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

JAHMAL GRAY,

Petitioner,

v.

T. KROGER,[1]

Respondent.

OPINION & ORDER

16-cv-203-jdp

Pro se petitioner Jahmal Gray is in the custody of the federal Bureau of Prisons (BOP), incarcerated at FCI-Oxford. He has petitioned for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241, alleging that he was disciplined based on a prison guard's false accusations. Petitioner also alleges that someone tampered with the materials that he prepared for an administrative appeal, which resulted in the BOP denying his appeal as untimely. I conclude that the government should be served with the petition.

ALLEGATIONS OF FACT

Petitioner does not provide many details about the events that led to his discipline, such as when they occurred, who was involved, and what happened. It appears that in 2015, petitioner was incarcerated at FCI-Elkton, located in Lisbon, Ohio. While at FCI-Elkton, petitioner was accused of aggressive and threatening behavior toward a corrections officer. The officer forwarded the matter to petitioner's unit team, and petitioner's case manager referred it to a discipline hearing officer (DHO). The DHO found petitioner guilty in August

[1] L.C. Ward is no longer the warden at FCI-Oxford. T. Kroger is currently serving as acting warden, and I have modified the caption accordingly.

2015 and sentenced him to 80 days of disciplinary segregation, 27 days of disallowed good-time credit, and 180 days of restricted visiting privileges.

Petitioner appealed in December 2015, contending that he had not engaged in aggressive or threatening behavior and that the incident report was "a form of retaliation filled with false accusations." Dkt. 1, at 7. But someone tampered with his appeal materials (petitioner does not explain how), and so his appeal was denied as untimely.

Petitioner was transferred to FCI-Oxford, which is located in Oxford, Wisconsin, and within the Western District of Wisconsin. Petitioner filed a petition for a writ of habeas corpus in this court on April 1, 2016. He wants the incident report that led to his discipline expunged from his prison record and his earlier privileges restored. Petitioner also seeks punitive damages for emotional distress.

ANALYSIS

Federal prisoners may use 28 U.S.C. § 2241 to challenge prison disciplinary decisions that result in the loss of good-time credits. *Walker v. O'Brien*, 216 F.3d 626, 629 (7th Cir. 2000). Because prisoners have liberty interests in their good-time credits, they are entitled to due process before a prison revokes those credits. *Jones v. Cross*, 637 F.3d 841, 845 (7th Cir. 2011). In the context of prison discipline, due process means giving a prisoner: (1) written notice of the alleged violation at least 24 hours before a hearing; (2) the opportunity to call witnesses and present evidence to an impartial decision-maker (if consistent with institutional security); and (3) a written decision from the fact-finder identifying the evidence on which he or she relied and the reasons for the disciplinary action. *Id.* "A disciplinary decision must also be supported by 'some evidence' to satisfy due process." *Id.* In this case, I

understand petitioner to allege that his discipline was not supported by "some evidence" because it was based on false accusations in an incident report.

The Seventh Circuit describes the requirement that prison officials have "some evidence" to support their disciplinary decisions as a "meager threshold." *Scruggs v. Jordan*, 485 F.3d 934, 941 (7th Cir. 2007). The "evidence must bear some indicia of reliability," and if it does, then a federal court will not reverse a disciplinary decision. *Id.* "The 'some evidence' standard is less exacting than the preponderance of the evidence standard, requiring only that the decision not be arbitrary or without support in the record." *McPherson v. McBride*, 188 F.3d 784, 786 (7th Cir. 1999) (citations omitted). When federal courts review prison disciplinary decisions, they "are not required to conduct an examination of the entire record, independently assess witness credibility, or weigh the evidence, but only determine whether the prison disciplinary board's decision to revoke good time credits has some factual basis." *Id.* (citations and internal quotation marks omitted).

