

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

-----  
ANTONIO VENABLE,

Petitioner,

v.

R. MARTINEZ,

Respondent.  
-----

ORDER

07-C-166-C

This is a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241, in which petitioner Antonio Venable, an inmate at the Federal Correctional Institution in Oxford, Wisconsin, claims he is in custody in violation of the laws or Constitution of the United States. Specifically, petitioner contends that he was deprived unfairly of good time credits when respondent violated his right to procedural due process at his disciplinary hearing. Petitioner has paid his \$5 dollar filing fee. Because I find that there is “some evidence” to support the disciplinary hearing officer's finding that petitioner was guilty of making a sexual proposal to staff, petitioner's petition will be denied.

In his petition, petitioner declares the following facts to be true.

## FACTS

On August 21, 2006, correctional officer K. Miller issued petitioner Antonio Venable an incident report. In the report, Miller alleged,

On August 20, 2006, at approximately 4:50 p.m., [petitioner] came to the Columbia officer station and asked repeatedly if he could know my first name to “get closer” to me. During the course of my duties, [petitioner] also asked me to shake him down so I could “get a feel for him.” Later, [petitioner] offered to help move boxes of toilet paper stating, “I would do anything to help you.” All comments made by Inmate Venable were taken as sexual in nature.

On August 24, 2006, petitioner had a unit disciplinary committee hearing. At that time, the committee determined that the report as written was more credible than petitioner’s explanation that his comments had been misunderstood and that he had never asked Officer Miller to pat him down. The unit disciplinary committee recommended that the matter be referred to a disciplinary hearing officer and that if the hearing officer were to find petitioner guilty of the prohibited act, he receive a penalty of disciplinary segregation, loss of good time, and loss of visiting and commissary privileges.

On August 31, 2006, petitioner appeared before the disciplinary hearing officer. The discipline hearing officer report indicates that petitioner did not request witnesses and that he denied the charges against him. Petitioner’s statement is reported on the hearing form as follows:

She misunderstood what all I was talking about. I was kicking it with some

other inmates and I asked her name. She told me, K. Miller. I told her no, what is your name, I asked her a couple of times. I wouldn't do anything to disrespect the lady. I did tell her I would help move boxes, but I didn't do anything wrong. She took what I said wrong.

At the conclusion of the hearing, the hearing officer found that petitioner had committed the act as charged. He notes that his decision was based on the following information:

\* \* \*

Inmate's statement before the DHO was he was not guilty of the charge, the officer misunderstood what he was saying and this was just a big mistake.

Based upon the evidence annotated above (staff member written report) the DHO concludes there was sufficient information present in the body of the report to support the charge. Your statements made before the Investigating Lieutenant and Members of your UDC were considered by the DHO. The DHO found based on the greater weight of the evidence (Officer written statement) which the DHO found credible as the reporting officer gains nothing by submitting false report, coupled with the information you provided to the Investigating Lieutenant which the DHO found gave credence to the reporting officer's documented account of the incident. The DHO found you did commit the prohibited act of Code 206 (Making a Sexual Proposal).

As a sanction for the conduct report, petitioner forfeited twenty-seven days' good conduct time, received thirty days in disciplinary segregation, and lost telephone, commissary and visiting privileges for 180 days. Petitioner appealed the disciplinary hearing officer's decision. Harrell Watts, Administrator of National Inmate Appeals for the Federal Bureau of Prisons denied petitioner's appeal on January 7, 2007.

## OPINION

### A. Administrative Exhaustion

28 C.F.R. § 542 governs the administrative remedy procedure that “applies to all inmates confined in institutions operated by the Bureau of Prisons. . . .” The Administrative Remedy Procedure consists of the inmate's completing the appropriate BP-9, BP-10, and BP-11 forms, and submitting them to the warden, the regional director of the Bureau of Prisons, and the Bureau of Prison's General Counsel, according to the timetable set out in 28 C.F.R. §§542.14 and 542.15. Although petitioner has not supplied the court with each of his appeals, he has submitted documentation of his appeal to the Bureau of Prison’s General Counsel on November 6, 2006, and a decision denying his appeal dated January 8, 2007. Therefore, it appears that petitioner has exhausted his administrative remedies.

### B. Standard of Review Under § 2241

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.” Superintendent, Massachusetts Correctional Institution v. Hill, 472 U.S. 445, 455 (1985) (emphasis added). 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. See 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.”)

Petitioner contends that his right to due process was violated by the revocation of good time credits because the disciplinary hearing officer placed too much weight on the credibility and written statement of correctional officer K. Miller, who issued petitioner the conduct report. Petitioner's argument fails under the standard set forth in Hill, 472 U.S. 445. Petitioner does not contend that there was *no* evidence that he made sexually suggestive statements to Miller; instead, he contends that the hearing officer placed greater weight on Miller's credibility than he did on petitioner's credibility. Nevertheless, it is not the court's role to “second-guess[]” the “disciplinary board's factual findings or decisions.” Id. at 455. The hearing officer was entitled to rely on the statement of a prison official that she understood petitioner's comments as a sexual proposal. I conclude that the hearing officer relied on “a modicum of evidence to support [his] decision to revoke [petitioner's] good time credits.” Therefore, petitioner's petition for a writ of habeas corpus will be denied.

#### ORDER

IT IS ORDERED that petitioner Antonio Venable's petition for a writ of habeas

corpus is DISMISSED; the clerk of court is directed to enter a judgment of dismissal and close this file.

Entered this 4<sup>th</sup> day of April, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge