

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL GEORGE SIMS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37493

FILED

JUN 13 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea,¹ of one count of battery by a prisoner in lawful custody. The district court sentenced appellant to serve 28 to 72 months in prison, to be served consecutively to appellant's prior sentence in another case.

Appellant first contends that he was deprived of his constitutional right to have legal counsel at his prison disciplinary hearing. Appellant, however, fails to explain how this has anything to do with his judgment of conviction. He offers no cogent argument or authority for the proposition that the denial of counsel at a prison disciplinary hearing invalidates a subsequent judgment of conviction based on the conduct considered at the disciplinary hearing. Accordingly, we need not consider this contention.²

Moreover, even assuming that this contention was somehow relevant to the instant appeal, appellant's basic

¹Appellant pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

²See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

premise lacks merit. There is no Sixth Amendment right to the assistance of counsel in a prison disciplinary hearing.³ We therefore conclude that appellant's contention lacks merit.

Appellant next contends that the district court abused its discretion by ordering appellant to pay restitution to the victim in the amount of \$80.00—the cost of replacing the victim's uniform. In particular, appellant claims that, at his arraignment, the Division of Parole and Probation representative advised the court that the Division would recommend restitution only if the prison disciplinary board recommended it and that the district court judge stated that he would impose restitution only if the Division recommended it. Appellant argues that the district court then abused its discretion at sentencing by ordering restitution because the disciplinary board did not recommend restitution and the Division's recommendation was based on an interview with the victim. We conclude that appellant's contention lacks merit.

Appellant was fully informed at his arraignment that there was a possibility of restitution as a result of his nolo plea. Contrary to appellant's representations, the Division did not inform the court that it would recommend restitution only if the disciplinary board recommended it. Rather, the Division informed the court that it had been the Division's experience that the disciplinary board considers restitution and that the Division "usually" recommends whatever amount the board determines. Moreover, there is nothing improper about the Division contacting the victim to inquire about restitution and then making a recommendation based on that information. There also is nothing in the record to support

³Baxter v. Palmigiano, 425 U.S. 308, 314-15 (1976); Bostic v. Carlson, 884 F.2d 1267, 1274 (9th Cir. 1989).

appellant's assertion that the disciplinary board considered and rejected the victim's request for restitution. Finally, the district court clearly informed appellant that there was "every possibility" that the court would order restitution and that that decision was up to the court.

Having considered appellant's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Young J.
Young

Leavitt J.
Leavitt

Becker J.
Becker

cc: Hon. Dan L. Papez, District Judge
Attorney General
Kevin R. Briggs, Deputy Attorney General
White Pine County District Attorney
Lockie & Macfarlan, Ltd.
White Pine County Clerk