

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM CATO SELLS, JR.,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL AND DIRECTOR, NEVADA
DEPARTMENT OF CORRECTIONS,
JACKIE CRAWFORD,
Respondents.

No. 42706

FILED

AUG 19 2004

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 William Sells, Jr.'s post-conviction petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

On April 1, 2003, Sells filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Sells' petition raised claims concerning a prison disciplinary hearing in which he was found guilty of tampering with a locking device. As a result, Sells received 180 days in disciplinary segregation and forfeited 90 days of statutory good time credit.¹ The State opposed Sells' petition. On December 30, 2003, the district court denied the petition, and this appeal followed.²

¹To the extent that Sells objected to his placement in disciplinary segregation, we note that such a challenge is not cognizable in a petition for a writ of habeas corpus. See Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984) (providing that this court has "repeatedly held that a petition for writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof").

²We note that the district court improperly dismissed Sells' petition on the basis of its untimeliness. NRS 34.726 does not apply to a petition

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When a prison disciplinary hearing results in the loss of statutory good time credits, the United States Supreme Court has held that minimal due process rights entitle a prisoner to: (1) advance written notice of the charges, (2) a qualified opportunity to call witnesses and present evidence, and (3) a written statement by the fact finders of the evidence relied upon.³ In addition, some evidence must support the disciplinary hearing officer's decision.⁴

First, Sells claimed that his due process rights were violated when he was not allowed to call the institutional locksmith as a witness. Sells argued that the locksmith would have provided testimony as to what comprises "tampering" with a locking device. We conclude that this claim is without merit. Prison officials have wide discretion in allowing inmates to call a witness, and may refuse to do so for reasons of irrelevance, lack of necessity, or safety.⁵ Here, Sells' charge was not particularly complex, and there was no need for an expert in locking devices to provide a definition of "tampering." Sells stated to the disciplinary hearing officer, "I was in the shower over an hour. On the lock is a ring. I was just playing with it." Correctional Officer Crandall stated that she observed Sells tampering with the knob of the lock both before and after his wrists were restrained.

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for a writ of habeas corpus that challenges a prison disciplinary hearing. See NRS 34.720; 34.726. The district court reached the correct result, however, in dismissing Sells' petition.

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

⁴Superintendent v. Hill, 472 U.S. 445, 455 (1985); see also Nevada Code of Penal Discipline § II(C)(4) ("[i]t is only necessary that a finding of guilt be based on some evidence, regardless of the amount").

⁵Wolff, 418 U.S. at 566.

Sells failed to demonstrate how testimony from the prison locksmith would have been relevant or necessary to his case. As such, Sells was not entitled to relief on this claim.

Second, Sells contended that Correctional Officer Crandall committed perjury when she provided testimony during his hearing. Specifically, Sells claimed that Crandall perjured herself when she stated that the shower locks have a screw cap, which can be easily unscrewed and the lock compromised. We conclude that Sells failed to adequately establish that Crandall's testimony was untrue. Further, testimony concerning the precise method by which a shower lock can be picked was not necessary to resolve the case. Consequently, Sells failed to demonstrate that he was entitled to relief on this claim.

Third, Sells alleged that he was charged with tampering with a locking device in retaliation for his exercise of his constitutional rights.⁶ However, based on Sells' own testimony, as well as the testimony of Officer Crandall, there is some evidence to support the disciplinary hearing officer's conclusion that Sells was guilty of the offense.⁷ Therefore, he failed to establish that the charge was brought against him for an improper purpose.

Lastly, Sells claimed that the forfeiture of his statutory good time credits was done in violation of Nevada statutory law. Sells argued that although NRS 209.451(3) states that the forfeiture of statutory credits may only be made by the Director, the signature on the "Certification of Director's Action" is not that of the Director. This claim is

⁶Specifically, Sells exercised his right against self-incrimination when asked by prison officials to divulge the names of prisoners involved in the unauthorized duplication of prison keys.


⁷See Hill, 472 U.S. at 455.


without merit; the Director may delegate his powers and duties.⁸ Thus, Sells did not demonstrate that the forfeiture of his statutory credits violated Nevada law.

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

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Steve L. Dobrescu, District Judge
William Cato Sells, Jr.
Attorney General Brian Sandoval/Ely
White Pine County Clerk

⁸See NRS 209.132.

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