

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JESUS MAR GARCIA,

OPINION AND ORDER

Petitioner,

05-C-611-C

v.

STEVEN HOBART, Warden,

Respondent.

Petitioner Jesus Mar Garcia, an inmate at the Federal Correctional Institution in Oxford, Wisconsin, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner challenges prison disciplinary proceedings that resulted in his loss of 41 days of good time credit.

In an order dated November 30, 2005, I ordered respondent to show cause why petitioner's petition should not be granted on petitioner's claims that: (1) the hearing officer provided no evidence that the contraband seized from petitioner's cell belonged to petitioner and (2) the hearing officer provided no evidence that the contraband seized from petitioner's

cell on November 16 was the same contraband that tested positive for cocaine on November 18. Respondent filed a timely response to the order and petitioner filed a timely traverse to the response.

Because I conclude that petitioner has failed to show that he is in custody in violation of the Constitution or laws of the United States, his petition for a writ of habeas corpus will be dismissed.

I find the following facts from the record pursuant to 28 U.S.C. § 2248.

FACTS

Petitioner Jesus Mar Garcia is now an inmate at the Federal Correctional Institution in Oxford, Wisconsin. When the events leading to this petition occurred, petitioner was an inmate at the Federal Correctional Institution in Milan, Michigan.

On November 16, 2002, petitioner's cell was searched for contraband. During the search, an aspirin bottle was found between the back of petitioner's storage locker and the wall. The bottle was confiscated, petitioner and his cellmate were removed from the cell and the cell was locked to prevent any inmates from entering the cell. The bottle and its contents were delivered to the evidence locker located in the lieutenant's office. On November 16, petitioner and his cellmate were subjected to drug testing; petitioner tested positive for cocaine and his cellmate tested negative.

On November 18, 2002, the aspirin bottle was removed from the evidence locker and its contents (a white powder) were tested using an NIK Narcotics Test Kit G. The powder tested positive for cocaine. Because the powder tested positive for cocaine, petitioner's cell was searched again on November 18. During the second search of petitioner's cell prison officials found a white envelope containing a plastic bag inside a light fixture. The plastic bag contained a white powder. The powder was tested again using an NIK Narcotics Test Kit G and tested positive for cocaine. On November 18, 2002, petitioner was given incident report #1048375 for "possession of narcotics in violation of Code 113 of the disciplinary regulations." Also, petitioner was given an incident report charging him with use of narcotics. A hearing on the charge of use of narcotics was held on December 21, 2002 and petitioner was found guilty.

The investigation of the possession of the contraband was turned over to the FBI and therefore incident report #1048375, concerning possession of narcotics, was not processed by the Bureau of Prisons until the case was released by the FBI. The Bureau of Prisons resumed its investigation and processing of incident report #1048375 on January 5, 2004. On January 8, 2004, petitioner was given timely notice of his disciplinary hearing and was notified of his rights.

The disciplinary hearing took place on January 15, 2004. Petitioner elected not to call any witnesses and not to have a staff member represent him at the hearing. Petitioner

denied the charge of possession of narcotics. At the hearing, petitioner complained that his cellmate was not charged in the incident and argued that petitioner did not have tools that would have enabled him to gain access to the light fixture. The hearing officer suspended the hearing for further investigation.

The disciplinary hearing was re-convened on March 4, 2004. The hearing officer found petitioner guilty of possession of cocaine. In his hearing report dated April 6, 2004, the hearing officer stated that he relied on the following information to reach his conclusion: (1) the light fixture was easily accessible and could be opened by hand without the use of tools; (2) petitioner and his cellmate were subjected to drug testing after the first piece of contraband was located in their cell and only petitioner tested positive for cocaine; (3) the FBI had concluded that there was sufficient evidence to seek indictment only against petitioner; and (4) petitioner's cellmate had also been issued an incident report for possession of narcotics but the incident report was expunged after the cellmate's involvement was nullified.

The chain of custody for the contraband had been evaluated and established in the context of the disciplinary hearing regarding petitioner's use of narcotics and therefore the hearing officer did not include a discussion of the chain of custody in the hearing concerning the possession charge.

