NOT DESIGNATED FOR PUBLICATION

No. 125,124

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

RHEUBEN JOHNSON,
Appellant,

v.

DAN SCHNURR, Warden,
Appellee.

MEMORANDUM OPINION

Appeal from Reno District Court; KEITH SCHROEDER and JOSEPH L. MCCARVILLE III, judges. Opinion filed February 24, 2023. Affirmed.

Shannon S. Crane, of Hutchinson, for appellant.

Jon D. Graves, legal counsel, Kansas Department of Corrections, for appellee.

Before ARNOLD-BURGER, C.J., BRUNS and ISHERWOOD, JJ.

PER CURIAM: Rheuben Johnson—an inmate at the Hutchinson Correctional Facility—appeals from the district court's dismissal of his K.S.A. 60-1501 petition arising out of a prison disciplinary proceeding. The district court held a nonevidentiary hearing on Johnson's claims and dismissed Johnson's petition. In doing so, the district court found that the hearing officer in the disciplinary proceeding afforded Johnson due process. The district court also found that there was sufficient evidence presented at the disciplinary hearing to support a finding that Johnson had violated K.A.R. 44-12-305. Based on our review of the record on appeal, we conclude that the district did not err in dismissing Johnson's K.S.A. 60-1501 petition. Thus, we affirm.

FACTS

On December 21, 2020, Johnson was accused by prison officials of violating the provisions of K.A.R. 44-12-305—prohibiting an inmate from acting in an insubordinate or disrespectful manner to staff—which is a class II disciplinary offense. Specifically, a prison mental health coordinator alleged that Johnson called her "evil and hateful" and that he also commented on her size by telling her that she was severely obese. It is undisputed that these comments were contained in an internal prison document known as a Form 9.

In the disciplinary report, the mental health coordinator further asserted that Johnson had verbally abused her. Likewise, the coordinator indicated that she had previously advised Johnson that he would be written up if he continued to display such behavior. The disciplinary report also accused Johnson of disobeying orders, lying to prison officials, interfering with their official duties, and undue familiarity with prison staff.

The disciplinary report indicates that a copy was personally served on Johnson within 48 hours of the alleged infractions. Although Johnson refused to sign the disciplinary report to acknowledge its receipt, he does not dispute that he received notice of the alleged violations. He also does not dispute that he received notice of when the disciplinary hearing would be held. Furthermore, the record reflects that Johnson participated in person at the disciplinary hearing.

At the hearing held on January 5, 2021, Johnson was the only witness. Although Johnson requested the presence of three witnesses, he did not request that the mental health coordinator attend the hearing. The notes from the hearing indicate that one of the witnesses requested by Johnson was no longer employed by Hutchinson Correctional Facility and that the other two witnesses were not involved in the incidents which formed

the basis for the disciplinary charges. The hearing officer also denied Johnson's request for a mental health report because it was "not available to the disciplinary department."

Johnson admitted at the hearing that he had written the words set forth in the Form 9. However, he claimed that he did not intend for the language used to be disrespectful. Ultimately, the hearing officer found that Johnson had violated the provisions of K.A.R. 44-12-305. In particular, the hearing officer found that the nature of the comments made in the Form 9 provided a sufficient factual basis to support the conclusion that Johnson had committed the violation.

As a result, the hearing officer ordered Johnson to spend 15 days in disciplinary segregation and to have 30 days of restriction. Notwithstanding, the hearing officer suspended the segregation and restriction. Additionally, the hearing officer ordered Johnson to pay $10 in fees.

> On March 31, 2021, after exhausting his administrative remedies, Johnson filed a timely K.S.A. 60-1501 petition in district court. The district court held a nonevidentiary hearing at which Johnson and counsel for the Kansas Department of Corrections appeared. After the hearing, the district court entered a five-page order of summary dismissal. In the order, the district court found that there was evidence in the record to support the disciplinary hearing officer's conclusion that Johnson had violated K.A.R. 44-12-305. The district court also ruled that Johnson's due process rights had not been violated.

In dismissing Johnson's K.S.A. 60-1501 petition, the district court explained:

> "The Court reviewed the due process petitioner received and finds that the requirements of *Wolff v. McDonnell* were satisfied, in that petitioner received the disciplinary report within 48 hours, had 24 hours notice of his hearing and had an opportunity to present evidence and call witnesses. The hearing officer gave his reasons to not calling witnesses or assisting petitioner in acquiring a [mental health] report, which are explained in the decision. Petitioner was not denied due process."

Thereafter, Johnson timely appealed.

