IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN WITHEROW,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON,
DAVID MELIGAN,
Respondent.

No. 38908

FILED

OCT 0 1 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF 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 June 7, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a reply. On November 16, 2001, the district court denied appellant's petition. This appeal followed.

In his petition, appellant challenged matters arising out of a prison disciplinary hearing which resulted in appellant's placement in disciplinary segregation for 180 days and the recommendation for the loss of 120 days or more of good time credits. The loss of good time credits, however, did not occur. Specifically, appellant claimed that his due

process rights were violated at his disciplinary hearing when: (1) the presumption of innocence was disregarded at the hearing and his guilt was determined upon the standard of "some evidence" which is an "inappropriate and insufficient standard of proof"; (2) he was not provided with adequate notice of the factual basis of the alleged rule violations sufficient to enable him to prepare a defense to the charges; and (3) he was not provided with adequate advance notice of the evidence relied upon to support the disciplinary charges against him. Appellant also claimed that the opening of his sealed mail was illegal and unconstitutional.

Our review of the record on appeal reveals that the district court did not err in denying appellant's petition. As stated previously, appellant was placed in disciplinary segregation and did not lose any statutory good time credit. Appellant's challenge to disciplinary segregation, which is considered a "more restrictive type of confinement within the prison," speaks only to the condition of confinement.[1] "We have repeatedly held that a petition for writ of habeas corpus may challenge the

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[1]See Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984); see also Sandin v. Conner, 515 U.S. 472 (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).

validity of current confinement, but not the conditions thereof."[2] Thus, appellant was not entitled to relief.

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.[3] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[4]

_____, J.
Rose

_____, J.
Young

_____, J.
Agosti

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[2]See Bowen v. Warden, 100 Nev. at 490, 686 P.2d at 250.

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

[4]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

cc: Hon. William A. Maddox, District Judge
Attorney General/Carson City
Carson City District Attorney
John Witherow
Carson City Clerk