

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILLIP JACKSON LYONS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 38454

FILED

APR 14 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
OFFICIAL DEPUTY CLERK

This is an appeal from an order of the district court denying a petition for a writ of habeas corpus.

On December 19, 2000, appellant filed a proper person petition for a writ of habeas corpus in the district court challenging a prison disciplinary hearing resulting in 180 days in disciplinary segregation and forfeiture of 119 good time credits.<sup>1</sup> The district court appointed counsel to assist appellant in the proceedings. On August 23, 2001, after conducting an evidentiary hearing, the district court denied appellant's petition. This appeal followed.

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<sup>1</sup>To the extent that appellant challenges his placement in disciplinary segregation, appellant's challenge was not cognizable in a habeas corpus petition. 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 interests 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). Thus, this court will only review those assertions relating to the MJ-36 violation—the only violation contained in the notice of charges served on October 6, 2000, permitting the forfeiture of credits. See Nev. Code of Penal Discipline § IV(A)(2), (3) (1993). Any alleged errors relating to the general violations charged are outside the scope of these proceedings.

"Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due in such proceedings does not apply."<sup>2</sup> The United States Supreme Court has held that minimal due process in a prison disciplinary hearing requires: (1) advance written notice of the charges; (2) written statement of the fact finders of the evidence relied upon and the reasons for disciplinary action; and (3) a qualified right to call witnesses and present evidence.<sup>3</sup> The Wolff Court declined to require confrontation and cross-examination in prison disciplinary proceedings because these procedures presented "greater hazards to institutional interests."<sup>4</sup> The requirements of due process are further met if some evidence supports the decision by the prison disciplinary committee.<sup>5</sup> Although the Nevada Code of Penal Discipline sets forth the disciplinary framework, the Code expressly states that it does not create any liberty interest on behalf of an inmate from any part of the Code.<sup>6</sup> Any allegation relating to a violation of a particular provision set forth in the Code that falls short of a recognized due process interest cannot serve as the basis for relief.

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<sup>2</sup>Wolff v. McDonnell, 418 U.S. 539, 556 (1974).

<sup>3</sup>Id. at 563-69.

<sup>4</sup>Id. at 567-68.

<sup>5</sup>Superintendent v. Hill, 472 U.S. 445, 455 (1985); see also Nev. Code of Penal Discipline § II(C)(4) (providing that it is only necessary that the disciplinary committee's finding of guilt be based upon some evidence, regardless of the amount).

<sup>6</sup>Nev. Code of Penal Discipline § I(D).

On appeal, appellant argues that: (1) he was denied his constitutional right to be confronted by his accuser; (2) he was denied his constitutional right to call witnesses in his own behalf;<sup>7</sup> (3) there was insufficient evidence presented to find him guilty of the violations; (4) the warden did not have the authority to direct the prison disciplinary committee to initiate new charges after appellant's first administrative appeal; (5) the warden did not have the authority to direct the prison disciplinary committee to reinstate charges against appellant for which he had allegedly been found not guilty at his first prison disciplinary hearing; (6) his double jeopardy rights were violated when charges were reinstated after appellant had been previously found not guilty during the first prison disciplinary hearing; and (7) his due process rights were violated when the warden permitted two prison disciplinary hearings to be held for the same and identical conduct.<sup>8</sup>

Having reviewed the briefs and all of the documents presented to this court for consideration, we conclude that appellant failed to demonstrate that any protected due process right relating to the MJ-36 violation was infringed upon during the prison disciplinary proceedings.


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<sup>7</sup>The witnesses were not identified in the petition. Appellant identified two witnesses during the evidentiary hearing—the complaining employee and C.O. Hallam. We decline to consider whether appellant was denied the opportunity to call C.O. Fournier as a witness because this claim was not raised in the district court.


<sup>8</sup>We note that the documents submitted to this court do not support appellant's contention that he was found "not guilty" of any violations during the prison disciplinary hearings. Rather, the documents before this court reveal that several of the charges had been "dismissed" at the conclusion of the proceedings.

Appellant received adequate written notice of the charges in a timely fashion. In view of the fact that appellant did not have a right to confront and cross-examine his accuser and in view of the fact that appellant failed to support this claim with specific facts in the district court, appellant failed to demonstrate that the prison improperly denied him the right to call witnesses during the prison disciplinary hearing.<sup>9</sup> A written statement of the evidence relied upon was set forth by the prison disciplinary hearing officer. Finally, a review of the documents reveals that some evidence was presented to support the prison disciplinary committee's decision, and thus, the forfeiture of credits was proper.<sup>10</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

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

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<sup>9</sup>See generally Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

<sup>10</sup>We decline to reach appellant's argument regarding the standard of proof because appellant failed to raise his argument—the standard of proof in a prison disciplinary hearing for the forfeiture of credits should be proof beyond a reasonable doubt—in the proceedings before the district court.

cc: Hon. Lee A. Gates, District Judge  
Gary E. Gowen  
Attorney General Brian Sandoval/Carson City  
Attorney General Brian Sandoval/Las Vegas  
Clark County District Attorney David J. Roger  
Clark County Clerk