

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

ANDREW ROVITO,

Petitioner,

v.

L.C. WARD,¹

Respondent.

OPINION & ORDER

15-cv-729-jdp

Pro se prisoner Andrew Rovito is in the custody of the Federal Bureau of Prisons (BOP). Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, contending that his current confinement is the result of a prison disciplinary hearing in which the BOP stripped petitioner of good-conduct time without “some evidence,” in violation of due process. Petitioner seeks expedited consideration. Dkt. 15.

The petition is before the court for preliminary review pursuant to Rule 4 of the Rules Governing Section 2254 Cases. (This rule may also be applied to habeas petitions not brought under § 2254, including § 2241 petitions. Rule 1(b), Rules Governing Section 2254 Cases; *see also* 28 U.S.C. § 2243.) Under Rule 4, I will dismiss the petition only if it plainly appears that petitioner is not entitled to relief; otherwise, I will order respondent to show cause as to why I should not grant the petition.

I will not dismiss the petition at this time. Because petitioner will conclude his period of incarceration in June, I will expedite the court’s usual process for resolving habeas

¹ Petitioner is currently located at Oxford Federal Correctional Institution (where the warden is L.C. Ward, not Angela Owens), and the court has modified the caption accordingly.

petitions. I will give the government a shorter amount of time to show cause as to why I should not grant the petition, and I will schedule this case for a hearing.

BACKGROUND

I draw the following information from the petition.

While housed at a BOP residential reentry center (RRC) in Chicago, petitioner was charged with a “Code 200” escape attempt. Petitioner had returned to the RRC after being out on a “pass” and explained to a staff member and his resident advisor that while he was out on his pass, he could not enter Sam’s Club (the approved destination) because he had forgotten his membership card; petitioner went to a nearby Jewel Osco instead and then returned to the RRC on time. In response to petitioner’s “detour,” the BOP conducted a disciplinary hearing, determined that petitioner’s actions constituted an escape, and moved petitioner from the RRC to more traditional custody at the Metropolitan Correctional Center in Chicago. Petitioner lost 27 days of good-conduct time, and forfeited 33 days of non-vested good-conduct time and one year of good-conduct time earned for completing the Residential Drug Abuse Treatment Program (RDAP). (The RDAP credit was conditioned on petitioner not receiving any 100- or 200-level incident reports for the remainder of his sentence.)

Petitioner contends that his current incarceration is unconstitutional because the BOP did not have any evidence that he escaped from custody or that he had participated in unauthorized activity while out on his pass. Petitioner contends that the incident report did not contain any facts that supported the escape charge; petitioner returned from his pass willingly and before his approved return time. Petitioner contends that losing his good-

conduct time amounts to a deprivation of liberty, in violation of petitioner's due process rights.

Petitioner filed his petition while incarcerated at the Metropolitan Correctional Center in Chicago. The District Court for the Northern District of Illinois transferred the case to the Eastern District of Wisconsin upon learning that the BOP had transferred petitioner to Oxford Federal Correctional Institution in Oxford, Wisconsin (FCI-Oxford). Dkt. 7. The Eastern District quickly rectified the Northern District's mistake and transferred petitioner's case to this district, as FCI-Oxford is located within the Western District of Wisconsin. Dkt. 11. This court took the petition under advisement on November 13, 2015.

Petitioner represents that he has exhausted his administrative remedies. Specifically, he represents that the BOP denied his appeal at the regional level (BP-10) and that his BP-11 did not receive a response, which constitutes a de facto denial.

ANALYSIS

Prison disciplinary decisions that result in the loss of good-time credit must be supported by some evidence to satisfy due process. *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 454 (1985). Disciplinary hearings that deprive an inmate of good-time credit without some supporting evidence—and, as a result, increase the inmate's period of incarceration—may serve as a basis for requesting habeas relief. *See Waletzki v. Keohane*, 13 F.3d 1079, 1080 (7th Cir. 1994) (“[G]ood-time credits reduce the length of imprisonment, and habeas corpus is available to challenge the duration as well as the fact of custody. . . . [W]hen [a petitioner] is attacking the fact or length of his confinement in a federal prison on the basis of something that happened after he was convicted and sentenced, habeas corpus is

the right remedy.” (internal citations omitted)). I see no reason to deny the petition at this stage. Section 2241 provides that the “writ of habeas corpus shall not extend to a prisoner unless . . . [h]e is in custody in violation of the Constitution or laws or treaties of the United States[.]” 28 U.S.C. § 2241(c)(3). Here, petitioner alleges that he is in custody in violation of due process.

Usually at this point I would instruct the government to show cause as to why I should not grant the petition. Show cause orders are typically accompanied by a fairly lengthy briefing schedule. But petitioner has informed the court that his release date is sometime in June 2016, making a traditional briefing schedule unworkable. Instead, I will shorten the government’s time to show cause. And instead of allowing petitioner a traverse, I will schedule a hearing for May 4, 2016, at 10:00 a.m., in an attempt to resolve this case expeditiously. The government should be prepared to show cause as to why the requested writ should not issue, and both parties should be prepared to discuss the merits (or lack thereof) of petitioner’s claim. I will issue a writ of habeas corpus ad testificandum to ensure petitioner’s attendance at the hearing in short order.

One final note: on March 14, 2016, petitioner filed a “motion for summary judgment,” contending that he is entitled to a favorable ruling and immediate release because the government has not responded to the petition. Dkt. 16. But petitioner is mistaken; the court has had the petition under advisement for purposes of screening petitioner’s claims since its filing, and the court has not required any response from the government. I will deny petitioner’s motion.

ORDER

IT IS ORDERED that:

1. Petitioner Andrew Rovito's motion for expedited proceedings, Dkt. 15, is GRANTED, insofar as the court is implementing an expedited schedule.
2. The government may have until April 26, 2016, to file a response showing cause why the court should not grant the petition. The court will hold a hearing the following week, on May 4, 2016, at 10:00 a.m.
3. Petitioner's motion for summary judgment, Dkt. 16, is DENIED.
4. For the sake of expediency, I will send the petition to Warden Ward, the local United States Attorney, and the United States Attorney General via certified mail in accordance with Fed. R. Civ. P. 4(i), along with a copy of this order.

Entered April 13, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge