

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

THOMAS SIMMONS,

Petitioner,

v.

STEPHEN HOBART,

Respondent.

ORDER

05-C-510-C

On August 22, 2005, petitioner Thomas Simmons, an inmate at the Federal Correctional Institution in Oxford, Wisconsin, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. In an order dated October 19, 2005, I stayed a decision whether to issue an order to show cause and gave petitioner a chance to supplement his petition because I was unable to determine whether his averments were sufficient to suggest that his due process rights had been violated. On October 25, 2005, petitioner filed a supplement to his petition in which he avers

that he was not allowed [or provided] opportunity to call witnesses and present documentary evidence in his defense; and that medical records were not obtained for verification of prescribed medicines prior to the alleged incident in question; prison officials failed to give him notice of the charges against him within the 24-hour time period prior to the hearing. Petitioner

received a copy of his allege[d] charges at the disciplinary hearing.

As I noted in the October 19, 2005 order, a prisoner facing the loss of good time credits in a disciplinary hearing is entitled to written notice of the charges against him at least 24 hours before the hearing, a chance to call witnesses and present evidence in his defense and 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)). From petitioner's supplement, I understand him to be saying that he was not given notice of the charges at least 24 hours before the hearing or a chance to present witnesses and documentary evidence at the hearing. These allegations are sufficient to state a procedural due process claim. Therefore, I will issue an order to requiring respondent Hobart to show cause why petitioner's petition for a writ of habeas corpus should not be granted.

The next step in this case is to have petitioner's petition served on respondent. Rule 4 of the Rules Governing Section 2254 Cases provides that the clerk of court is responsible for serving "the petition and any order on the respondent and on the attorney general or other appropriate officer of the state involved." Because there are no specific rules governing service of process in § 2241 habeas corpus actions, I will look to the ruling governing § 2254 cases for guidance. Accordingly, I will instruct the clerk of court to send to respondent and the United States Attorney General by certified mail a copy of petitioner's petition, the

supplement filed on October 25, 2005, this court's October 19, 2005 order and this order. A courtesy copy of these documents will be sent to the United States Attorney for the Western District of Wisconsin because the United States Attorney for this district will likely represent the respondent in this action.

ORDER

IT IS ORDERED that respondent may have 20 days from the date of service of petitioner's petition upon him in which to show cause why this petition for a writ of habeas corpus should not be granted on petitioner's claim that he was deprived of 41 days of good time in violation of the due process clause of the Fifth Amendment. Petitioner may have 20 days from the date of service of the response in which to serve and file a traverse. Service of the traverse is to be made by mailing a copy to counsel for the respondent, whose name will be known to petitioner at the time respondent files a response.

Entered this 27th day of October, 2005.

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