

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY JOSEPH FESTA,  
Appellant,  
vs.  
BRIAN WILLIAMS, WARDEN; OMD;  
AND THE STATE OF NEVADA,  
Respondents.

No. 74895-COA

FILED

NOV 06 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

Anthony Joseph Festa appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

In his petition, filed on July 18, 2017, Festa challenged a prison disciplinary hearing that resulted in the loss of statutory good time credits. 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-finder of the evidence relied upon. *Wolff v. McDonnell*, 418 U.S. 539, 563-69 (1974). Due process also requires an impartial decision maker. *Id.* at 570-71. In addition, some evidence must support the disciplinary hearing officer's decision. *Superintendent v. Hill*, 472 U.S. 445, 455 (1985).

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<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

First, Festa claimed that he did not receive timely notice of the disciplinary charges against him. Festa's claim lacked merit. Prison officials must provide notice of the disciplinary charges an inmate faces at least 24 hours before the disciplinary hearing. *Wolff*, 418 U.S. at 564. The evidence submitted in this matter demonstrated Festa received the notice of charges on December 22, 2016, and a second notice on February 18, 2017, well before the disciplinary hearing was conducted on March 8, 2017.<sup>2</sup> Accordingly, Festa received the notice of charges at least 24 hours prior to the hearing. Therefore, the district court did not err by denying this claim.


Second, Festa claimed a prison official involved in deciding his disciplinary hearing was not an impartial decision maker. Festa asserted he filed a Prison Rape Elimination Act claim against Officer Gordon and, for that reason, Officer Gordon should not have acted as a hearing officer for the disciplinary proceeding. Festa's claim lacked merit. The record before this court demonstrates that Officer Gordon did not act as a hearing officer for the disciplinary proceedings, but rather that different prison officials performed that role for Festa's initial inquiry and disciplinary hearing. Festa failed to demonstrate Officer Gordon improperly participated in the prison disciplinary proceedings and, therefore, Festa failed to demonstrate the hearing was not heard by an impartial decision

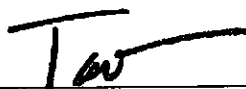
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<sup>2</sup>Festa also asserted the notice of charges was not provided in accordance with the deadlines contained in the Nevada Department of Corrections' (NDOC) administrative regulations. However, so long as the minimum due process requirements we previously listed are met, the NDOC's failure to comply with its internal procedures is not a due process violation. *See Walker v. Sumner*, 14 F.3d 1415, 1419-20 (9th Cir. 1994), *abrogated in part on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995). Therefore, Festa is not entitled to relief in this regard.

maker. Therefore, we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Linda Marie Bell, Chief Judge  
Anthony Joseph Festa  
Attorney General/Carson City  
Attorney General/Las Vegas  
Eighth District Court Clerk