IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER ANTHONY JONES,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K. MCDANIEL,
Respondent.

No. 42707

FILED

AUG 23 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant Christopher Jones' post-conviction petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

On September 26, 2002, Jones filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Jones' petition raised claims concerning two prison disciplinary hearings in which he received a total of 360 days of disciplinary segregation, 60 days' loss of phone privileges, 60 days' loss of canteen privileges, and forfeiture of 89 days of statutory good time credit.[1] The State opposed the petition,

[1]To the extent that Jones challenged his placement in disciplinary segregation and the loss of privileges, we note that such challenges are 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").

and Jones filed a reply. On December 4, 2003, the district court denied Jones' petition. This appeal followed.

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.[2] In addition, some evidence must support the disciplinary hearing officer's decision.[3]

Jones first contended that the documents relied upon by the disciplinary hearing officer to find him guilty of the charges were obtained illegally. Jones claimed that prison officials did not follow the applicable administrative regulations before censoring his mail. Because the documents were improperly acquired, Jones argued, they should have been suppressed at his disciplinary hearing.

A review of the record on appeal reveals that this claim is without merit. We initially note that Jones failed to demonstrate that prison officials violated administrative regulations in opening his incoming mail.[4] Further, even assuming prison officials violated pertinent

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[2]Wolff v. McDonnell, 418 U.S. 539, 563-69 (1974).

[3]Superintendent 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").

[4]See Administrative Regulations Manual, A.R. 750.

regulations concerning censorship of prisoner mail, there is no authority to support Jones' proposition that suppression of this evidence was warranted in the context of an administrative disciplinary hearing.[5] Consequently, the district court did not err in denying this claim.

Second, Jones alleged that his notice of charges was inadequate. Jones specifically argued that he was not provided sufficient notice concerning his alleged violation of MJ-29 (charging or collecting a fee or favor for services as a legal assistant), MJ-31 (unauthorized use of telephone or mail), and G-14 (failure to follow posted rules and regulations). The notice of charges Jones received stated, "On April 22, 2002, investigation was completed confirming Christopher Jones . . . is using the United States Postal Service via Nevada State Bank to transfer funds to other inmates using a [fictitious] business name and location." We conclude that the notice of charges contained sufficient facts to inform Jones of the charges and allow him to marshal the facts and prepare a defense.[6] Further, despite Jones' arguments to the contrary, there is no due process requirement that a prisoner receive copies of documentary evidence relied upon by the disciplinary hearing officer in advance of the

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[5]Cf. NRS 169.025; 179.085 (providing that a motion to suppress illegally obtained evidence may be filed in a criminal proceeding); see Nevada Code of Penal Discipline § I(C) ("[p]rison disciplinary proceedings, as described in this Code, are an administrative process, unrelated to and not bound by the rules for criminal procedure").

[6]See Wolff, 418 U.S. at 564.

hearing.[7] As such, we affirm the order of the district court with respect to this claim.

Third, Jones argued that he was denied due process at his disciplinary hearing because he was unable to view the documentary evidence relied upon by the hearing officer, in violation of Nevada Code of Penal Discipline § II(C)(3)(b). The summary of Jones' hearing states that the disciplinary hearing officer relied on Sgt. Cunningham's report. Even if Jones was not allowed to examine Cunningham's written report, he failed to demonstrate that this violated his basic due process rights.[8] Moreover, the provisions of the Nevada Code of Penal Discipline do not "create any right or interest in life, liberty or property, or establish the basis for any cause of action against the State of Nevada."[9] Therefore, we affirm the order of the district court with respect to this claim.

Fourth, Jones claimed that he was denied due process at his disciplinary hearing because he was unable to call Sgt. Cunningham as a witness. 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.[10] Here, the disciplinary hearing officer refused to call Sgt. Cunningham based on the belief that his testimony would be

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[7]Cf. id. at 563 (holding that an inmate must receive advance written notice of the alleged violation); Nevada Code of Penal Discipline § II(B)(2).

[8]See Wolff, 418 U.S. at 563-69.

[9]See Nevada Code of Penal Discipline § I(D).

[10]Wolff, 418 U.S. at 566.

redundant in light of his written report. We conclude that prison officials did not abuse their discretion in refusing to call Sgt. Cunningham, and the district court did not err in denying this claim.

Fifth, Jones contended that the disciplinary hearing officer was biased. Jones alleged that Officer Chambliss stated that he "had no choice" in finding Jones guilty of the offenses; further, Chambliss participated in a related prison disciplinary hearing. We conclude that Jones did not establish that Officer Chambliss presented "a hazard of arbitrary decisionmaking."[11] Chambliss' comment, standing alone, does not demonstrate that Chambliss was biased. Further, a disciplinary hearing officer is not necessarily prejudiced because he participated in a related case.[12] As such, we affirm the order of the district court with respect to this claim.[13]

Sixth, Jones alleged that the written statement of the evidence relied upon by the disciplinary hearing officer to find him guilty of MJ-29

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[11]Id. at 571.

[12]See Nevada Code of Penal Discipline § I(E)(15).

[13]To the extent that Jones challenged the use of a single disciplinary hearing officer rather than a three-person disciplinary hearing committee, we conclude that this claim is similarly meritless. Administrative Directive 8-98 modified the Code of Penal Discipline and replaced the disciplinary committee with a disciplinary hearing officer. The directive stated that the modification was "to increase the accountability for the disciplinary process." Nothing in the modification presents such a "hazard of arbitrary decisionmaking that it should be held violative of due process of law." Wolff, 418 U.S. at 571.

(charging or collecting a fee for services as a legal assistant) and MJ-31 (unauthorized use of telephone or mail) was insufficient. However, the summary of disciplinary proceedings provided that "Sgt. Cunningham's report is clear that C. Jones . . . did use Postal Service and Nevada State Bank to transfer funds to other inmate." We conclude that this statement of evidence relied upon is sufficient to satisfy due process requirements.[14] Consequently, the district court did not err in denying this claim.

Lastly, Jones claimed that there was insufficient evidence to find him guilty of MJ-29 (charging or collecting a fee or favors for services as a legal assistant). Jones contended that he was merely arranging funds to be sent to his co-plaintiff in order to purchase typewriter ribbons for use in a class action matter. We must determine whether there is any evidence in the record to support the disciplinary hearing officer's conclusion that Jones violated MJ-29.[15] On February 14, 2002, Inmate Services notified the Warden that Jones was transferring funds to another inmate through the Nevada State Bank. Sgt. Cunningham initiated an investigation, and his report concluded that Jones transferred money to inmate Rodriguez. Further, Jones admitted that Rodriguez provided typing services. We therefore conclude that there is some evidence to support the hearing officer's finding that Jones committed the above violation, and the district court did not err in denying this claim.

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[14]See id. at 564-65.

[15]See Hill, 472 U.S. at 455-56.

Having reviewed the record on appeal and for the reasons seat forth above, we conclude that Jones is not entitled to relief and that briefing and oral argument are unwarranted.[16] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[17]

_____, J.
Rose

_____, J.
Maupin

_____, J.
Douglas

cc: Hon. Dan L. Papez, District Judge
Christopher Anthony Jones
Attorney General Brian Sandoval/Ely
White Pine County Clerk

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

[17]We have reviewed all documents that Jones 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 Jones 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.