

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

BONARD R. DENINNO,

Petitioner,

v.

RICARDO MARTINEZ, Warden,
F.C.I. Oxford, Wisconsin,

Respondent.

OPINION and ORDER

07-C-132-C

Petitioner Bonard Deninno, 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 has paid the \$5.00 fee for filing his petition.

In his petition, petitioner contends that defendants violated his due process rights when they found him guilty of a disciplinary violation in the absence of any credible evidence against him. He seeks reinstatement of the good conduct credits he lost at his disciplinary hearing and requests that this court order the related incident report expunged from his record. Because petitioner has alleged facts showing he may be entitled to relief, I will issue an order to show cause why petitioner's petition should not be granted on his

claim that prison officials violated his constitutional right to due process.

From the petition and documents attached to it, I draw the following facts.

ALLEGATIONS OF FACT

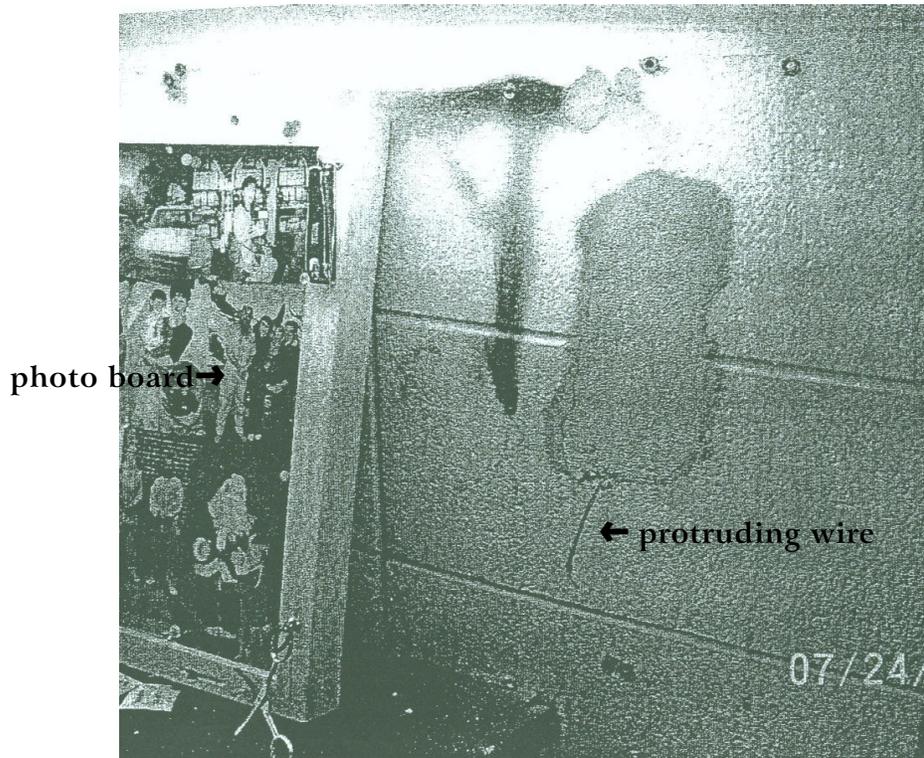
A. Parties

Petitioner Bonard Deninno is an inmate at the Federal Correctional Institution in Oxford, Wisconsin.

Respondent Ricardo Martinez is Warden of the Oxford Federal Correctional Institution.

B. Disciplinary Incident Report

On March 13, 2006, petitioner moved into prison cell A-2. On July 24, 2006, four months after petitioner moved into a new prison cell, correctional officer Scott Nelson decided to search the cell. When he did so, he discovered an electrical wire protruding from a hole in the cement cell wall and hidden behind a bolted down picture board, as shown below.



Nelson and other prison officers used drills and a hammer to dig behind the concrete wall. When they did so, they discovered a transformer buried behind the wall, to which the live wire was attached. During the excavation process, one of the officers received an electrical shock.