ANALYSIS

Standard of Review

To avoid summary dismissal of a K.S.A. 60-1501 petition, an inmate must allege "shocking and intolerable conduct or continuing mistreatment of a constitutional stature." *Johnson v. State*, 289 Kan. 642, 648, 215 P.3d 575 (2009) (citing *Bankes v. Simmons*, 265 Kan. 341, 349, 963 P.2d 412, *cert. denied* 525 U.S. 1060 [1998]). In determining whether this standard is met, we must "accept the facts alleged by the inmate as true." *Hogue v. Bruce*, 279 Kan. 848, 850, 113 P.3d 234 (2005). "Summary dismissal is appropriate if, on the face of the petition, it can be established that petitioner is not entitled to relief, or if, from undisputed facts, or from uncontrovertible facts, . . . it appears, as a matter of law, no cause for granting a writ exists." Johnson, 289 Kan. at 648-49.

In other words, a district court may summarily dismiss a habeas corpus petition if it plainly appears from the face of the petition and any exhibits attached that the petitioner is not entitled to relief. K.S.A. 2021 Supp. 60-1503(a). When a district court summarily dismisses a petition without issuing a writ under K.S.A. 2021 Supp. 60-1503(a), we are in just as good a position as the district court to determine whether relief is warranted. This is also true when—as in this case—the district court holds a preliminary hearing and determines that "'the inmate is entitled to no relief.' K.S.A. Supp. 2020 Supp. 60-1505(a)." *Denney v. Norwood*, 315 Kan. 163, 175, 505 P.3d 730 (2022).

Due Process

On appeal, Johnson first contends that the district court erred in concluding that his constitutional right to due process had not been violated. The question of whether due process has been afforded in a prison disciplinary case is also a question of law over

which we have unlimited review. In considering a due process claim, we apply a two-step analysis. At the outset, we must determine whether the State has deprived the inmate of life, liberty, or property. If so, we then determine the extent and nature of the due process required. *Johnson*, 289 Kan. 642, Syl. ¶ 3.

Here, the disciplinary hearing officer imposed a $10 fine against Johnson for his violation of prison disciplinary rules. Consequently, Johnson has established that his property rights have been implicated. See *Stano v. Pryor*, 52 Kan. App. 2d 679, 682, 372 P.3d 427 (2016). Because Johnson sufficiently implicated his due process rights, we turn to a review of the nature and extent of the due process that was required in his disciplinary proceeding.

In prison disciplinary proceedings, an inmate is not afforded "'the full panoply of rights'" that a defendant in a criminal proceeding is afforded. *Hogue*, 279 Kan. at 851 (quoting *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S. Ct. 2963, 41 L. Ed. 2d 935 [1974]). As the United States Supreme Court recognized in *Wolff*, in a prison disciplinary proceeding, there must be a "mutual accommodation" between the needs and objectives of the prison and the inmate's constitutional rights. 418 U.S. at 556. Accordingly, although an inmate still has a limited right to due process in disciplinary proceedings, we are to give broad deference to prison officials in maintaining discipline in prisons. *Swafford v. McKune*, 46 Kan. App. 2d 325, 328-29, 263 P.3d 791 (2011).

The limited due process rights that must be provided to a prison inmate in a disciplinary proceeding include "an impartial hearing, a written notice of the charges to enable inmates to prepare a defense, a written statement of the findings by the factfinders to the evidence and the reasons for the decision, and the opportunity to call witnesses and present documentary evidence." *In re Habeas Corpus Application of Pierpoint*, 271 Kan. 620, 627, 24 P.3d 128 (2001) (citing *Wolff*). However, the fact that a hearing officer fails to strictly follow procedural regulations established by the Kansas Department of

Corrections does not—in and of itself—rise to the level of a constitutional violation. *Anderson v. McKune*, 23 Kan. App. 2d 803, 811, 937 P.2d 16 (1997). As discussed above, an inmate must also allege "'shocking and intolerable conduct or continuing mistreatment'" in order to avoid the summary dismissal of a K.S.A. 60-1501 petition. *Denney*, 315 Kan. at 173.

A review of the record on appeal in the present case reveals that Johnson was personally served with a disciplinary report—which sets forth the factual basis for the alleged violation—on the morning after the incident giving rise to the allegations. Although he refused to sign the report to acknowledge receipt, he does not dispute that he received a copy of the report in a timely manner. Likewise, he does not dispute that he was given notice of the hearing. Further, as discussed above, Johnson personally attended and participated in the disciplinary hearing.

