

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

MARCELO SANDOVAL,

Petitioner,

v.

WARDEN HOLINKA,
Warden FCI Oxford,

Respondent.

ORDER

09-cv-033-bbc

On January 16, 2009, petitioner Marcelo Sandoval, 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 his petition, petitioner contends that he was denied due process at a disciplinary hearing that resulted in the loss of good-time credits because prison officials failed to inform him of his right to call witnesses and present evidence and denied his request for an interpreter. Petitioner seeks to have his good-time credits reinstated and his disciplinary record expunged.

On February 27, 2009, I gave petitioner an opportunity to supplement his petition with additional facts regarding what information he was given and what he understood about his proceedings before the Disciplinary Hearing Officer. Specifically, I asked petitioner to

supply additional facts regarding the following questions: (1) what sort of notice he was given regarding the hearing, calling witnesses and presenting evidence; (2) whether he understood the information regarding the hearing, witnesses and evidence he was given and, if not, why; (3) whether petitioner failed to understand what occurred during the hearing; (4) what evidence he would have submitted or witnesses, if any, he would have called and what the witnesses would have said at the hearing; and (5) how an interpreter would have assisted him in presenting his defense. Petitioner has submitted his supplement in which he alleges that he received written notice of the hearing and his rights in English but because he cannot read English he was unaware of the content of the notice. Because petitioner has alleged that he failed to receive actual notice of his rights to present evidence and call witness in violation of his right to due process, I will direct respondent to issue a response to this petition to show cause why this writ should not issue on petitioner's claim.

From petitioner's petition and supplement, I draw the following facts.

ALLEGATIONS OF FACT

Petitioner Marcelo Sandoval cannot read or write in English but he can understand a limited amount of spoken English. During petitioner's criminal proceedings in the federal district court, he was provided an interpreter, which is noted in petitioner's pre-sentence investigation report in possession of the Bureau of Prisons.

On March 20, 2008, petitioner had a hearing before the Disciplinary Hearing Officer

because of an altercation with another inmate on February 28, 2008. Before the hearing, petitioner was provided with a notice of the hearing that was in English. When he asked why he was being placed in “the hole” after the altercation, he was told that it was because of fighting. Petitioner was not told that he could call witnesses or challenge the evidence against him. Petitioner was not informed that he had a “right” to an interpreter. He asked for an interpreter but was denied one. Had he known of his opportunity to call witnesses he would have called inmates that were present during the fight to testify that he was attacked and acted in self-defense.

The Disciplinary Hearing Officer asked why petitioner had blood on his hands after the incident on February 28. Petitioner responded that the blood was his and that the blood was the result of blocking inmate Ortiz’s punches. Inmate Ortiz had no wounds from the incident. Petitioner was found guilty of fighting with another person and lost good-time credits.

DISCUSSION

In the prison context, the Fifth Amendment does not require procedural perfection but it does require that an inmate receive meaningful process before losing any good-time credits. McPherson v. McBride, 188 F.3d 784, 785-86 (7th Cir. 1999). At the very least, an inmate must receive written notice of the charges, an opportunity to call witnesses and

present evidence when doing so is consistent with institutional safety and correctional goals and a statement of the evidence relied on and the reasons for his disciplinary actions. Wolff v. McDonnell, 418 U.S. 539, 563-67 (1974). In this case, petitioner alleges that he received a written notice regarding the hearing but he did not understand the contents of the notice because petitioner cannot read English. Petitioner learned about the charges against him by asking prison officials why he was being placed in segregation after the fight. However, because no one verbally informed him that he could have witnesses and present evidence prior to his hearing, he was never aware of these rights. Petitioner believes that if he had had an interpreter he would have been aware of his rights and been able to properly defend himself. He alleges that he would have presented a number of witnesses and offered medical reports as evidence in his defense.

Although petitioner is correct that an interpreter could have translated the contents of the notice for petitioner, it is not clear that petitioner *needed* an interpreter at the disciplinary hearing. He admits that he comprehends some spoken English. An interpreter would be necessary where petitioner would be unable to comprehend a significant portion of the disciplinary hearing because his comprehension of spoken English was very poor. Powell v. Ward, 487 F. Supp. 917, 932 (S.D.N.Y. 1980) (“Unless Spanish speaking inmates understand and can communicate with the hearing board, they are being denied the due process protections guaranteed in Wolff.”). That is not the case here. As I understand his

petition and supplement, petitioner does not allege that he could not understand the proceedings against him or the questions posed to him by the disciplinary hearing officer.

Although due process does not require an interpreter for Spanish-speaking inmates at a disciplinary hearing, United States v. Johnson, 248 F.3d 655, 663 (7th Cir. 2001) (no constitutional right to court-appointed interpreter), it does require that petitioner be informed of his rights. Id.; see also United States v. Cirrincione, 780 F.2d 620, 634 (7th Cir. 1985). Petitioner's inability to read or write English places him in a difficult position in a prison system in which English is the primary language of his keepers and of the rules, regulations and materials he receives. In this case, petitioner's situation is analogous to that of an illiterate inmate who cannot understand the nature of his rights and the proceedings before him. In Wolf, 418 U.S. at 570, the Supreme Court held that illiterate inmates are entitled to some assistance in helping them to understand their rights and the nature of the proceedings. Without knowing that he has rights to defend himself by the use of evidence and witnesses, a prisoner would be denied a meaningful opportunity to defend himself and the minimal process due at disciplinary hearing. McPherson v. McBride, 188 F. 3d at 785-86.

A notice in Spanish explaining the charges against him and what his rights were would have satisfied due process. Powell, 487 F. Supp. at 232 (requiring notice and statement in Spanish for Spanish-speaking inmates who cannot read or understand English). As I

understand his petition and supplement, however, petitioner did not receive any information in Spanish regarding these proceedings. Petitioner placed prison officials on notice of his language deficiencies when he requested an interpreter for his hearing. Further, in his petition, petitioner states that he was provided an interpreter for his criminal trial and that this information was in petitioner's file. It is a matter of record that petitioner's English comprehension was poor. Therefore, it appears that petitioner's due process rights may have been violated under the standard set forth in Wolff. Accordingly, I will direct respondent to file a response to this petition showing cause, if any, why this writ should not issue on petitioner's claim that he was illegally deprived of his good time credits when he was not given notice in Spanish of his opportunity to present evidence or call witnesses at the disciplinary hearing.

ORDER

IT IS ORDERED that:

1. No later than 20 days from the date of service of the petition, respondent Carol Holinka is to file a response showing cause, if any, why this writ should not issue with respect to petitioner's claim that he was illegally deprived of his good time credits when he was not given notice in Spanish of his opportunity to present evidence or call witnesses at the disciplinary hearing.

2. Petitioner may have 20 days from the service of the response in which to file a traverse to the allegations of the response submitted by respondent.

Entered this 27th day of March, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge