


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RENE GEOVANY ALFARO,
Appellant,
vs.
CALVIN JOHNSON, WARDEN,
Respondent.

No. 86579-COA

FILED
FEB 15 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Rene Geovany Alfaro appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 1, 2023. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Alfaro argues the district court erred by denying his petition without conducting an evidentiary hearing. In his petition, Alfaro claimed the disciplinary proceedings, which resulted in his forfeiture of 20 days of statutory good time credits, violated his due process rights.

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. *Wolff v. McDonnell*, 418 U.S. 539, 563-69 (1974). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Alfaro claimed that insufficient evidence supported the disciplinary hearing officer's finding of guilt because video and photo evidence could have been presented which contradicted the facts presented in the notice of charges (NOC). Alfaro appeared to claim this evidence would demonstrate that he committed no violation because he was already in wrist restraints before the Correctional Emergency Response Team (CERT) came to extract him. Some evidence must support the disciplinary hearing officer's decision. 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. *Superintendent v. Hill*, 472 U.S. 445, 455-56 (1985).

The NOC, which was served on Alfaro prior to the disciplinary hearing, alleged that he violated MJ28 (organizing, encouraging, or participating in a work stoppage or other disruptive demonstration or practice) by telling Senior Corrections Officer Lima that he would not be "cuffing up" and would need to be extracted from the yard cage. Officer Lima notified Sgt. Sanchez and Lt. Zelaya, who spoke with Alfaro who then "still did not submit to wrist restraints." Both Officer Lima and Lt. Zelaya testified at the disciplinary hearing and the disciplinary hearing officer relied on the "officers [sic] written report and observations" in support of his finding of guilt.

The district court found that there was some evidence to support the finding that Alfaro committed the offense by failing to comply with officer commands. This finding is supported by substantial evidence. In addition, Alfaro failed to allege specific facts in his petition demonstrating that he requested evidence for presentation at the disciplinary hearing or that the evidence would contradict the officer's

statements. Therefore, we conclude the district court did not err in denying this claim without conducting an evidentiary hearing.

Next, Alfaro claimed that the disciplinary hearing officer was biased because he allegedly stated he would take the corrections officers' side "due to oath taken" and because he found Alfaro guilty even though the NOC contained errors compared to the video and audio evidence. Due process requires an impartial decision maker. *Wolff*, 418 U.S. at 571. Alfaro failed to allege specific facts demonstrating that the disciplinary hearing officer was not impartial. See AR 707.1(2)(D) (describing circumstances when an NDOC employee involved in the disciplinary process *shall* be considered impartial). Therefore, we conclude the district court did not err in denying this claim without conducting an evidentiary hearing.

On appeal, Alfaro argues that, pursuant to *Medlar v. Neven*, No. 58185, 2011 WL 6141437 (Nev. Dec. 7, 2011) (Order Affirming in Part, Reversing in Part and Remanding), the district court erred by failing to review the record and that the State is required to provide the district court with a copy of the record for its review. In *Medlar*, the Nevada Supreme Court determined that a court reviewing prison disciplinary hearings is not required to review the entire record but reversed and remanded for the district court to consider the transcript or audio recording of the prison disciplinary proceedings because the findings form had contradictory information about whether Medlar made a statement of admission. *Medlar*, No. 58185, 2011 WL 6141437, at *2. Here, the findings form contains no such unresolved factual dispute. Accordingly, *Medlar* is distinguishable. Therefore, we conclude Alfaro fails to demonstrate he is entitled to relief based on this claim.

Alfaro also argues on appeal that (1) the disciplinary hearing officer failed to give an explanation regarding why the evidence used was credible, (2) Alfaro requested evidence and witnesses but without explanation, they were not produced, (3) the NOC was served less than an hour prior to the preliminary hearing, and (4) that corrections staff caused the work stoppage by choosing to wait for CERT. Alfaro did not raise these claims in his petition below, and we need not consider them on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Erika D. Ballou, District Judge
Rene Geovany Alfaro
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk