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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1746**

Charles R. Williams, petitioner,
Appellant,

vs.

Joan Fabian, Commissioner of Corrections,
Respondent.

**Filed April 27, 2010
Affirmed
Minge, Judge**

Washington County District Court
File No. 82-CV-09-1290

Charles R. Williams, Stillwater, MN (pro se appellant)

Lori Swanson, Attorney General, Kelly S. Kemp, Assistant Attorney General, St. Paul,
MN (for respondent)

Considered and decided by Minge, Presiding Judge; Schellhas, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

MINGE, Judge

Appellant-inmate challenges the action by respondent-Department of Corrections
(DOC) extending his supervised-release date, arguing that DOC violated his right to

procedural due process because it did not allow him to call witnesses at the hearing in his defense or to review certain evidence. We affirm.

FACTS

This appeal stems from the district court's denial of a writ of habeas corpus under Minn. Stat. ch. 589 (2008). Appellant Charles Williams was an inmate at MCF-Stillwater when a hearing officer and the warden found him guilty of violating several DOC rules, for which he lost 120 days of good time, effectively extending his incarceration. Williams argues that the disciplinary hearing violated his rights to procedural due process.

Williams was attacked by another inmate. His assailant told DOC staff that he assaulted Williams in retaliation for an incident the previous day in which Williams had forced the other inmate to engage in oral sex. Although Williams initially denied the oral-sex incident, Williams claimed it was consensual after learning that the incident was recorded by video camera.

A hearing was held on the following violations of DOC's Offender Discipline Regulations (ODRs): lying and misrepresentation, threatening others, disorderly conduct, sexual behavior, and assault upon an inmate.¹ Williams was informed of these charges in writing before the hearing. In the notice-of-rights and witness-request form, Williams requested that two inmates appear and testify at his hearing. Williams did not request that a correctional officer appear and testify.

¹ The assault-upon-an-inmate charge concerned the forced oral sex, not the fight between the other inmate and Williams the next day.

At the disciplinary hearing, Williams was present and indicated he was ready to proceed. Williams pleaded guilty to the lying-and-misrepresentation charge, but pled not guilty to all other charges. The hearing officer admitted into evidence the video, phone records, and incident reports. The reports were written by a DOC investigator and were based on the investigator's interviews with both inmates and also his review of the evidence. The reports were consistent with the video and other evidence. The investigator testified at the hearing. Williams admitted having oral sex but claimed it was consensual. Williams argued that the other inmate said that Williams raped him and that the other inmate attacked Williams because he wanted to be transferred to another prison. When the hearing officer questioned Williams about the two inmates he wanted to call as witnesses, Williams explained that these witnesses had no direct knowledge of the sexual incident. Rather, they had merely heard from other parties that the other inmate wanted to be transferred. The hearing officer denied Williams's request for these two inmates to testify. The officer also denied Williams request to view the video, to review the results of a post-sexual-contact physical examination, and to call another corrections officer as a witness.

In a written decision in August 2008, the hearing officer found Williams guilty of all charges. The hearing officer specifically found that Williams's credibility was weak and that the video shows actions consistent with oral sex. Williams's penalty included 120 days of extended incarceration for the assault-upon-an-inmate charge. The warden upheld the hearing officer's determination.

In March 2009, Williams petitioned the district court for a writ of habeas corpus, asserting that he had been denied procedural due process. He challenged, among other things, the hearing officer's refusal to call his witnesses and prison officials' failure to allow him to see potentially exculpatory evidence before the hearing. The district court denied Williams's petition. This appeal followed.

DECISION

The issue is whether appellant's due process rights were violated during the hearing on his disciplinary violations. A writ of habeas corpus is a statutory remedy available "to obtain relief from imprisonment or restraint." Minn. Stat. § 589.01 (2008). "A writ of habeas corpus may also be used to raise claims involving fundamental constitutional rights and significant restraints on a defendant's liberty or to challenge the conditions of confinement." *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26-27 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006). This court gives "great weight to the [district] court's findings in considering a petition for a writ of habeas corpus and will uphold the findings if they are reasonably supported by the evidence." *Nw. v. LaFleur*, 583 N.W.2d 589, 591 (Minn. App. 1998), *review denied* (Minn. Nov. 17, 1998). Questions of law are reviewed de novo. *Id.* Because there is no factual dispute about the process Williams received, the only issue we face is the legal issue of whether that process satisfied procedural due process.

Both the United States Constitution and the Minnesota Constitution provide that no person may be deprived of "life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. A prisoner has a protected liberty

interest in avoiding an extension of his supervised-release date. *Johnson v. Fabian*, 735 N.W.2d 295, 302 (Minn. 2007). Therefore, a prisoner must receive procedural due process before the DOC can extend that date. *Carillo v. Fabian*, 701 N.W.2d 763, 773 (Minn. 2005).

In the context of a prison disciplinary hearing, the United States Supreme Court has stated:

Prison officials must have the necessary discretion to keep the hearing within reasonable limits and to refuse to call witnesses . . . , as well as to limit access to other inmates to collect statements or to compile other documentary evidence. Although we do not prescribe it, it would be useful for the [decision maker] to state its reason for refusing to call a witness, whether it be for irrelevance, lack of necessity, or the hazards presented in individual cases. Any less flexible rule appears untenable as a constitutional matter. . . . Many prison officials . . . are reluctant to extend the unqualified right to call witnesses; and in our view, they must have the necessary discretion. . . . [W]e stop short of imposing a more demanding rule with respect to witnesses and documentary evidence.

Wolff v. McDonnoll, 418 U.S. 539, 566-67, 94 S. Ct. 2963, 2980 (1974); accord *Hrbek v. Nix*, 12 F.3d 777, 780 (8th Cir. 1993).

Williams argues that he was denied procedural due process by not being allowed to (1) call two prison inmates and a correctional officer as witnesses; and (2) review the video and the report of a sexual-assault examination of the other inmate. We consider each argument in turn.

A. WITNESSES

Prisoners do not have an unqualified right to call witnesses in prison disciplinary proceedings. *Wolff*, 418 U.S. at 566-67, 94 S. Ct. at 2979-80. Prison officials can

properly refuse to hear witness testimony on a number of grounds, including keeping the hearing within reasonable limits. *Id.* By questioning Williams, the hearing officer learned that the two inmates Williams wanted to call as witnesses had no personal knowledge of the facts surrounding the sexual assault and that they would establish the other inmate's desire for a transfer. Their testimony would be hearsay within hearsay because they would testify as to what they had heard from others whose knowledge in turn was based on what they had heard from the inmate who complained of the oral sex. Excluding hearsay testimony falls well within the discretion of prison officials because of concerns of unreliable evidence. The transfer issue is of marginal relevance.

Williams also complains that the hearing officer refused to call these witnesses without providing a reason. Although the hearing officer's written decision did not state the reasons for refusing to call these witnesses, procedural due process does not require that the decision do so: "*Although we do not prescribe it, it would be useful for the [decision maker] to state its reason for refusing to call a witness.*"² *Wolff*, 418 U.S. at 566-67, 94 S. Ct. at 2980 (emphasis added). The fact that the hearing officer refused to allow the witnesses to testify only after learning that their testimony would be hearsay within hearsay implies the reason: hearsay concerns.

Regarding Williams's effort to call a correctional officer as a witness, the record indicates Williams did not list a correctional officer on his witness-request form. The

² Williams repeats this opinion-explanation argument, asserting that the hearing officer failed to state a reason for not allowing him to (1) call a correctional officer as a witness; and (2) review the sexual-assault report. These arguments fail for the same reason discussed above.

warden found that (1) as a part of preparing for a hearing, the DOC procedure required Williams to complete the form listing his witnesses; (2) Williams had been furnished the witness-list form; and (3) Williams's failure to list the corrections officer constituted a waiver of his right to call the officer. In sum, we conclude that Williams's right to procedural due process was not violated by not allowing him to call the two inmates or the correctional officer as witnesses.³

B. VIDEO

Williams claims that the refusal to grant him access to the video hindered his ability to defend himself, did not allow him to know the evidence against him, and violated his right to due process. But as with witnesses, prisoners do not have an unqualified right to review evidence. *Wolff*, 418 U.S. at 566-67, 94 S. Ct. at 2979-80. Prison officials can properly refuse to grant an offender access to evidence on a number of grounds, including institutional safety or correctional goals. *Id.* Allowing Williams to see the video recording would allow him to locate the surveillance camera, which could compromise the effectiveness of the surveillance system. This in turn could jeopardize the safety of others and compromise future investigations by allowing inmates to evade detection. *See id.* at 561-62, 566-67, 94 S. Ct. at 2977-80 (noting that the procedure for

³ Without citing any legal authority, Williams also argues that DOC Div. Directive 303.010 (Sep. 1, 2005) defines what satisfies procedural due process in a prison disciplinary hearing. From this premise, he argues that because the policy allegedly grants him the right to have witnesses testify at the hearing, his due process rights were violated by not being allowed to have these witnesses testify. But the policy does not grant him the right to have witnesses testify. Rather, it grants him the right to *request* witnesses. DOC Policy 303.010(G)(2)(d). A hearing officer can properly deny requests on a number of grounds, including those explained above. *See Wolff*, 418 U.S. at 566-67, 94 S. Ct. at 2980.

prison disciplinary proceedings can place the “safety [of] guards and inmates . . . at stake” and endanger “important aims of the correctional process”).⁴

Also, there is no claim that the video is exculpatory. Williams admits that he engaged in oral sex with the other inmate. The warden and prison hearing officer who viewed the video indicated that it shows activity consistent with oral sex. Williams does not claim that viewing the video would help him defend against the sexual-assault charge. No one claims it showed any assaultive or coercive behavior by Williams. On these facts, the significance of the video is minimal.⁵ In a prison setting, we will not reverse on this basis.

C. EXAM RESULTS

Williams claims that his right to procedural due process was violated by not allowing him to review the report of the sexual-assault examination of the other inmate.⁶ Because Williams admitted that the inmate performed oral sex on him, the report is cumulative. Moreover, the report does not conclude whether the oral sex was consensual, so the report’s relevance to the key issue—consent—is minimal. Since the report was

⁴ Williams also repeats his opinion-explanation argument, asserting that the hearing officer failed to state a reason for not allowing him to review the video. The argument fails for the same reason discussed above.

⁵ Because the video was viewed in camera, the decision makers saw the video. Thus, DOC Div. Directive 303.010(G)(2)(e), dealing with the *presentation* of evidence, was not violated.

⁶ The record shows that Williams now has the report. It was an exhibit submitted to the district court.

cumulative and of little relevance, it was not a violation of procedural due process to not initially provide it to Williams.⁷

Affirmed.

Dated:

⁷ Because the report was not relevant, policy 303.010 also did not require that Williams be allowed to review it. DOC Div. Directive 301.030.