

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

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MICHAEL HILL,

Petitioner,

v.

STEVEN HOBART, Warden,

Respondent.  
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OPINION AND ORDER

05-C-525-C

This is a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241. Petitioner Michael Hill is an inmate at the Federal Correctional Institution at Oxford, Wisconsin. Petitioner contends that he was deprived of a liberty interest without due process of law. He seeks reinstatement of the good conduct credits he lost after he was found to have possessed a weapon in his cell. Petitioner contends that the process he received leading up to this punishment did not meet constitutional requirements because he was denied a polygraph test, fingerprinting, a copy of a videotape of his housing unit and an FBI investigation. The petition will be dismissed; petitioner has not set forth facts sufficient

to suggest that he is being held in custody in violation of the Constitution or laws of the United States.

From petitioner's verified petition and its attachments, I find the following facts.

### FACTS

On January 21, 2005, senior officer J. Duckett filed an incident report against petitioner charging him with "possession, manufacturing or introduction of a weapon." On January 25, 2005, petitioner received notice that a disciplinary hearing would be held "on or after January 26, 2005 at 8am." An attachment to the notice advised petitioner that he had the right to be represented by a staff member, to call witnesses and to present documentary evidence.

Petitioner made the following requests regarding the investigation of this incident: (1) that the Federal Bureau of Investigation be called into the institution to conduct an investigation; (2) that fingerprints be taken from the weapon and compared with his own; (3) that he be provided with a copy of the videotape of his housing unit on the day of the incident; and (4) that he be given a polygraph test. Petitioner's four requests were denied.

The weapon, which was a grey piece of metal with a handle made of black tape, was found in the common area in petitioner's cell. Anyone could have walked into the cell and

planted the weapon there.

On February 4, 2005, a discipline hearing officer found petitioner guilty of possessing a weapon in his cell. As punishment, petitioner lost 41 days of good time credits, 30 days of commissary privileges, 30 days of telephone use and 30 days of visitation rights. Additionally, he was given 30 days in disciplinary segregation. The hearing report, dated March 10, 2005, stated that discipline hearing officer based her decision on the following:

The reporting officer stated while searching your cell he found one homemade weapon. The weapon was a grey piece of metal with black tape as a handle. The weapon was 9 3/4 inches in length and was found under commissary items along side the wall in the common area inside a microwave popcorn bag. The inmates assigned to this cell are Hill and Tidwell.

A photocopy of the weapon by J. Duckett, S.O. dated 1/21/05, clearly depicts a weapon, as it has black tape on one end to form a handle.

You and your cellmate denied the weapon was yours to the DHO. Therefore, both inmates are held responsible, as inmates are responsible for the contents of their cells.

Based on the greater weight of evidence as annotated above, the DHO finds that you did commit the prohibited act of Code #104, Possession of a Weapon.

The hearing report listed the following as the "reason for sanctions":

Possession of a weapon in a correctional setting is prohibited by Federal Law. Experience has shown weapons are used in incidents of assaults and murders, and threaten the safety of staff and inmates and the orderly operation of the institution. Sanctions were imposed in an effort to impress on Inmate the gravity of his actions and hopefully deter him from such actions in the future. Although not directly related to the instant offense, the DHO believes that imposition of the loss of visitation, commissary, and phone privileges were necessary to assist in effectuating the desired and appropriate behavior modification on your part.

Petitioner's cellmate was also found guilty of possession of a weapon.

On March 13, 2005, petitioner appealed the discipline hearing officer's decision to the regional director; the appeal was denied. In his decision, the regional director stated:

At the time you requested the video tape, it was no longer available. Videotapes are recycled. This incident was not investigated by the FBI as they do not investigate all institutional incidents. As the DHO informed you, only the Warden can authorize a polygraph test. You did not indicate to the DHO you wanted your request made to the Warden. The DHO held you accountable because the 9 3/4 inches gray piece of metal was accessible to you. Inmates are responsible for items found in their living area.

On May 8, 2005, petitioner appealed to the Bureau of Prisons' General Counsel and his appeal was denied.

## DISCUSSION

### A. Administrative Exhaustion

28 U.S.C. § 2241 permits district courts to grant relief to prisoners "in custody in violation of the Constitution or laws or treaties of the United States." When a petitioner mounts a due process challenge to a disciplinary procedure that resulted in a denial of good conduct credit to which the petitioner was statutorily entitled, the suit may be maintained as a petition for habeas corpus. Jackson v. Carlson, 707 F.2d 943, 946 (7th Cir. 1983). This is because the petitioner is seeking release at an earlier date even though he is not

seeking immediate release. Id. Thus, petitioner has properly brought his claim under § 2241.

Federal prisoners are required to exhaust the administrative remedies available to them. Sanchez v. Miller, 792 F.2d 694, 697 (7th Cir. 1986); Del Raine v. Carlson, 826 F.2d 698, 703 (7th Cir. 1987). The administrative procedure for a federal inmate challenging the decision of a disciplinary hearing officer consists of the inmate's submitting a BP-10 form to the appropriate regional director and a BP-11 form to the Bureau of Prisons' General Counsel according to the timetable set out in 28 C.F.R. § 542.15. 28 C.F.R. § 541.19. Petitioner has attached to his petition copies of his appeal to the regional administrative remedy appeal board, the board's denial, his appeal to the Bureau of Prisons' General Counsel and its denial. These documents are sufficient to show petitioner has exhausted his administrative remedies.

#### B. Due Process Violation

In order to make out a due process claim, petitioner must show first that he was deprived of a liberty interest and second, that this deprivation took place without the procedural safeguards necessary to satisfy due process. The Court of Appeals for the Seventh Circuit has held repeatedly that prisoners have a protected liberty interest in good time credit that they have 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).

Although the Fifth Amendment's due process clause provides federal inmates with certain minimum procedural safeguards, it does not create a right to procedural perfection. "[A] prisoner must show that his continued custody is a violation of the Constitution'." White v. Henman, 977 F.2d 292, 295 (7th Cir. 1992) (quoting Kramer v. Jenkins, 806 F.2d 140, 142 (7th Cir. 1986)). When the loss of good-time credit is a possible sanction, an inmate must receive the following procedural safeguards during 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)).

Petitioner does not contend that he was not provided with advance written notice of the charges or with a written statement by the factfinder explaining her decision. Petitioner does contend that he was deprived of an opportunity to obtain certain evidence including a videotape of his housing unit (which he was told no longer existed), a polygraph test and fingerprinting. Moreover, petitioner was denied his request for an FBI investigation of the

incident. Petitioner is not entitled to an investigation of his choice; he is entitled only to an opportunity to call witnesses and present documentary evidence.

The 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.”) 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. The fact that there was a weapon in petitioner’s cell is sufficient evidence to render his punishment non-arbitrary. The hearing officer satisfied the “some evidence” standard.

Because there is no indication that petitioner was deprived of the minimal procedural safeguards provided by the due process clause, his petition will be dismissed.

ORDER

IT IS ORDERED that petitioner Michael Hill's petition for a writ of habeas corpus is DISMISSED for petitioner's failure to show that his custody has been extended in violation of the Constitution or laws of the United States.

Entered this 28th day of October, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge