

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERNANDO RODRIGUEZ,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,
Respondent.

No. 41681

FILED

MAR 23 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant Fernando Rodriguez's post-conviction petition for a writ of habeas corpus.

On September 26, 2002, Rodriguez filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Rodriguez's petition raised claims concerning a prison disciplinary hearing in which he received 90 days in disciplinary segregation, 60 days loss of phone privileges, 30 days loss of canteen privileges, and forfeiture of 119 statutory good time credits.¹ The State opposed the petition. Rodriguez filed a reply and the State filed a supplemental answer. On May 19, 2003, the district court denied Rodriguez's petition. This appeal followed.

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

¹To the extent that Rodriguez challenged his placement in disciplinary segregation and the loss of privileges, we note that such challenges are 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").

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, Rodriguez claimed that the notice he received was inadequate because he was not provided with copies of the documentary evidence relied upon by the disciplinary hearing officer. Rodriguez alleged that as a consequence, he was unable to prepare a defense. We conclude that the district court did not err in determining that Rodriguez received adequate notice. The notice of charges contained sufficient facts to inform Rodriguez of the charges and allow him to marshal the facts and prepare a defense.⁴ Further, there is no due process requirement that a prisoner receive copies of documentary evidence relied upon by the disciplinary hearing officer in advance of the hearing.⁵ Therefore, we affirm the order of the district court with respect to this claim.

Second, Rodriguez contended that his due process rights were violated when the reporting officer, rather than the shift supervisor,

²Wolff v. McDonnell, 418 U.S. 539, 563-69 (1974).

³Superintendent v. Hill, 472 U.S. 445, 455 (1985); see also Nevada Code of Penal Discipline § II(C)(4) ("[i]t is only necessary that a finding of guilt be based on some evidence, regardless of the amount).

⁴See Wolff, 418 U.S. at 564.

⁵Cf. id. at 563 (holding that an inmate must receive advance written notice of the alleged violation); Nevada Code of Penal Discipline § II(B)(2). Rodriguez's reliance on the Nevada Code of Penal Discipline § II(C)(3)(b) to support his claim is inappropriate. That section provides that during the hearing the inmate generally "should receive copies of any evidentiary documents which the committee considers." This provision of the Code does not support Rodriguez's allegation that he should have received copies of documentary evidence in advance of the hearing.

completed the notice of charges. A review of the notice of charges reveals that the shift supervisor signed the document. This complies with the requirements of Nevada Code of Penal Discipline § II(A)(2). Moreover, due process does not require that a shift supervisor complete the notice of charges. Therefore, the district court did not err in denying this claim.

Third, Rodriguez alleged that he was not able to examine the documentary evidence at the hearing, in violation of the Nevada Code of Penal Discipline § II(C)(3)(b). The summary of Rodriguez's hearing states that the hearing officer relied upon a written report, which found that Rodriguez "was receiving monies from Inmate Jones . . . via a fictitious business for legal assistance." Even if Rodriguez was not allowed to examine the written report upon which the hearing officer relied, he failed to demonstrate that this violated his basic due process rights.⁶ Moreover, the provisions of the Nevada Code of Penal Discipline do not "create any right or interest in life, liberty or property, or establish the basis for any cause of action against the State of Nevada . . . or [its] employees."⁷ Consequently, the district court did not err in denying this claim.

Fourth, Rodriguez claimed that there was insufficient evidence to find him guilty of MJ-29 (charging or collecting a fee or favors for services as a counsel-substitute, legal assistant or "writ writer"), or MJ-31 (unauthorized use of telephone or mail). We must determine whether there is any evidence in the record to support the disciplinary hearing officer's conclusion.⁸ According to the summary of Rodriguez's hearing, Rodriguez stated, "Inmate Jones started the legal cases. I typed

⁶See Wolff, 418 U.S. at 563-69. The record reveals that the documents were reviewed in camera.

⁷See Nevada Code of Penal Discipline § I(D).

⁸Hill, 472 US at 455-56.

them up. He sent me monies on his own. I didn't ask him for this." Additionally, inmate Jones stated, "I sent him monies. He was just helping with typing." We conclude that there is some evidence to support the hearing officer's finding that Rodriguez committed the above violations, and the district court did not err in denying this claim.

Fifth, Rodriguez contended that he could not be guilty of G-14 (failure to follow posted rules and regulations) because there was no evidence presented at the disciplinary hearing that the rules he allegedly violated were actually posted. The Nevada Code of Penal Discipline states that "[u]pon entry to the [Nevada Department of Prisons], all inmates should be issued, and required to sign for, a copy of the Code."⁹ Because the rules Rodriguez violated were contained in the Code, we conclude that there was some evidence to support the hearing officer's finding that Rodriguez failed to follow posted rules and regulations.¹⁰ Therefore, we affirm the order of the district court with respect to this claim.

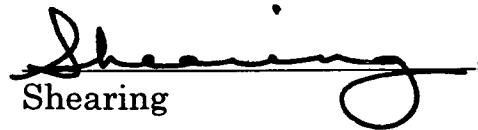
Lastly, Rodriguez claimed that there was no officer testimony presented at the hearing. There is no requirement that officer testimony be elicited at the disciplinary hearing, however. Therefore, the district court did not err in denying this claim.

⁹Section I(C).


¹⁰Rodriguez claimed that in order to be "posted," a rule or regulation must be written on the walls of the institution. Although we recognize that a "posted" rule is typically displayed in a place of public view, this does not alter our conclusion that some evidence supported the disciplinary hearing officer's determination that Rodriguez committed a violation of the rule. See Hill, 472 U.S. at 457 (noting that in order to meet constitutional requirements, the evidence does not need to logically rule out "any conclusion but the one reached by the disciplinary board").

Having reviewed the record on appeal and for the reasons set forth above, we conclude that Rodriguez is not entitled to relief and that briefing and oral argument are unwarranted.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹²

 C.J.
Shearing

 J.
Rose

 J.
Maupin

cc: Hon. Steve L. Dobrescu, District Judge
Fernando Rodriguez
Attorney General Brian Sandoval/Carson City
White Pine County Clerk

¹¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹²We have reviewed all documents that Rodriguez has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that Rodriguez has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.