IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL D. ISHAM,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K. MCDANIEL,
Respondent.

No. 38248

FILED

JUN 11 2002

CLERK OF SUPREME COURT
BY J. Richard
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

On March 19, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On July 3, 2001, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he was denied due process at his prison disciplinary hearing. Our review of the record on appeal reveals that the district court did not err in denying appellant's petition.[1]

Statutory good time credits constitute a liberty interest protected by due process.[2] Minimal due process in a prison disciplinary

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[1]We note that appellant's claim regarding his transfer to higher security housing is a challenge to the conditions of his confinement and therefore not cognizable in a petition for a writ of habeas corpus. See Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984).

[2]Wolff v. McDonnell, 418 U.S. 539, 557 (1974); see also NRS 209.446(1).

hearing requires: "(1) advance written notice of the disciplinary charges; (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action."[3] As to sufficiency of evidence, the requirements of due process are satisfied if there is "some evidence" in the record that could support the decision reached by the disciplinary committee, even if that evidence is "meager."[4] The right to counsel is not required in prison disciplinary hearings; however, if an inmate is illiterate or the issues are complex, an inmate should be allowed to seek aid from another inmate or staff.[5]

First, appellant claimed that he received inadequate notice regarding the scope of the hearing. Specifically, appellant argued that the notice was inadequate because: (1) the charges were vague, ambiguous and conclusory, (2) it did not state that discipline could include restitution for medical expenses, (3) he did not receive a fingerprint analysis of the weapon twenty-four hours prior to the hearing, and (4) "battery" in the Nevada Code of Penal Discipline is defined differently than it is in the Nevada Revised Statutes. This claim is without merit. Appellant was provided with written notice, five days prior to the hearing, of the factual situation which was the basis for the charge that he participated in the beating and stabbing of another inmate sufficient to "enable him to

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[3]Superintendent v. Hill, 472 U.S. 445, 454 (1985) (citing Wolff, 418 U.S. at 563-69).

[4]Id. at 455-57.

[5]Wolff, 418 U.S. at 570; see also Baxter v. Palmigiano, 425 U.S. 308, 315 (1976).

marshal the facts and prepare a defense."[6] Therefore, appellant was not denied due process in this regard.

Second, appellant claimed he was denied due process because he was not allowed the assistance of inmate counsel. This claim is without merit. Appellant did not allege, nor does the record reflect, that he is illiterate or that the issues are complex.[7] Moreover, the record shows that appellant did not request counsel substitute. Therefore, appellant was not denied due process in this regard.

Third, appellant claimed he was denied due process because the charges were based upon the uncorroborated, unreliable, hearsay statements of confidential informants, and therefore the hearing officer was required to make an independent assessment of the credibility of the informants. This claim is without merit. The disciplinary committee is allowed to consider hearsay statements.[8] In addition, five separate confidential informants corroborated that appellant was involved in the incident.[9] Moreover, the information was reliable: the investigating officer testified personally to the truthfulness of the information, the information was corroborated, and an in camera review found that the

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[6]Wolff, 418 U.S. at 564; see also Bostic v. Carlson, 884 F.2d 1267, 1270-71 (9th Cir. 1989); Zimmerlee v. Keeney, 831 F.2d 183, 188 (9th Cir. 1987).

[7]Wolff, 418 U.S. at 570; see also Baxter, 425 U.S. at 315.

[8]Nevada Code of Penal Discipline § II(C)(4).

[9]See id. § VI(A); Zimmerlee, 831 F.2d at 186 (information received from a confidential informant may be used in prison disciplinary hearings when the record demonstrates that the information is reliable and necessary).

documentation was reliable.[10] Finally, the record reflects that safety prevented the disclosure of the identity of the confidential informants.[11] Therefore, appellant was not denied due process in this regard.

Lastly, appellant claimed that he was denied due process because he was not allowed to call a former prison employee as a witness who, according to appellant, would have testified that appellant was not involved in the incident. This claim is without merit. The witness appellant wished to call was no longer employed at the prison and the committee considered other testimony that appellant was not involved. Moreover, the record does not reflect that appellant provided to the committee in advance the names of any witnesses he wished to call or what they would testify to.[12]

We note that there was sufficient evidence for the committee to find that appellant was guilty of the charges: the reliable eyewitness accounts of five confidential informants[13] and the report of the prison investigator that immediately following the incident, appellant had injuries consistent with the attack on the inmate.[14] We also note that

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[10]See Zimmerlee, 831 F.2d at 186-87.

[11]See id. at 186.

[12]See Bostic, 884 F.2d at 1274 (an inmate "must inform the committee of the nature of the testimony each witness will deliver in order to allow the committee to determine whether institutional concerns would preclude calling the witnesses").

[13]See Zimmerlee, 831 F.2d at 186.

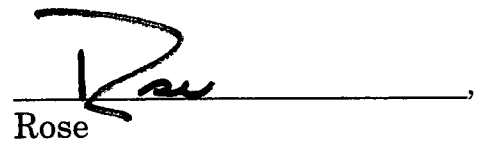
[14]See Hill, 472 U.S. at 455-56.

appellant received a written statement of the evidence relied on and the reasons for disciplinary action.[15]

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[16] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[17]

_____, J.
Shearing



_____, J.
Rose

_____, J.
Becker

cc: Hon. Michael R. Griffin, District Judge
Attorney General/Carson City
Michael D. Isham
Carson City Clerk

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[15]See id. at 454 (citing Wolff, 418 U.S. at 563-67).

[16]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

[17]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted. On November 1, 2001, appellant filed a request with this court for permission to submit an appellate brief. The State opposed the request. We decline to extend permission to appellant to file an appellate brief. Therefore, the State's motion opposing the request is moot.