Johnson argues that the hearing officer denied his request for three witnesses and to present evidence regarding his mental health status. The record reflects that the hearing officer considered Johnson's requests and explained the reasons why they had been denied. Significantly, Johnson makes no attempt—either in his K.S.A. 60-1501 petition or on appeal—to show how the requested witnesses or evidence regarding his mental health would have materially aided his defense, nor has he shown any harm caused by the hearing officer's decision on these procedural matters. See *State v. Gallegos*, 313 Kan. 262, 277, 485 P.3d 622 (2021) (issues not adequately briefed are deemed waived or abandoned).

As our Supreme Court has recognized, "*Wolff* did not require the right to confront and cross-examine witnesses or the right to counsel in all cases. [Citation omitted.]" *In re Pierpoint*, 271 Kan. at 627-28. If an inmate's request for a witness is denied, the hearing officer must make a record explaining the decision. See K.A.R. 44-13-101(c)(5); K.A.R.

44-13-405a(e). As discussed above, the record reveals that the hearing officer in this case provided a reason for denying Johnson's requests.

K.A.R. 44-13-405a(b) provides the hearing officer with wide discretion in permitting or denying an inmate's requests for witnesses to testify in a disciplinary hearing. In this case, the hearing officer's notes indicate that one of the requested witnesses was no longer employed by Hutchinson Correctional Facility. In addition, the hearing officer found that the other two requested witnesses were not involved with or present at the incident leading to the disciplinary report. We find that the hearing officer provided a reasonable explanation for denying Johnson's request, that the hearing officer did not abuse his discretion, and—as a result—did not violate Johnson's limited due process rights in a disciplinary proceeding.

Johnson also requested to have his mental health records forwarded to him in order to aid his defense that an eating disorder led to his discomfort with the mental health coordinator. In denying the request, the hearing officer found that the disciplinary department did not have access to the requested records. It is also important to recognize that Johnson was able to testify regarding his mental health status and to claim that his comments were not intended to be disrespectful. Again, we find the hearing officer's explanation to be reasonable and that it did not result in a violation of Johnson's limited due process rights in the disciplinary proceeding. Accordingly, we see no due process violation in the denial of Johnson's request.

Johnson further argues that he was denied the opportunity to cross-examine the mental health coordinator who signed the disciplinary report under oath. Notably, Johnson did not request to call the mental health coordinator as a witness. Moreover, K.A.R. 44-13-404(c)(1) does not require the presence of the prison official reporting a class II or class III violation. Here, Johnson allegedly violated K.A.R. 44-12-305, which

is a class II violation. Consequently, we find that the failure of the mental health coordinator to testify did not violate Johnson's limited due process rights.

Sufficiency of the Evidence

Johnson's second contention on appeal is that there is not sufficient evidence presented to support the hearing officer's conclusion that he violated K.A.R. 44-12-305. As addressed above, this regulation prohibits an inmate from acting in an insubordinate or disrespectful manner to a member of the prison staff. In a prison disciplinary case, we review a challenge to the sufficiency of the evidence by reviewing the record to determine whether there is "'some evidence'" presented to support the hearing officer's conclusion. *May v. Cline*, 304 Kan. 671, 674, 372 P.3d 1242 (2016). In other words, we must determine if there is any evidence in the record to support the conclusion reached by the hearing officer. 304 Kan. at 674.

K.A.R. 44-12-305 requires that an inmate must be "attentive and respectful towards employees, visitors, and officials. The showing of disrespect, directly or indirectly, or being argumentative in any manner shall be considered insubordination." In this case, the Form 9—which Johnson admits was filled out by him—is on its face "some evidence" that Johnson was disrespectful to the mental health coordinator. In addition to calling her "evil and hateful," Johnson made disparaging comments regarding her weight. Although Johnson subjectively claims that his comments were not intended to be disrespectful, a reasonable person viewing the Form 9 objectively could conclude that he was being disrespectful to the mental health coordinator. As a result, we find that there was sufficient evidence presented at the hearing upon which a reasonable hearing officer could conclude that Johnson violated the provisions of K.A.R. 44-12-305.

CONCLUSION

In conclusion, we find that Johnson's limited due process rights in his prison disciplinary hearing were not violated. Likewise, we find that there is sufficient evidence in the record to support the hearing officer's determination. Furthermore, we find that Johnson failed to allege shocking and intolerable conduct or continuing mistreatment rising to the level of a constitutional violation. We, therefore, affirm the district court's summary dismissal of Johnson's K.S.A. 60-1501 petition.

Affirmed.