

IN THE SUPREME COURT OF THE STATE OF NEVADA

MIGUEL ANGEL RAMIREZ,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,
Respondent.

No. 41137

FILED

FEB 18 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 January 25, 1999, 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 730 days in disciplinary segregation, forfeiture of 360 good time credits and restitution in the amount of \$665.50.¹ Appellant retained counsel and filed a supplement to the petition on July 13, 1999. The State opposed the

¹To the extent that appellant challenged his placement in disciplinary segregation and the amount and payment of restitution from his prison account, 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).

petition. On October 29, 2002, the district court dismissed appellant's petition. This appeal followed.²

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.³ The United States Supreme Court has also recognized that due process requires an impartial decision maker.⁴ Further, the requirements of due process are met if some evidence supports the decision by the prison disciplinary committee.⁵

First, appellant claimed that his due process rights were violated because he received inadequate notice of the charges. Appellant claimed that he was never personally served with the notice of charges. The record belies this claim. The notice of charges indicates that appellant was served with the notice on November 23, 1997, but that he refused to sign the notice. The record further contains a handwritten note from the correctional officer who served the notice of charges. This note

²Appellant filed a second supplement and a number of proper person motions in the district court. We conclude that the district court properly granted the State's motion to strike the second supplemental petition because appellant had not received permission to file supplemental pleadings. See NRS 34.750(5). We further conclude that the district court did not abuse its discretion in denying the remainder of appellant's motions.

³Wolff v. McDonnell, 418 U.S. 539, 563-69 (1974).

⁴Id. at 571.

⁵Superintendent 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).

indicates that the correctional officer read the charges to appellant and advised appellant of his right to remain silent. However, the correctional officer noted that appellant refused to sign the notice of charges. The correctional officer further stated that appellant was provided with copies of the forms upon completion of the hearing officer's inquiry. Appellant's refusal to sign the notice of charges does not negate the fact that the notice of charges was served upon him. Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

Second, appellant claimed that his due process rights were violated because his prison disciplinary hearing was conducted beyond the thirty-day period set forth in the Code of Penal Discipline.⁶ Appellant failed to demonstrate that any due process right was violated by the timing of the hearing. The Code specifically provides that the establishment of the Code does not establish the basis for any cause of action against the State.⁷ There is no due process requirement that a hearing occur within a particular period from the time that notice of the charges was served.⁸ Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

Third, appellant claimed that his due process rights were violated because he was not served with a second notice of charges after the first hearing date had been postponed. Appellant failed to demonstrate that any due process right was violated. There is no due process requirement that appellant receive a second notice of charges if

⁶The Code provides that the formal hearing should be conducted within thirty days after the notice of charges has been served. Nevada Code of Penal Discipline § II(C)(1).

⁷Nevada Code of Penal Discipline § I(D).

⁸Cf. Wolff, 418 U.S. at 555-73

the first hearing date is postponed.⁹ Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

Fourth, appellant claimed that his due process rights were violated because one of the members of the committee was not impartial. Appellant claimed that committee member Linda Stone was not impartial because she was a member of the prison disciplinary committee that conducted a formal hearing on another inmate involving the same incident. Appellant claimed that because this prior committee found that the confidential informant was unreliable and because this finding was reversed by the warden that Stone had a personal interest in the outcome of this hearing. Appellant failed to demonstrate that Stone was not impartial. Stone's participation in a prior prison disciplinary hearing involving the same incident did not present "a hazard of arbitrary decisionmaking that it should be held violative of due process of law."¹⁰ The Code of Penal Discipline provides adequate safeguards of impartiality in the prison disciplinary process.¹¹ Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

⁹Id.

¹⁰Id. at 571.

¹¹The Code specifically provides:

As it applies to hearing officer[s] and members of disciplinary committees, impartial means that the person did not witness or investigate the alleged violation, was not a victim of the alleged violation, did not participate in the writing of the notice of charges, or did not sit as a member of the classification committee which authorized pre-disciplinary detention for the same offense. . . . An employee is not necessarily impartial based on factors such as: general knowledge of the case

continued on next page . . .

Fifth, appellant claimed that his due process rights were violated because the disciplinary committee did not determine the reliability and credibility of the confidential informant. Appellant asserted that the identity of the confidential informant was necessary to establish the "legality of the means by which the discovery of information in this case precipitated." The record belies this claim. The summary of the prison disciplinary hearing reveals that the committee determined that the confidential informant was reliable.¹² Further, the committee determined that safety prevented the disclosure of the confidential informant. Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

Sixth, appellant claimed that his due process rights were violated when the prison disciplinary committee denied him the opportunity to call several inmate witnesses. Appellant failed to demonstrate that his due process rights were violated. Appellant submitted affidavits from the inmate witnesses, and the prison

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through the "grapevine", the employee has been the subject of grievances and lawsuits brought by the inmate, the inmate has had a previous unpleasant encounter with the employee, the employee has knowledge of the case by virtue of having heard the violations of others involved in the same incident. This list is not exclusive.

Nevada Code of Penal Discipline § I (E)(15).

¹²The committee specifically found, "[i]nvestigating officer testifies personally as to truthfulness of the confidential information in his report." This is a proper basis for a finding of reliability. See Zimmerlee v. Keeney, 831 F.2d 183, 186 (9th Cir. 1987); Nevada Code of Penal Discipline § VI(A).

disciplinary committee stipulated to the contents.¹³ Appellant agreed to the stipulation during the hearing. Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

Finally, appellant claimed that the prison disciplinary committee used an improper burden of proof—some evidence—to determine appellant's guilt. Appellant claimed that the prison disciplinary committee should have instead had to find appellant's guilt by a preponderance of the evidence. Appellant claimed that the some evidence standard was merely the standard for appellate review. Appellant failed to demonstrate that his due process rights were violated. In Hill, the United States Supreme Court held that due process would be satisfied if some evidence supported the prison disciplinary board's finding of guilt.¹⁴ The Hill Court further specifically "decline[d] to adopt a more stringent evidentiary standard as a constitutional requirement."¹⁵ There is some evidence in the record to support the prison disciplinary committee's finding of guilt.¹⁶ Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

¹³The summary of the prison disciplinary hearing contains a handwritten notation that "[a]ffidavits state to what inmates would testify to."


¹⁴472 U.S. at 454.

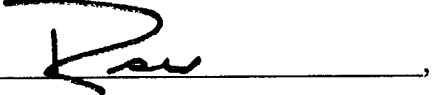
¹⁵Id. at 456.

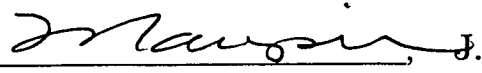
¹⁶In fact, even assuming that the prison disciplinary board was required to find guilt by a preponderance of the evidence as suggested by appellant, the record supports a finding of guilt by a preponderance of the evidence.

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.¹⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁸

 C.J.
Shearing

 J.
Rose

 J.
Maupin

cc: Hon. Dan L. Papez, District Judge
Miguel Angel Ramirez
Attorney General Brian Sandoval/Carson City
White Pine County District Attorney
White Pine County Clerk

¹⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁸We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.