The incident report that led to petitioner's discipline is not in the record, and so I cannot determine whether the DHO could properly rely on the report as "some evidence" of petitioner's rule violation. But I note that "as long as procedural protections are constitutionally adequate, [I cannot] overturn a disciplinary decision solely because evidence indicates the claim was fraudulent." *Id.* at 787. Thus, to be entitled to habeas relief, petitioner will ultimately have to go beyond merely alleging that the incident report was inaccurate and demonstrate that no reasonable disciplinary official could have found the report to be reliable enough to support disciplining petitioner for a rule violation.

Petitioner's principal ground for habeas relief is that he was disciplined because of false accusations, which violated his right to due process. But he also alleges that someone

tampered with his appeal materials, which resulted in his appeal being denied as untimely. It is not clear whether petitioner is identifying a separate ground for habeas relief or just preemptively addressing his possible failure to properly exhaust his administrative remedies. *See Del Raine v. Carlson*, 826 F.2d 698, 703 (7th Cir. 1987) (prisoners must exhaust administrative remedies before filing a petition under § 2241).

Other district courts in this circuit have reached different conclusions regarding whether the due process clause guarantees prisoners the right to appeal prison disciplinary decisions. *Compare Nail v. Superintendent*, No. 08-cv-401, 2008 WL 4372410, at *1 (N.D. Ind. Sept. 23, 2008) ("*Wolff* [*v. McDonnell*, 418 U.S. 539 (1974),] does not require the right to appeal prison disciplinary proceedings. Furthermore, the United States Supreme Court has warned the federal courts of appeals not to add to the procedures that were required by *Wolff*."), *with Lewis v. Israel*, 528 F. Supp. 960, 962-63 (E.D. Wis. 1981) ("At the informal hearing, he was given the opportunity to defend himself against the charges, a right that he used. The finding of guilty is in writing, with a brief statement of the reasons for the finding. Mr. Lewis also had the right to appeal this decision to the warden of the prison. The Constitution does not require more."). Thus, mere interference with petitioner's appeal, standing alone, might not entitle him to habeas relief. But I will leave it to petitioner to determine whether to pursue this issue as a separate ground for relief when he submits a brief on the merits of his petition. As it stands, petitioner has adequately alleged that prison officials violated his due process rights when revoking his good-time credits. I will therefore direct the petition to be served on the government.

As a final point, petitioner should be aware that money damages are not available in habeas corpus actions. Thus, regardless of whether petitioner demonstrates that he is entitled

to habeas relief, he will not be able to recover the "punitive damages for emotional distress" that he seeks in his petition. Dkt. 1, at 14.

ORDER

IT IS ORDERED that:

1. The clerk of court is directed to send copies of this order and of petitioner Jahmal Gray's petition for a writ of habeas corpus, Dkt. 1, to respondent T. Kroger at FCI-Oxford, the local United States Attorney, and the United States Attorney General by certified mail, in accordance with Federal Rule of Civil Procedure 4(i).

2. Within 60 days from the date of service of the petition, respondent must file an answer to the petition, showing cause, if any, why this writ should not issue.

3. If respondent contends that the petition is subject to dismissal on grounds such as the statute of limitations, an unauthorized successive petition, lack of exhaustion, or procedural default, then respondent may file a motion to dismiss, a supporting brief, and any documents relevant to the motion, within 30 days of this order, either with or in lieu of an answer. Petitioner may have 20 days following service of any dismissal motion within which to file and serve his responsive brief and any supporting documents. Respondent may have 10 days following service of the response within which to file a reply.

   If the court denies the motion to dismiss in whole or in part, then it will set a deadline within which respondent must file an answer, if necessary, and establish a briefing schedule regarding any claims that have not been dismissed.

4. If respondent does not file a dispositive motion, then the parties must adhere to the following briefing schedule regarding the merits of petitioner's claims:

   a. Petitioner must file a brief in support of his petition within 30 days after the respondent's answer is filed.

   b. Respondent must file a brief in opposition within 30 days.

c. Once respondent files a brief in opposition, petitioner may have 20 days to file a reply if he wishes to do so.

Entered June 2, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge