

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

AARON DeROO,

Petitioner,

v.

CAROL HOLINKA, Warden,

Respondent.

ORDER

11-cv-28-bbc

On January 31, 2011, I dismissed petitioner Aaron DeRoo's petition for a writ of habeas corpus, concluding that he had failed to state a claim for violation of his constitutional right to due process. Now before the court is petitioner's motion for reconsideration of the dismissal, dkt. #4. Petitioner's motion is without merit and will be denied.

In his petition, petitioner contended that the Bureau of Prisons violated his constitutional right to due process by relying on an incident report that was expunged as justification for taking away excessive days of good-time credits in later disciplinary decisions. However, the materials submitted by petitioner showed that he had confessed to violating the prison regulations that formed the basis for the disciplinary decisions challenged

in the petition. I concluded that because he received notice and a fair hearing and he confessed to the offenses charged, he received due process. Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 454 (1985) (due process requires only that the prisoner receive (1) advance written notice of at least 24 hours of the disciplinary charge; (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense; (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary actions; and (4) a decision supported by “some evidence”).

In his motion for reconsideration, petitioner contends that the disciplinary officer’s decision to revoke his good-time credits was not supported by “some evidence” because the expunged conduct report cannot be considered evidence. The problem with this argument is that the expunged conduct report was not the only evidence on which the officer relied in making his determination of guilt and punishment. Petitioner confessed to the conduct for which he was charged. Petitioner’s confession alone is enough to satisfy the “some evidence” standard. Thus, it is irrelevant to due process that the disciplinary hearing officer noted that petitioner had been found guilty of similar conduct in the past. Scruggs v. Jordon, 485 F.3d 934, 940 (7th Cir. 2007) (prisoner’s confession alone is sufficient evidence to support disciplinary officer’s determination of guilt and punishment); Lagerstrom v. Kingston, 463 F.3d 621, 624 (7th Cir. 2006) (holding that disciplinary hearing satisfied due process even

though evidence presented in disciplinary hearing was false and hearing was eventually overturned). Accordingly, petitioner's received due process and his motion for reconsideration will be denied.

ORDER

IT IS ORDERED that petitioner Aaron DeRoo's motion for reconsideration, dkt. #4, is DENIED.

Entered this 15th day of February, 2011.

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