

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

STANLEY HOWARD,

Petitioner,

v.

RICARDO MARTINEZ,

Respondent.

OPINION AND ORDER

07-C-0356-C

Petitioner Stanley Howard, 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 asserts he was not given adequate notice before he was disciplined for possession of a weapon. Petitioner seeks restoration of his lost good time credit, expungement of the incident in question from his record and a declaration of eligibility for the one-year sentence reduction for his participation in the institution's drug rehabilitation program. Petitioner has paid the \$5.00 fee for filing his petition.

Because I conclude that petitioner was given adequate notice of the evidence used by prison officials to support the disciplinary conviction against him, I will deny his petition for a writ of habeas corpus.

From petitioner's petition and accompanying exhibits, I find the following facts.

FACTS

Petitioner Stanley Howard is an inmate confined at Oxford Federal Correctional Institution in Oxford, Wisconsin. Respondent Ricardo Martinez is the warden at the Institution.

On December 4, 2006, petitioner's cell was searched by correctional officers. During that search the officers discovered and documented the existence of a sharpened piece of plexiglass with an electrical tape handle. Petitioner was charged with Possession of a Weapon, in violation of Code 104 of the prison regulations. On December 5, 2006, petitioner was delivered a copy of incident report #1542673, which described the incident. Under the heading, DESCRIPTION OF INCIDENT, the following was written:

While conducting a random cell search of room B9 in Dane Cottage with officer Salzwedel and P. Parker, Officer Parker removed a rubber cap off the vertical support rail on the bunk. While using the flashlight to look down the tube, officer Parker observed black electrical tape which he believed to be a handle of an [*sic*] weapon. Officer Salzwedel also observed the object, I then removed the item from the support tube. The item was a sharpened peice [*sic*] of plexiglass and electrical tape handle. Pictures were taken and the homemade weapon was delivered to the SIS office by myself.

On December 21, 2006, a disciplinary hearing was held. The hearing officer determined that the act of possessing a weapon had been committed as alleged in the

incident report. In support of this conclusion, the hearing officer relied on the following evidence: 1) the officers involved in searching petitioner's cell issued memoranda attesting to the description of the incident as well as pictures of the alleged weapon; 2) petitioner was the sole occupant of his cell at the time of the incident; and 3) petitioner agreed that he had received, read and understood the institution policy regarding items of contraband located within the confines of a cell.

Petitioner lost 27 days of good time credit, was placed in disciplinary segregation for 30 days and lost telephone and commissary privileges for 45 days. Additionally, he was declared ineligible for a one-year sentence reduction for his participation in the institution's drug rehabilitation program.

Petitioner appealed the hearing officer's determination, but the appeal was denied.

OPINION

In this case, the loss of petitioner's good time credit triggers the protections of due process, because the loss affects the duration of petitioner's sentence. Sandin v. Conner, 515 U.S. 472 (1995); Montgomery v. Anderson, 262 F.3d 641, 644-45 (7th Cir. 2001).

When the loss of good-time credit is a sanction for a violation of prison rules, an inmate is entitled to receive procedural safeguards during prison disciplinary proceedings, including "(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)).

Petitioner does not contend that the evidence relied upon by the hearing officer was insufficient to support the charge of possession of a weapon or that petitioner did not have the opportunity to call witnesses and present evidence in his defense. Petitioner contends only that the incident report he was given on December 5, 2006 gave him insufficient notice of the evidence that tied *him* specifically to the act of possessing a weapon. (Petitioner has argued that the weapon was not his). Based on this perceived fault, petitioner contends his procedural due process rights were violated.

Petitioner cites United States ex rel. Speller v. Lane, 509 F. Supp. 796 (S.D. Ill. 1981), for the proposition that in order to provide adequate notice to an inmate facing disciplinary charges, prison officials must provide the inmate, *prior* to the hearing, notice of the specific evidence that gives rise to the charge. Petitioner cites the court’s statement that, because “no evidence as to petitioner’s actual participation, other than the charges on the ticket, were set forth . . . the statement of the evidence relied upon failed to afford petitioner his due process rights.” Id. at 799.

Petitioner misinterprets Lane. The court was referring to the evidence presented

during the disciplinary hearing to justify conviction on the disciplinary charges, not the notice provided to the inmate prior to the hearing. Id. The notice requirement compels prison officials to give an inmate notice of the charge, not to lay out their entire case. Notice is sufficient if it gives “the charged party a chance to marshal the facts in his defense and to clarify what the charges are” Wolf v. McDonnell, 418 U.S. 539, 564 (1974). The incident report petitioner received satisfies this standard. Therefore, I find that petitioner was given legally adequate notice of the charges brought against him. Because petitioner raised no other objection to his disciplinary hearing, I must dismiss his petition for a writ of habeas corpus.

ORDER

IT IS ORDERED that Petitioner Stanley Howard’s petition for a writ of habeas corpus is DENIED for his failure to show that he was given inadequate notice of the disciplinary charges brought against him.

Entered this 18th day of July, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge