

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

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NATHANIEL SMITH,

Petitioner,

v.

STEPHEN HOBART, Warden,  
FCI-Oxford, WI.,

Respondent.  
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ORDER

05-C-371-C

Petitioner Nathaniel Smith, 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 named a number of persons in the caption of his petition; I have removed all of the names from the caption except that of the warden, who is the only proper respondent in a § 2241 petition.) In his petition, petitioner seeks reinstatement of 27 days of good time credit that he contends was taken from him arbitrarily and capriciously and without notice that his conduct could subject him to disciplinary proceedings. Petitioner has paid the \$5.00 fee for filing his petition.

Petitioner's petition for a writ of habeas corpus is accompanied by a motion for

summary judgment, which I construe as part of his petition, as well as exhibits that appear to be copies of the conditions of an escorted trip and documents generated in the course of his hearing and appeal. I conclude that it is not clear whether petitioner had fair notice that he was forbidden to engage in sexual intercourse with his wife while he was out of prison on a furlough. Therefore, I will require respondent to file a response to the petition.

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

#### ALLEGATIONS OF FACT

Petitioner Nathaniel Smith is an inmate confined at the Federal Correctional Institution in Oxford, Wisconsin. Respondent Stephen Hobart is the warden at the Institution.

On January 17, 2004, petitioner took an escorted trip to Chicago, Illinois and engaged in sexual intercourse with his wife. Before going on the trip, petitioner read and signed a form entitled "Conditions of Escorted Trip." The first condition on the form reads:

While on escorted trip status, I understand that I remain in the custody of the Bureau of Prisons. I agree to conduct myself in a manner not to bring discredit to myself or to the Bureau of Prisons. I understand that I am subject to arrest and/or institution disciplinary action for violating any condition of my escorted trip.

Other conditions on the form prohibit the inmate from violating laws of any

jurisdiction, coming into contact with drugs or other intoxicants, making phone calls, driving automobiles, arranging to visit family or friends without advance permission and obtaining medical attention, except in an emergency. The form has no condition referring to engaging in sexual relations with one's own spouse.

On October 12, 2004, nine months after the furlough, petitioner was issued a conduct report charging him with "Engaging in Sexual Acts" in violation of prison rule "code 205." On October 26, 2004, a Federal Bureau of Prisons hearing officer held a hearing on the conduct report. At the hearing, petitioner admitted to having sex with his wife while on escorted leave. The hearing officer found petitioner's behavior was a violation of the prison regulation forbidding engaging in sexual acts and that petitioner had violated the first of the "Conditions of Escorted Trip," prohibiting him from bringing discredit to himself or the Bureau of Prisons. As a consequence of the finding of guilt, petitioner lost 27 days of good time credit, received 21 days of disciplinary segregation and lost 60 days of phone and commissary privileges. Petitioner appealed the hearing officer's finding, but to no avail. In the response to petitioner's appeal, Bureau of Prisons staff wrote that although petitioner believed that his supervising officer gave him permission to have marital relations with his wife, the "Conditions of Escorted Trip," which petitioner read and signed, states that he was to conduct himself in a manner not to bring discredit to him or the Bureau of Prisons.

## DISCUSSION

The question petitioner poses is whether a reasonable person, presumed to know the rules of the institution, would have had reason to believe that having sexual relations with his wife while on an approved furlough would be a violation of Code 205, "Engaging in sexual acts," see Table 3, 28 C.F.R. § 541.13, or that it was an act that would bring discredit to him or the Bureau of Prisons. As petitioner notes, it is obvious that engaging in sexual acts within the institution would be a violation of the code, even if it was with his wife, but it is not obvious that engaging in sexual relations with one's own wife in a private residence would be such a violation. It is even less obvious that this act is one that would bring discredit upon the furloughed inmate or the institution.

## ORDER

IT IS ORDERED that respondent Stephen Hobart, Warden, may have until August 25, 2005 in which to file and serve a response to petitioner Nathaniel Smith's petition for a writ of habeas corpus. Petitioner may have until September 16, 2005, in which to file and

serve a traverse if he wishes to do so.

Entered this 5th day of August, 2005.

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