DISCUSSION

Respondent agrees that petitioner has exhausted his administrative remedies concerning the incident report for possession of contraband and concomitant loss of 41 days of good time credit. Sanchez v. Miller, 792 F.2d 694, 697 (7th Cir. 1986) (federal prisoners are required to exhaust administrative remedies before petitioning for writ of habeas corpus); Del Raine v. Carlson, 826 F.2d 698, 703 (7th Cir. 1987) (same). Therefore, I will turn to the merits of petitioner's claims.

A. Evidence of Possession

When the loss of good-time credit is a sanction for a violation of prison rules, an inmate must receive the following procedural safeguards during prison disciplinary proceedings: “(1) advance written notice of the disciplinary charges; (2) an opportunity . . . to call witnesses and present documentary evidence in his defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action.” McPherson v. McBride, 188 F.3d 784, 785-86 (7th Cir. 1999) (quoting Superintendent, Mass. Correctional Institution v. Hill, 472 U.S. 445, 454 (1985)).

In addition, a finding of guilt cannot be arbitrary. In this regard, the United States Supreme Court has held that “the requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke good time credits.” Hill,

472 U.S. at 455. In reviewing a prison disciplinary board's decision, the court does not need to examine the entire record, conduct an independent assessment of the credibility of witnesses or weigh the evidence. Id. "Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." Id. at 455-56. ("Requiring a modicum of evidence to support a decision to revoke good time credits will help to prevent arbitrary deprivations without threatening institutional interests or imposing undue administrative burdens.") The "some evidence" standard requires nothing more than a decision that is not arbitrary or lacking support in the record. McPherson, 188 F.3d at 786.

Petitioner argues that prison officials had no evidence that he possessed contraband. In particular, petitioner argues that prison officials found him guilty even though they had no evidence that the contraband belonged to him rather than to his cellmate or to any of 150 other inmates who could have entered his cell and planted the contraband there.

However, the facts reveal that the hearing officer met the "some evidence" standard because in his hearing report he provided several reasons to support his conclusion that the contraband seized from petitioner's cell belonged to petitioner. The fact that petitioner tested positive for cocaine on November 16, 2002, is sufficient evidence to support a finding by the hearing officer that the cocaine seized on both November 16 and November 18 belonged to petitioner and not to his cellmate (who tested negative for cocaine) or to any

other inmate. Moreover, the hearing officer relied on the FBI's finding that there was sufficient evidence to seek indictment for possession of narcotics only against petitioner. The hearing officer is not required to prove that petitioner was guilty, only that there was some evidence in the record to support a finding that petitioner was guilty. The hearing officer's finding of guilt was not arbitrary, but supported by the record and therefore met the requirements of due process and federal law.

B. Chain of Custody

Petitioner contends that the hearing officer failed to provide any evidence that the contraband seized from his cell on November 16 and tested two days later on November 18 was one and the same. Petitioner argues that because two days elapsed between the time the contraband was seized and the time it was tested, the hearing officer should have explained the chain of custody in the disciplinary report.

There is no requirement that the hearing officer offer proof of the chain of custody in a particular manner. The officer is bound only by the standard that he must provide "some evidence" of petitioner's guilt. In the November 30, 2005 order to show cause I noted that a finding of guilt in the present case would require a showing not only that the contraband belonged to petitioner, but also that the contraband seized from petitioner's cell on November 16 was the same contraband that tested positive for cocaine on November 18.

The most direct way for the hearing officer to show the chain of custody would have been to attach to his hearing report of April 6, 2004, a copy of the Chain of Custody Log. However, given the facts in this case, the hearing officer's failure to attach the Chain of Custody Log to his hearing report does not constitute a violation of petitioner's due process rights. The fact that petitioner tested positive for cocaine on November 16, 2002, the same day the contraband was removed from his cell, is sufficient evidence that the contraband confiscated from his room was the same contraband that tested positive for cocaine two days later. There was "some evidence" in the record to support the conclusion that the contraband seized from petitioner's cell on November 16 was the same contraband that tested positive for cocaine on November 18. Therefore the hearing officer's actions met the requirements of due process and federal law. Accordingly, petitioner's petition will be dismissed for his failure to show that his custody term has been extended in violation of the Constitution or federal law.

ORDER

IT IS ORDERED that petitioner Jesus Mar Garcia's petition for a writ of habeas corpus is DISMISSED.

The clerk of court is directed to close this case.

Entered this 30th day of January, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge