

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

AARON DeROO,

Petitioner,

v.

CAROL HOLINKA, Warden,

Respondent.

OPINION and
ORDER

11-cv-28-bbc

Petitioner Aaron DeRoo is a prisoner at the Federal Correctional Institution in Oxford, Wisconsin. In this habeas corpus action brought pursuant to 28 U.S.C. § 2241, petitioner contends that the Bureau of Prisons violated his constitutional right to due process by relying on an incident report that was expunged as justification for taking away excessive days of good-time credits in later disciplinary decisions. He has paid the \$5 filing fee.

After reviewing the petition, I conclude that petitioner has failed to state a claim for violation of his constitutional right to due process. Thus, I will dismiss this petition and close the case.

I draw the following facts from the petition and additional materials submitted by petitioner.

FACTS

On June 27, 2000, when petitioner Aaron DeRoo was incarcerated at the Terre Haute Correctional Institution in Terre Haute, Indiana, he received incident report #793334, charging him with possession of intoxicants. A disciplinary hearing was held and he lost 27 days of good-time credit. However, the disciplinary hearing officer who conducted the hearing did not give petitioner a written report after the hearing. After numerous requests under the Freedom of Information Act and in this court, the Bureau of Prisons produced the report for petitioner, along with several other reports related to different disciplinary decisions that had not been produced previously. DeRoo v. Holinka, 9-cv-247-bbc; DeRoo v. Holinka, 10-cv-95-bbc. Petitioner pursued his administrative remedies with respect to incident report #793334 and was given a rehearing at which the hearing officer found no evidence of guilt, expunged the charge and reinstated 27 days of good-time credit.

Incident report #793334 was not the only time petitioner was charged with possession of intoxicants while incarcerated at Terre Haute. On February 24, 2001, petitioner was issued incident report #861142 for use of intoxicants, and on May 19, 2001, petitioner was issued incident report #885440 for possession of intoxicants. In both instances, petitioner admitted to the charges and lost good-time credit. After the hearing on incident #861142, the hearing officer wrote that he was revoking 27 days of good-time credit in part because “this is your fourth charge for this offense” and “past attempts to

correct your behavior have failed.” Similarly, the hearing officer who imposed the sanction for incident #885440 wrote that he was revoking 40 days of good-time credit in part because petitioner had “numerous charges for this offense” and the officer “believes no other sanction would produce the desired effect.”

DISCUSSION

Petitioner contends that the Bureau of Prisons violated his right to due process by taking away an excessive number of good-time credits for incidents #885440 and #861142 on the ground that petitioner had been found guilty of possessing intoxicants more often than he actually had. He contends that 67 days of good-time credit should be reinstated.

The problem with petitioner’s argument is that he received all the process he was due with respect to incident reports #885440 and #861142. When a prison disciplinary proceeding may result in the loss of good-time credits, due process requires only that the prisoner receive (1) advance written notice of at least 24 hours of the disciplinary charge; (2) an opportunity, when consistent with institutional safety and correctional goals, 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 actions. Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 454 (1985); McPherson v. McBride, 188 F.3d 784, 785-86 (7th Cir. 1999). In addition, there

must be “some evidence” to support the decision by a prison disciplinary board to revoke good-time credits. Hill, 472 U.S. at 455.

“Ultimately, the question before [a court determining whether a prisoner received due process] is whether [the prisoner] was afforded a fair hearing.” Scruggs v. Jordon, 485 F.3d 934, 940 (7th Cir. 2007). If the prisoner confesses to the offense for which he was charged and the disciplinary hearing officer relies on that confession to determine his guilt and punishment, due process has been satisfied. Id. Due process does not requires the hearing officer to justify his decision or penalty with anything more than “some evidence.” Thus, it is irrelevant to the due process analysis that the officers who conducted hearings on incidents #885440 and #861142 may have relied on incident report #793334 when deciding what sanction to impose on petitioner. Because petitioner received notice and a fair hearing and he confessed to the offenses charged, he received due process. C.f. Lagerstrom v. Kingston, 463 F.3d 621, 624 (7th Cir. 2006) (holding that disciplinary hearing satisfied due process even though evidence presented in disciplinary hearing was false and hearing was eventually overturned).

ORDER

IT IS ORDERED that

1. Aaron DeRoo's petition for a writ of habeas corpus brought under to 28 U.S.C. § 2241 is DISMISSED for petitioner's failure to show that he is in custody in violation of the Constitution or 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 31st day of January, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge