

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**David Lawrence Dixon,
Petitioner Below, Petitioner**

vs.) **No. 11-1226** (Fayette County 11-C-98)

**David Ballard, Warden, Mt. Olive Correctional
Complex, Respondent Below, Respondent**

FILED

July 3, 2012

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner David Lawrence Dixon, pro se, appeals the circuit court's May 6, 2011, order summarily denying his petition for a writ of habeas corpus stemming from two prison disciplinary convictions for rule violations. The respondent warden, by John H. Boothroyd, his attorney, filed a response.

The Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds that a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Petitioner is an inmate at the Mt. Olive Correctional Complex. According to one of the exhibits petitioner filed with his petition for a writ of habeas corpus, he has had forty-two prior disciplinary proceedings, thirty of which resulted in a loss of privileges including thirteen instances where petitioner was charged with "Refusing an Order" or "Insubordination/Insolence."

In the two disciplinary proceedings that were the subject of his habeas petition, petitioner was charged with "Refusing an Order" and "Insubordination/ Insolence" arising out of an incident, where he refused a correctional officer's directive that he button his shirt. Corporal Stover testified at the disciplinary hearing that "[petitioner] was insubordinate because he continued on walking and told her he didn't have to button his shirt he just had to have his shirt on." Corporal Stover also testified that "[petitioner] appeared to try to intimidate her." Petitioner testified that "he did have his shirt unbuttoned" and that "he didn't need to button his shirt." Petitioner's contention at the hearing was that prison policy did not always require shirts to be buttoned, depending on where an inmate was going within the prison. Corporal Stover testified, however, that she did not see petitioner go to an area within the prison where it was not required for an inmate to have his shirt buttoned.

The hearing officer found petitioner guilty of both charges and sentenced him to sixty days in punitive segregation. Exhibits filed with petitioner's petition indicate that he appealed his

disciplinary convictions and exhausted his administrative remedies.

On April 20, 2011, petitioner filed his habeas petition in the circuit court together with an amended petition/index of exhibits.¹ The circuit court denied petitioner's petition in a one page order:

On April 20, 2011, the Petitioner, pro se, filed a Petition and Amended Petition seeking a writ of habeas corpus claiming procedural irregularities concerning a disciplinary hearing conducted by the authorities at Mount Olive Correctional Complex.^[2]

Upon careful review of the contents of the court file and in consideration of applicable law, the Court finds and concludes that the allegations contained within the aforementioned Petition and Amended Petition do not rise to the level of probable cause necessitating the issuance of the requested writ.

Accordingly, it is **ORDERED** that the relief sought be **DENIED** and said civil action **DISMISSED**.

On appeal, petitioner argues that the circuit court erred in not making detailed findings of fact and conclusions of law as required by West Virginia Code Section 53-4A-7(c). Petitioner argues that the circuit court also erred in failing to hold an evidentiary hearing when his petition raised allegations of cruel and unusual punishment and other cognizable grounds.

The respondent warden argues that West Virginia Code Section 53-4A-7(c) does not apply to petitioner's case because his petition challenges only disciplinary convictions for rule violations, not his criminal conviction or sentence. The respondent warden further argues that a remand for a more detailed order is not necessary when the issues on appeal can be resolved without the same. The respondent warden notes that petitioner failed to file an appendix or move for leave to proceed on a designated record as required by the Revised Rules. The respondent warden argues that if this Court considers the allegations contained in petitioner's appeal, those allegations, even if true, do

¹ Petitioner failed to file an appendix or move for leave to proceed on a designated record as required by the Revised Rules of Appellate Procedure. *See* Rev. R.A.P. 6(c) and (d). This Court obtained copies of petitioner's petition and amended petition/index of exhibits by contacting the office of the circuit clerk.

² The four claims petitioner made in his petition were: (1) that he was denied his due process rights at the disciplinary hearing; (2) that he was denied due process when a correctional officer served as the hearing officer; (3) that he was found guilty of two disciplinary violations in contravention of the Fourteenth Amendment to the United States Constitution; and (4) that his constitutionally protected rights were violated by a prison policy that did not conform to due process.

not show that the circuit court erred in its conclusion that no probable cause existed for the issuance of a writ. *See State ex rel. Pingley v. Coiner*, 155 W.Va. 591, 615, 186 S.E.2d 220, 233 (1972) (“Solitary confinement of a prison inmate of itself does not constitute cruel and unusual punishment.”).

The standard for this Court’s review of the circuit court’s order summarily denying petitioner’s habeas petition is set forth in Syllabus Point One, *Mathena v. Haines*, 219 W.Va. 417, 633 S.E.2d 771 (2006):

In reviewing challenges to the findings and conclusions of the circuit court in a habeas corpus action, we apply a three-prong standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard; the underlying factual findings under a clearly erroneous standard; and questions of law are subject to a *de novo* review.

The respondent warden is correct that a remand is not always necessary for more detailed findings of fact and conclusions of law. *See Ward v. Cliver*, 212 W.Va. 653, 656, 575 S.E.2d 263, 266 (2002) (concluding that a remand was not necessary for a more detailed dismissal order where an inmate sued a correctional officer). The standard for upholding prison disciplinary convictions is only that “some evidence” exists to support the convictions. *See Snider v. Fox*, 218 W.Va. 663, 666-67 627 S.E.2d 353, 356-57 (2006) (quoting *Superintendent, Massachusetts Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 457, 105 S.Ct. 2768, 2775, 86 L.Ed.2d 356, 366 (1985)). Corporal Stover’s testimony at the disciplinary hearing easily satisfies this standard. Therefore, this Court concludes that the circuit court did not abuse its discretion in summarily denying petitioner’s petition.

For the foregoing reasons, we find no error in the decision of the circuit court and its May 6, 2011, order summarily denying petitioner’s petition for a writ of habeas corpus is affirmed.

Affirmed.

ISSUED: July 3, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

NOT PARTICIPATING:

Justice Brent D. Benjamin