

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

This is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2241. Petitioner Bonard Deninno, a prisoner at the Federal Correctional Institution in Oxford, Wisconsin, seeks reinstatement of 14 days' good time credit that he lost after he was found guilty of possessing contraband. Petitioner contends that the disciplinary hearing that preceded his loss of good time credit violated the due process clause of the Fifth Amendment.

In an order dated March 12, 2007, I screened the petition and found that the facts petitioner alleged were of sufficient concern to require the government to show cause why the petition should not be granted. The government has responded as directed and petitioner has filed a traverse. The parties' submissions reveal that prison officials' decision

to find petitioner guilty may have been harsh, but their decision was based on “some evidence” as required by law. Consequently, the petition will be denied.

From the petition, the government’s response and petitioner’s traverse, I find the following facts to be undisputed.

FACTS

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 had moved into the cell, correctional officer Scott Nelson conducted a search. When he did so, he discovered that, from behind a bolted down picture board, an electrical wire was protruding from a hole in the cement cell wall. 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, which was connected to the prison’s

electrical system. 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. Petitioner was provided with notice of a disciplinary hearing and was advised of his right to call witnesses and have a staff member represent him at the hearing.

On July 27, 2006, a disciplinary hearing was held. Petitioner did not call any witnesses. At that hearing, petitioner denied knowledge of the wire. He admitted that he had read and signed the prison's rule book and admitted that the rules held prisoners responsible for all material located in the "common areas" of their cells. Prison officials characterized these admissions as a confession of guilt to the offense of "Possession of Anything Not Authorized" in violation of prison rule 305. Petitioner was not found guilty of manufacturing a hazardous tool, but was found guilty of the lesser offense of possessing contraband. 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.

DISCUSSION

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.” Under the Fifth Amendment’s due process clause, federal inmates are guaranteed certain minimum procedural safeguards with respect to disciplinary hearings. When the loss of good-time credit is a possible sanction for a disciplinary infraction, 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)).

Moreover, in order to comply with due process, a finding of guilt cannot be arbitrary. The minimum requirements of procedural due process demand that the findings of a prison disciplinary board have the support of “some evidence in the record.” Hill, 472 U.S. at 454. This is a lenient standard, however, requiring no more than “a modicum of evidence.” Webb v. Anderson, 224 F.3d 649, 652 (7th Cir. 2000). “Even meager proof will suffice, so long as the record is not so devoid of evidence that the findings of the disciplinary board were without support or otherwise arbitrary.” Id.; Lenea v. Lane, 882 F.2d 1171, 1175 (7th Cir.

1989) (“Although ‘some evidence’ is not much ... it still must point to the accused’s guilt.”). The relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board. Hill, 472 U.S. at 455-56.

Petitioner’s challenge to his disciplinary proceedings appears to revolve around the fact that he did not possess tools that would have allowed him to place a transformer behind a concrete wall in his prison cell. His objections are misplaced. Although petitioner was charged originally with “manufacturing” or “introducing” the transformer into the cell wall, he was acquitted of that charge. Instead, he was found guilty of the lesser charge of “possessing” the wire that protruded through his cell wall. As to that charge, there was “some evidence” that permitted prison officials to find him guilty.

Petitioner admitted to prison officials that the wire was located within his prison cell and that he was aware that prison rules made him responsible for all items located inside the cell walls. Although petitioner has asserted that the bulletin board from behind which the wire was protruding was “bolted down,” he has not suggested to this court and did not suggest in his administrative appeals that he would have been unable to remove the board from the wall and discover the protruding wire. Petitioner’s “possession” may have been a technical violation, but it was one that the prison was within its rights to sanction. Although reasonable minds could differ with respect to whether prison officials exercised their discretion wisely in choosing to prosecute petitioner for “possessing” the wire, there was

“some evidence” on which to base the finding of guilt. Courts must defer to the findings of correctional officials whenever some evidence of guilt exists. Cf. Mendoza v. Miller, 779 F.2d 1287, 1292 (7th Cir. 1985) (“Prison administrators therefore should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.”) Consequently, petitioner’s request for a writ of habeas corpus must be denied.

ORDER

IT IS ORDERED that Bonard Deninno’s petition for a writ of habeas corpus

pursuant to 28 U.S.C. § 2241 is DENIED. The clerk of court is directed to close this case.

Entered this 24th day of May, 2007.

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