

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY R. BOYKIN,  
Appellant,  
vs.  
WARDEN, ELY STATE PRISON, E.K.  
MCDANIEL,  
Respondent.

No. 41136

FILED

MAR 05 2004

ORDER OF AFFIRMANCE

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

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

On October 14, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court challenging matters arising out of a prison disciplinary hearing resulting in 90 days in disciplinary segregation, 90 days loss of canteen privileges, 90 days loss of phone privileges, 90 days loss of appliance privileges and forfeiture of 120 good time credits.<sup>1</sup> The State opposed the petition. Appellant filed a supplement. On March 3, 2003, the district court dismissed appellant's petition. This appeal followed.

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<sup>1</sup>To the extent that appellant challenged his placement in disciplinary segregation and the loss of privileges, we conclude that the district court properly determined that 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).

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>2</sup> The United States Supreme Court has also recognized that due process requires an impartial decision maker.<sup>3</sup> Further, the requirements of due process are met if some evidence supports the decision by the prison disciplinary committee.<sup>4</sup>

First, appellant claimed the notice of charges was inadequate. Appellant claimed that the notice of charges failed to contain an adequate description of the facts. Appellant further claimed he was unable to prepare a defense because he did not receive a copy of the "Inmate Interview Request Form" and the order attached to the form. We conclude that the district court did not err in concluding that appellant was provided adequate notice of the charges. The notice of charges contained sufficient, specific facts to inform appellant of the charges and allow appellant an opportunity to marshal the facts and prepare a defense. Further, the written notice of charges was presented to appellant well in advance of the prison disciplinary hearing date. Thus, the district court did not err in denying this claim.

Second, appellant claimed that he was denied an impartial hearing by the full disciplinary committee. Appellant complained that his

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<sup>2</sup>Wolff v. McDonnell, 418 U.S. 539, 563-69 (1974).

<sup>3</sup>Id. at 571.

<sup>4</sup>Superintendent v. Hill, 472 U.S. 445, 455 (1985); see also Nevada 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).

prison disciplinary hearing was conducted by only one hearing officer, rather than being conducted by a committee comprised of three members. We conclude that the district court did not err in concluding that appellant was provided an impartial hearing. Administrative Directive 8-98 modified the Code of Penal Discipline and replaced the disciplinary committee, comprised of three members, with a disciplinary hearing officer. The directive sets forth that the modification "is to increase the accountability for the disciplinary process." Nothing in this modification presents a "hazard of arbitrary decisionmaking that it should be held violative of due process of law."<sup>5</sup> The Code of Penal Discipline provides adequate safeguards of impartiality in the prison disciplinary process. Thus, the district court did not err in denying this claim.

Third, appellant claimed that there was not some evidence to support the written statement of evidence relied upon. We conclude that the district court did not err in determining that some evidence was presented of appellant's guilt sufficient to comport with the dictates of due process. The form alleged to have been forged was clearly altered. The charging officer's report indicates that an investigator concluded that the alterations to the form were written by appellant. Thus, the district court properly determined that this claim lacked merit.

Fourth, appellant claimed that he was denied the opportunity to present witnesses and evidence. We conclude that the district court did not err in determining that "appellant had an opportunity, consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense." The record indicates that three witnesses were called. The record does not indicate that any witnesses or

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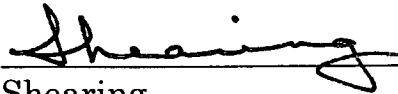
<sup>5</sup>Wolff, 418 U.S. at 571.

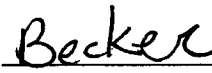
evidence were rejected. Thus, the district court properly determined that this claim lacked merit.

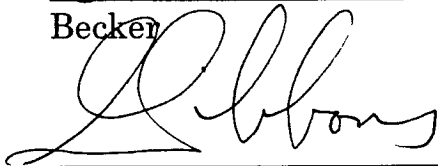
Finally, appellant raised several additional claims in his supplement relating to the tape recording of the hearing, the presence of Sergeant Cunningham during the hearing, and the disciplinary officer's failure to rely upon the testimony of Correctional Officer Combs. These claims failed to implicate any protected due process rights.<sup>6</sup> Therefore, we conclude that the district court did not err in denying 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.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Shearing

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

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

cc: Hon. Dan L. Papez, District Judge  
Anthony R. Boykin  
Attorney General Brian Sandoval/Carson City  
White Pine County District Attorney  
White Pine County Clerk

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<sup>6</sup>See id., 418 U.S. at 563-69.

<sup>7</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).