Nelson issued petitioner an incident report charging him with possessing, manufacturing or introducing a hazardous tool in violation of prison code 108. On July 27, 2006, a disciplinary hearing was held. At that hearing, petitioner admitted that he has read

and signed the prison's rule book. Petitioner admitted also that the rules held prisoners responsible for all material located in the "common areas" of their cells. Prison officials characterized petitioner's admissions as a confession of guilt to the offense of "Possession of Anything Not Authorized" in violation of prison rule 305. As punishment, petitioner was given 14 days' loss of good time, 15 days' disciplinary segregation and 45 days' loss of telephone and commissary privileges.

Petitioner appealed the decision to the Regional Counselor, Regional Director and to the Central Office of the Bureau of Prisons. His appeal was denied at each level.

Petitioner did not know the transformer was in the wall behind his cell. Moreover, he did not have the tools he would have needed to place the transformer behind the concrete wall.

OPINION

28 U.S.C. § 2241 permits district courts to grant relief to prisoners "in custody in violation of the Constitution or laws or treaties of the United States." When a petitioner mounts a due process challenge to a disciplinary procedure that results in revocation of good conduct credit to which the petitioner is statutorily entitled, the suit may be maintained as a petition for habeas corpus. Jackson v. Carlson, 707 F.2d 943, 946 (7th Cir. 1983). This is because the petitioner is seeking release at an earlier date even though he is not seeking

immediate release. Id. Thus, petitioner has properly brought his claim under § 2241.

Petitioner contends that he was deprived of due process in his disciplinary hearing. The Fifth Amendment prohibits the government from depriving “any person . . . of life, liberty or property, without due process of law.” U.S. Const. Amend. V. In order to receive protection under the Fifth Amendment, first a person must have a protected liberty or property interest. Sandin v. Conner, 515 U.S. 472, 486 (1995). In the context of incarceration, protected liberty interests are generally limited to disciplinary penalties that extend a prisoner’s duration of confinement, such as the loss of “good time credits,” and to prison conditions that are “atypical and significant” deviations from those normally associated with prison life. Id.; Lekas v. Briley, 405 F.3d 602, 610 (7th Cir. 2005).

Petitioner has alleged that he lost 14 days’ good time credit as a result of his disciplinary violation. The Court of Appeals for the Seventh Circuit has held repeatedly that prisoners have a protected liberty interest in good time credit that they have earned. See, e.g., Thomas v. McCaughtry, 201 F.3d 995, 999 n.4 (7th Cir. 2000); Sweeney v. Parke, 113 F.3d 716, 718 (7th Cir. 1997); Meeks v. McBride, 81 F.3d 717, 719 (7th Cir. 1996). Therefore, petitioner has shown that he was deprived of a liberty interest.

Although the Fifth Amendment’s due process clause provides federal inmates with certain minimum procedural safeguards, it does not create a right to procedural perfection. When the loss of good-time credit is a possible sanction, an inmate must receive the

following procedural safeguards in connection with prison disciplinary proceedings in order to satisfy the requirements of due process: “(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 contends that prison officials had no evidence that he was responsible for placing the transformer in the concrete wall behind the bolted photo board that was located in his cell or that he even knew the transformer or its protruding wire existed. Although petitioner acknowledges that the prison rules made him responsible for all materials located in the common area of his cell, an acknowledgment prison officials characterize as an admission of guilt, petitioner contends that the transformer was not located in a “common area” and that he was unaware of its existence. In addition, petitioner argues that prison officials failed to explain how he could have placed an object like a transformer behind a concrete wall.

Although prisoners are not entitled to the investigations of their choice and prison officials do not have to explain every detail of an alleged offense in order to satisfy a prisoner’s due process rights, hearing officers do have to offer “some evidence” that contraband belonged to or was made by petitioner and not another inmate. Petitioner asserts that the hearing officer failed to do that. Accordingly, respondent will be directed to show cause why petitioner's petition should not be granted because the hearing officer failed to provide “some evidence” that the contraband belonged to or was made by petitioner.

ORDER

IT IS ORDERED that

1. Respondent Ricardo Martinez is to file a response to this petition no later than 20 days from the date of service of the petition, showing cause, if any, why this writ should not issue on petitioner Bonard Deninno's claim that the hearing officer provided no evidence that the contraband found in petitioner's cell was made by or belonged to petitioner.

2. Petitioner Bonard Deninno may have 20 days from the service of the response in which to file a traverse to the allegations of the response submitted by respondent.

Entered this 12th day of March, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge