IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JUBEL JIMENEZ,

Petitioner,

v.

STEPHEN HOBART, Warden,

Respondent.

ORDER

05-C-451-C

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Petitioner Jubel Jimenez, 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. From the petition, it appears that petitioner is seeking reinstatement of 41 days of good time credit taken from him after he was found guilty of Code 104, "Possession, Manufacture, or Introduction of a Gun, Firearm, Weapon, Sharpened Instrument, Knife, Dangerous Chemical, Explosive, or any Ammunition." Petitioner has paid the $5 fee for filing a habeas corpus action.

A review of the petition reveals that it is devoid of any allegations of fact that would allow the court to determine why petitioner believes he is in custody in violation of the Constitution or laws of the United States. In the petition, petitioner refers the court to the

"B.P. 11 attached." The B.P. 11 (now a BP-231) attached to the petition shows that on March 21, 2005, petitioner filed an administrative appeal from a finding of guilt on a conduct report. The administrative appeal states,

> I would like for you to review my appeal and the reasons I stated in the attached B-P-10. In addition to my reasons on the appeal, I didn't know any better than to plea guilty as the D.H.O. states. Like I mentioned on the 10, I had just arrived 3 weeks prior to this incident and didn't know any rules or regulations yet. This is my first time in jail ever and its all new to me. I want to get moved near my family but now with this incident report on my record its going to be hard for me to move. Please expunge this incident report #1048375 for the reasons stated on the attached B-P-10. I thank you in advance for looking into this matter.

Petitioner did not attach to his petition in this court a copy of his B.P. 10, and nothing in his B.P. 11 reveals the nature of his challenge to the validity of the disciplinary hearing officer's finding that he was guilty of the offense charged in incident report #1048375. However, petitioner also submitted a copy of the response to his administrative appeal, which is dated June 1, 2005 and signed by Harrell Watts, Administrator of National Inmate Appeals. This document reads,

> You appeal the DHO's decision of December 28, 2004, for Possession, Manufacture, or Introduction of a Gun, Firearm, Weapon, Sharpened Instrument, Knife, Dangerous Chemical, Explosive, or any Ammunition, Cod 104. You claim you did not commit the above prohibited act and request the incident report be expunged.
>
> We find substantial compliance with Program Statement 5270.07, Inmate Discipline and Special Housing Units. The DHO's decision was based upon the greater weight of the evidence that he has detailed in Section V of the

> DHO report. We also find it reasonable for the DHO to have made this determination based on the greater weight of evidence. The reporting officer's written statement indicates that during a search of your cell, he found an 8 ½ inch flat metal homemade weapon on the shelf adjacent to the window underneath some clothes. The cell is occupied by you and another inmate. The DHO considered your statement, however, gave greater weight to the reporting officer's account of the incident. We concur the evidence supports the charge.
>
> P.S. 5270.07 stipulates that inmates are responsible for keeping their area free of contraband. Based on our review, we find that the required disciplinary procedures were substantially followed, the greater weight of the evidence supports the decision, and the sanctions imposed were appropriate for the offense and in compliance with policy. Your appeal is denied.

Although it is not entirely clear, I will construe petitioner's petition as alleging that he was denied procedural due process in connection with the disciplinary proceedings relating to incident report #1048375. In particular, I understand petitioner to be alleging that the decision to find him guilty was arbitrary and capricious.

OPINION

The loss of good time credit implicates a liberty interest, triggering the protections of procedural due process, because such loss affects the duration of an inmate's sentence. Sandin v. Conner, 515 U.S. 472 (1995); Wagner v. Hanks, 128 F.3d 1173, 1176 (7th Cir. 1997) (when sanction is confinement in disciplinary segregation for period not exceeding remaining term of prisoner's incarceration, Sandin does not allow suit complaining about

deprivation of liberty).

Due process requires the prison to provide fair notice of a rule before sanctioning an inmate for its violation. Forbes v. Trigg, 976 F.2d 308, 314 (7th Cir. 1992). However, prisoners are presumed to know the prison rules, see, e.g., Macias v. C.I.R., 255 F.2d 23, 28 (7th Cir. 1958) (citizens presumed to know the law), and prisoners at Oxford are presumed to receive a copy of all prison rules upon their arrival. 28 C.F.R. § 541.11(d) ("Staff shall advise each inmate in writing promptly after arrival at an institution of [p]rohibited acts and disciplinary severity scale.").

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)). Also, if institutional safety requires the omission of certain evidence, the inmate must be provided a statement indicating the fact of such omission. Wolff v. McDonnell, 418 U.S. 539, 565 (1974).

Petitioner does not allege that he was deprived of any of the procedures mandated above. Instead, it appears from his administrative appeal that he believes he made a mistake

when he pled guilty to the charges against him, perhaps because he believes that without his admission there was insufficient evidence to find him guilty.

"[T]he 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. The "some evidence" standard requires nothing more than a decision that is not arbitrary or lacking support in the record. McPherson, 188 F.3d at 786. Moreover, the Court of Appeals for the Seventh Circuit has held that where the charges are simple, even a brief statement that a disciplinary committee based its decision on the conduct report is sufficient. Saenz v. Young, 811 F.2d 1172, 1174 (7th Cir. 1987). The charge that petitioner possessed a weapon in his cell is not complex. The disciplinary hearing officer believed the conduct report, which was written by the officer who found the weapon, and not petitioner. No other reason is necessary for the hearing officer's finding of guilt or for the disposition of petitioner's sentence. Pardo v. Hosier, 946 F.2d 1278 (7th Cir. 1991) (reversing district court finding of constitutional deficiency where committee's statement of reasons failed to provide any explanation for the specific disciplinary action taken). Because it is clear from the attachments to petitioner's petition that there is no merit to his claim that he was denied his constitutional right to due process, I will deny his petition for a writ of habeas corpus to reinstate his good time credit.

ORDER

IT IS ORDERED that petitioner Jubel Jimenez's petition for a writ of habeas corpus is DISMISSED for petitioner's failure to show that he is in custody in violation of the constitution or laws of the United States. The clerk of court is directed to enter judgment for respondent.

Entered this 29th day of July, 2005.

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