

IN THE SUPREME COURT OF THE STATE OF NEVADA

JULIAN A. MATHEWS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42388

FILED

OCT 08 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 denying appellant Julian Mathews' post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On October 27, 1983, the district court convicted Mathews, pursuant a jury verdict, of one count each of assault with a deadly weapon, battery with intent to commit a crime, and robbery with the use of a deadly weapon. The district court sentenced Mathews to serve consecutive terms totaling forty-six years in the Nevada State Prison. This court dismissed Mathews' appeal from his judgment of conviction and sentence.¹

On August 14, 2003, Mathews filed a proper person post-conviction petition for a writ of habeas corpus, in which he raised several challenges to the revocation of his parole. The State filed an opposition. On November 14, 2003, the district court denied Mathews' petition. This appeal followed.

¹Mathews v. State, Docket No. 15475 (Order Dismissing Appeal, October 22, 1985). Appellant was also known as Matthews.

In Morrissey v. Brewer, the United States Supreme Court held that in order to meet minimum due process requirements, a parolee facing revocation is entitled to:

(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses . . . (e) a 'neutral and detached' hearing body . . .; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.²

In his petition, Mathews first contended that his due process rights were violated when he was improperly presented with a document explaining his rights. On May 30, 2003, Mathews signed a document informing him that the Board of Parole Commissioners determined that there was probable cause to believe that he violated the terms of his parole, and advising him of his rights with respect to the final parole revocation hearing. Mathews argued that he was presented with this document prematurely because at the time he signed the document, his preliminary inquiry had not yet been conducted. We conclude that this claim is without merit. Mathews failed to articulate how his due process rights were violated by the premature advisement of his rights.³ Further, Mathews did not allege, and there is nothing in the record to suggest, that the outcome of his preliminary inquiry was predetermined in any way.

²408 U.S. 471, 488-89 (1972).

³See Morrissey, 408 U.S. at 488-89; Anaya v. State, 96 Nev. 119, 606 P.2d 156 (1980).

Consequently, the district court did not err in denying Mathews relief on this claim.

Second, Mathews claimed that his due process rights were violated due to the flawed notice he received concerning the location of his preliminary inquiry. Specifically, the notice provided that the preliminary inquiry was to be conducted at the "CCDC" (Clark County Detention Center); Mathews mailed the notice to a potential witness, who mistakenly believed that "CCDC" referred to the Clark County District Court, and was therefore not present to testify. We conclude that this claim is similarly without merit. Although Mathews had the right to present witnesses at his preliminary inquiry,⁴ it was his responsibility to procure their attendance.⁵ Mathews therefore failed to establish that his due process rights were violated in this instance, and we affirm the order of the district court with respect to this claim.

Third, Mathews alleged that his due process rights were violated when he was not provided with counsel at his preliminary inquiry. Mathews mistakenly believed that counsel would be appointed to represent him at his preliminary inquiry, when in fact it was his responsibility to retain counsel.⁶ Mathews was represented by counsel in the final parole revocation hearing, however. Mathews' lack of counsel at his preliminary inquiry was irrelevant after his full revocation hearing

⁴See id.

⁵See NRS 213.1513(2)(c).

⁶See NRS 213.1513(2)(b).

was conducted.⁷ Consequently, the district court did not err in denying Mathews relief on this claim.

Fourth, Mathews contended that his due process rights were violated when he was not given advance notice of his final parole revocation hearing, and as a result was unable to have a witness testify on his behalf. Specifically, Mathews wanted his father's nurse to testify at the revocation hearing. Even assuming, without deciding, that Mathews' due process right to receive advance notice of the hearing was violated, he failed to establish that he was prejudiced by the lack of notice. Mathews did not provide any information whatsoever concerning the expected testimony of his father's nurse; as such, he failed to demonstrate that the outcome of his final parole revocation hearing would have been altered if he had received advance notice. Thus, we affirm the order of the district court with respect to this claim.


Lastly, Mathews alleged that his due process rights were violated during the parole revocation hearing because the room was configured poorly, and one of the parole commissioners was making the revocation hearing "difficult." We conclude that Mathews failed to demonstrate how his fundamental due process rights were infringed with respect to these claims,⁸ and we therefore affirm the order of the district court.


⁷See Barton v. Malley, 626 F.2d 151 (10th Cir. 1980); Collins v. Turner, 599 F.2d 657 (5th Cir. 1979); Mayer v. Moeykens, 494 F.2d 855 (2d Cir. 1974).


⁸See Morrissey, 408 U.S. at 488-89; Anaya, 96 Nev. 119, 606 P.2d 156.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Mathews is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Jackie Glass, District Judge
Julian A. Mathews
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁰We have reviewed all documents that Mathews has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that Mathews has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.