

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

GARY DEWILLIAMS,

Petitioner,

MEMORANDUM and ORDER

v.

06-C-044-S

STEPHEN R. HOBART,

Respondent.

Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 claiming that he was denied due process protections in his disciplinary proceeding. Respondent filed a response on February 27, 2006. Petitioner filed his traverse on April 6, 2006.

FACTS

Petitioner Gary DeWilliams is currently incarcerated at the Federal Correctional Institution, Oxford, Wisconsin (FCI-Oxford). On May 11, 2005 petitioner was housed in cell M03-010 at FCI-Oxford.

On the morning of May 11, 2005 Michael Klawitter, a correctional counselor, performed a pat search of plaintiff at the front door of his housing unit. He found plaintiff had a container of dried tobacco, matches and a cigarette. Plaintiff was charged with Possession of Anything Unauthorized, in violation of Code 305 of BOP regulations in Incident report #1340585.

The same afternoon, Klawitter searched plaintiff's cell and found an unauthorized electrical hook-up connected to a light. The cord measured approximately 5 inches in length and was connected to the light on one end with wire nuts and had electric cable factory connectors on the other end. Plaintiff was issued an incident report # 1340593 charging him with Possession or Manufacture of a Hazardous tool, in violation of Code 108 of the BOP regulations.

On May 16, 2005 petitioner had a Unit Disciplinary Committee hearing for both incident reports. Since he admitted to having tobacco on his person, petitioner was found guilty of incident report # 1340585. He was sanctioned 45 days loss of commissary.

Petitioner stated he did not know anything about the wires. Because of the serious nature of the incident and possible sanctions incident report #1340593 was referred to the Discipline Hearing Officer. On May 16, 2005 petitioner was provided his rights at the hearing. Petitioner requested inmate Kenneth Reed, who was his cell mate as a witness. Staff member John Ouelet represented petitioner at the hearing.

The hearing on incident report #1340593 was held on July 14, 2006 before hearing officer Joetta Terrell. Petitioner waived his right to call inmate Reed as a witness. He testified that he knew nothing about the wires and had moved into the cell a month before.

The Hearing officer found that petitioner had committed the prohibited act based on information from BOP staff who discovered

the unauthorized electrical hook-up on May 11, 2005 and a photograph of the hook-up. She determined that a person who touched the wires could have possibly been shocked and seriously harmed. The hearing officer also considered a memorandum from Lt. J. Roebuck who had interviewed Klawitter because petitioner had claimed Klawitter had offered him a deal before issuing the incident report. Klawitter denied offering petitioner a deal.

MEMORANDUM

Petitioner claims that he was denied due process in his disciplinary proceedings. In Wolff v. McDonnell, 418 U.S. 539, 563-67 (1974), the United States Supreme Court held that a prisoner is entitled to advance written notice of the disciplinary charges, an opportunity to call witnesses and present documentary evidence in his defense, the aid of a staff member and a written statement by the fact finder of the evidence relied upon and the reasons for the disciplinary action. The record in this case indicates that petitioner received these due process protections in the disciplinary proceeding.

Since petitioner received the due process protections to which he was entitled the reviewing court is limited to determining whether the DHO's findings were supported by "some evidence". See Meeks v. McBride, 81 F.3d 717, 720 (7th Cir. 1996). Based on the affidavit of the hearing officer, the Court finds that her finding

of guilt was supported by some evidence, specifically, the results of the search of petitioner's cell. Accordingly, petitioner's petition must be dismissed.

Petitioner is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his writ of habeas corpus must be dismissed with prejudice. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that petitioner's petition for a writ of habeas corpus is DISMISSED with prejudice.

Entered this 10th day of April, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge