

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

TORRIANNO R. POPE,

Petitioner,

v.

WARDEN CAROL HOLINKA,

Respondent.

OPINION AND ORDER

10-cv-689-wmc

Petitioner Torrianno Pope, a prisoner at the Federal Correctional Institution in Oxford, Wisconsin, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, challenging a disciplinary hearing at which he lost 30 days of good-time credits. Pope paid the \$5 filing fee. While Pope alleges exhaustion of his administrative remedies, he does not allege facts from which the court can infer that the length of his custody had been increased unconstitutionally. Therefore, his petition for a writ of habeas corpus must be dismissed.

ALLEGATIONS OF FACT

In his petition and attachments, Pope alleges the following facts:

- He is currently incarcerated at the Federal Correction Institution in Oxford, Wisconsin.
- He was housed at the Comprehensive Sanction Center in Cedar Bluff, Iowa.
- He tested positive for marijuana based on a urine sample he provided on January 18, 2010. A January 22, 2010 re-test was negative for marijuana.
- He was given a disciplinary hearing on a charge of using marijuana and returned to prison, but lost 30 days of good time.

- He received the conduct report for complaining about a staff member who slammed his foot in a door.

OPINION

A prisoner may bring a petition under 28 U.S.C. § 2241 if he is in custody in violation of the Constitution or laws of the United States. Federal habeas corpus is reserved solely for those claims in which the prisoner's success would entitle him to release from custody or a shorter duration of confinement. *Hill v. McDonough*, 547 U.S. 573, 580 (2006). Pope would be entitled to relief here if the length of his custody was increased in violation of the Constitution.

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”) or 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).

Pope alleges that he lost 30 days of 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 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, Pope has alleged the deprivation of a colorable liberty interest.

While the Fifth Amendment's due process clause provides federal inmates with certain minimum procedural safeguards against the wrongful deprivation of a liberty interest, but 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.”) This “some evidence” standard, therefore, requires nothing more than a decision that is not arbitrary or lacking support in the record. *McPherson*, 188 F.3d at 786.

In this case, Pope does not allege that he was denied basic due process as contemplated by *McPherson* or that there was no evidence in the record supporting the disciplinary decision. Rather, Pope argues that he should not have been found guilty of the offense because the second test for marijuana tested negative. Unfortunately for Pope, a petition for a writ of habeas corpus does not provide a vehicle to re-litigate the question of his guilt or innocence. Pope can only pursue claims that the disciplinary hearing denied him due process protections or ruled without any evidentiary support. Without an alleged violation of his due process rights or an allegation that the decision was arbitrary, Pope cannot pursue a claim that his time in custody was lengthened in violation of the Constitution. Therefore, his petition for a writ of habeas corpus under 28 U.S.C. §2241 will be dismissed.

ORDER

IT IS ORDERED that:

1. Torrianno Pope’s petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 is DISMISSED due to his failure to show that the length of his custody has been increased in violation of the Constitution or the laws of the United States.
2. The clerk of court is directed to enter judgment for respondent Carol Holinka and close this case.

Entered this 24th day of October, 2011.

BY THE COURT:
/s/

WILLIAM M. CONLEY
District Judge