

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD E. MITCHELL A/K/A  
DONALD E. MITCHELL, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54945

**FILED**

SEP 10 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

In his petition, appellant challenged the loss of statutory good time credits as the result of a prison disciplinary hearing in which he was found guilty of threats, abusive language, disobedience, and unauthorized trading, bartering or lending. The district court denied the petition, finding no due process violation had been proven.

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

---

<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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. Wolff v. McDonnell, 418 U.S. 539, 563-69 (1974). Minimal due process also requires an impartial decision maker. Id. at 571. Confrontation and cross-examination in prison disciplinary proceedings are not required because these procedures present "greater hazards to institutional interests." Id. at 567-68. In addition, some evidence must support the disciplinary hearing officer's decision. Superintendent v. Hill, 472 U.S. 445, 455-56 (1985); see also N.D.O.C. A.R. 707.1(2)(B)(3)(e)(11)(a). In reviewing a claim based on insufficiency of the evidence, this court must determine whether there is any evidence in the record to support the disciplinary hearing officer's conclusion. Hill, 472 U.S. at 455-56.

Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate the violation of any protected due process right for the following reasons: (1) he had no right to present the charging officer as a witness because the right to cross-examination and confrontation does not extend to prison disciplinary proceedings, (2) he received a written statement of the evidence relied upon, (3) hearsay evidence is not prohibited at these hearings, (4) the proceeding was presided over by an impartial hearing officer, and (5) some evidence supported the decision of the disciplinary hearing officer. An institutional appeal is not a protected due process right. Therefore, we affirm the denial of these claims.

However, we cannot affirm the district court's decision to deny appellant's claim that he was denied the right to present three inmate witnesses—inmates Praytor, Anthony, and Collins. Although the

summary of the disciplinary hearing indicates that appellant was asked and declined to present witnesses, appellant claimed that this information was false and that the audio recording of the proceeding would support his assertion. It does not appear that the audio recording was presented for the court's review, and a factual dispute was left unresolved by the district court. Although appellant had only a qualified right to present witnesses, if appellant had requested witnesses and the disciplinary hearing officer denied that request, prison officials at some point, on the record or at a later hearing, should state their reasons for refusing to call a witness. Ponte v. Real, 471 U.S. 491, 497 (1985). Therefore, we reverse the denial of this claim and remand this for further proceedings in the district court. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Jackie Glass, District Judge  
Donald E. Mitchell  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk