IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK J. TROWBRIDGE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47672

FILED

DEC 05 2006

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's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stephen L. Huffaker, Judge.

On January 9, 2006, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. In his petition, appellant challenged a prison disciplinary hearing in which he received 120 days disciplinary segregation and forfeiture of 130 good/work time credits.[1] Appellant also contended that his due process rights were violated when the parole board rescinded his grant of parole. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On September 6, 2006, the district court denied appellant's petition. This appeal followed.

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[1]To the extent that appellant challenged 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 [a] writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof").

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]

First, appellant claimed that his due process rights were violated and he was not properly charged with violating MJ-10 (gang activities) because the charge was not brought by the Associate Warden of Operations (AWO) as set forth in the administrative regulations. This claim is belied by the record.[4] The notice of charges was signed by the AWO as the shift supervisor, and his signature denoted review and approval of the completed notice. Accordingly, we conclude the district court did not err in denying this claim.

Second, appellant claimed that his due process rights were violated because no evidence supported the conviction. This claim is belied by the record.[5] The record on appeal indicates that the disciplinary

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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 Nev. Dept. of Corrections AR 707.04 (1.3.6.1) (providing that it is only necessary that the disciplinary committee's finding of guilt be based upon some evidence, regardless of the amount).

[4]See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that a petitioner is not entitled to an evidentiary hearing on claims that are belied by the record).

[5]See id.

board relied upon a staff report and inmate testimony when finding appellant guilty of violating MJ-10 (gang activities) and MJ-28 (organizing, encouraging or participating in a work stoppage or other disruptive demonstration or practice). The report filed by investigator Klein stated that a prison unit had to be placed on lockdown after a large grouping of inmates gathered on the basketball court during a disagreement over which group should be allowed to play basketball. Klein stated that during the investigation, several inmates were interviewed and it was established that appellant was one of the instigators in the incident. The notice of charges stated that appellant was a validated member of the Aryan Warriors within the Nevada Department of Corrections. We conclude that there was some evidence to support the hearing officer's finding that appellant was guilty of violating MJ-10 and MJ-28, and the district court did not err in denying this claim.

Next, appellant claimed that his due process rights were violated when the parole board rescinded his grant of parole. On July 8, 2005, appellant received notice that he would be paroled to a hold/detainer when eligible. In his petition, appellant asserted that his grant of parole was to be effective November 3, 2005. Prior to November 2005, however, appellant was found guilty of violating MJ-10 and MJ-28 as stated above, and his parole was rescinded.

Parole is an act of grace by the State.[6] No protected liberty interest was encroached upon by the parole board's rescission of appellant's grant of parole because he never received the benefit

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[6]NRS 213.10705; see also Severance v. Armstrong, 96 Nev. 836, 620 P.2d 369 (1980).

promised—he was never paroled to his final sentence.[7] Accordingly, we conclude that the district court did not err in denying this claim.

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.[8] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

/ Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Chief Judge, Eighth Judicial District
Hon. Stephen L. Huffaker, Senior Judge
Patrick J. Trowbridge
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[7]See Jago v. Van Curen, 454 U.S. 14, 17 (1981); Kelch v. Director, 107 Nev. 827, 830, 822 P.2d 1094, 1095 (1991).

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