summary of the evidence relied upon by the disciplinary hearing officer, this claim is belied by the record because


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<sup>2</sup>To the extent Breland challenged his placement in disciplinary segregation, Breland's challenge was not cognizable in a postconviction petition for a writ of habeas corpus. *See Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984); *see also Sandin v. Conner*, 515 U.S. 472, 486 (1995) (holding that liberty interest protected by the Due Process Clause will generally be limited to freedom from restraint which imposes an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life).


<sup>3</sup>Breland also argues the district court erroneously stated in its order that Breland did not file an opposition to the motion to partially dismiss his petition. While the district court erred by making this statement, Breland fails to demonstrate the district court would not have denied or dismissed his claims had the district court considered his opposition. Under due process, Breland was not entitled to the appointment of counsel nor to have a polygraph examination. *See Wolff v. McDonnell*, 418 U.S. 539, 563-69 (1974).

Breland was provided with disciplinary form III, which gives the written summary of evidence relied upon. Finally, to the extent Breland claims the hearing officer was not impartial because he reviewed Breland's co-offender's disciplinary hearing transcript, this claim was not raised below and we decline to consider it for the first time on appeal. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991) *overruled on other grounds by Means v. State*, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004). Therefore, Breland failed to demonstrate that he was entitled to relief, and we

ORDER the judgments of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Gary Fairman, District Judge  
Andre A. Breland  
Attorney General/Ely  
White Pine County Clerk