



JOHNSON v. SMITH

2015 | Cited 0 times | S.D. Indiana | September 28, 2015

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION JARED JOHNSON, Petitioner, vs. BRIAN SMITH Superintendent, Indiana Department of Corrections, Plainfield Correctional Facility, Respondent.

Case No. 1:14-cv-01379-TWP-MJD

Entry Discussing Petition for Writ of Habeas Corpus The petition of Jared Johnson for a writ of habeas corpus challenges a prison disciplinary proceeding identified as No. IYC 14-04-0301. habeas petition must be denied.

Discussion A. Overview Prisoners in Indiana custody may not be deprived of good-time credits, Cochran v. Buss, 381 F.3d 637, 639 (7th Cir. 2004) (per curiam), or of credit-earning class, Montgomery v. Anderson, 262 F.3d 641, 644-45 (7th Cir. 2001), without due process. The due process requirement is satisfied with the issuance of advance written notice of the charges, a limited opportunity to present evidence to an impartial decision maker, a written statement articulating the reasons for

the finding of guilt. Superintendent, Mass. Corr. Inst. v. Hill, 472 U.S. 445, 454 (1985); Wolff v. McDonnell, 418 U.S. 539, 570-71 (1974); Piggie v. Cotton, 344 F.3d 674, 677 (7th Cir. 2003); Webb v. Anderson, 224 F.3d 649, 652 (7th Cir. 2000). B. The Disciplinary Proceeding On April 22, 2014, Officer C. Rolland wrote a Report of Conduct in case IYC 14-04-0301 charging Johnson with attempt or conspiracy to commit battery. The Report of Conduct states:

On 04-22-14 at approximately 5:04 PM I Officer C. Rolland was signaled by Sergeant S Manning to the north side kitchen walk. I, Officer C. Rolland, witnessed Offender Johnson, Jared #150371 and Offender Johnson, Aaron DOC#956904 squaring off in what look like an attempt to fight. Sergeant S. Manning secured Offender Johnson, Aaron. I and Officer T. Dennis approached Offender Johnson, Jared whom I instructed to stop and place his hands on his head. Offender Johnson, Jared turned from Officer T. Dennis and I in an attempt to avoid being taken into custody. I and Officer T. Dennis moved toward Offender Johnson, Jared catching him not far from where the altercation took place. I secured his right arm and Officer T. Dennis secured his left arm. Offender Johnson, Jared started to resist Officer T. Dennis and myself. I instructed Officer T. Dennis that we would assist the Offender to the ground. Officer T. Dennis was securing Offender Johnson, Jared left hand when I discovered a sharpened edge pointed piece of metal secured around the right wrist of Offender Johnson, Jared that



JOHNSON v. SMITH

2015 | Cited 0 times | S.D. Indiana | September 28, 2015

was covered by his coat. The a piece of what appeared to be an eye glass retainer cord. The weapon was secured on my person. Officer T. Dennis then finished securing Offender Johnson in mechanical restraints. Offender Johnson was then assisted to his feet and escorted to the Shift Office for photographs then the Health Services Unit and then the Restrictive Housing Unit. On April 26, 2014, Johnson was notified of the charge of attempt or conspiracy to commit battery and served with the Report of Conduct and the Notice of Disciplinary Hea Report. notified of his rights, pled not guilty and requested the appointment of a lay advocate. He requested a witness, Offender Aaron Johnson, and requested statements and photos as physical evidence.

The hearing officer conducted a disciplinary hearing in IYC 14-04-0301 on May 11, 2014, and found Johnson guilty of the charge of attempt or conspiracy to commit battery. In making this determination, the hearing officer idence from witnesses, and photographic evidence. The hearing officer recommended and approved the following sanctions: 360 days disciplinary segregation, a 360 day deprivation of earned credit time, and a demotion from credit class II to credit class III.

Johnson appealed to the Facility Head and the Appeal Review Officer without success. His petition for writ of habeas corpus followed. C. Analysis The grounds for relief raised by Johnson include the following: 1) he was denied physical evidence; 2) the evidence was insufficient to find him guilty; 3) he was denied an impartial decision maker; 4) he was denied lay representation; and 5) Indiana Law and Department of Correction policies and procedures were violated. 1. Physical Evidence Johnson asserts that he was denied the physical evidence he requested at screening. A prisoner has a limited right to present witnesses and evidence in his defense, consistent with correctional goals and safety. Wolff, 418 U.S. at 566. A hearing officer has considerable discretion with respect to witness and evidence requests, and may deny requests that threaten institutional safety or are irrelevant, repetitive, or unnecessary. Piggie v. Cotton, 342 F.3d 660, 666 (7th Cir. 2003). Furthermore, due process only requires access to witnesses and evidence that are exculpatory. Rasheed Bey v. Duckworth, ecored

pointing t Meeks v. McBride, 81 F.3d 717, 721 (7th Cir. 1996). The denial of the right to present evidence will be considered harmless, unless the prisoner shows that the evidence could have aided his defense. See Jones v. Cross, 637 F.3d 841, 847 (7th Cir. 2011). In this case, the record shows that the hearing officer considered the photos and statements Johnson requested. Specifically, Johnson requested the witness statements of Offender Aaron Johnson and the two officers noted on the Report of Conduct, as well as photographic evidence. All of this evidence was presented at his hearing and considered by the hearing officer in

Johnson apparently wanted to review all of this evidence to prepare his defense, but was unable to do so. Even if Johnson was not permitted to review the evidence he requested, this evidence was not exculpatory as is apparent from the record in this proceeding. 1

In addition, Johnson has not explained how he was prejudiced by this failure. The denial of the right



JOHNSON v. SMITH

2015 | Cited 0 times | S.D. Indiana | September 28, 2015

to present evidence will be considered harmless unless the prisoner shows that the evidence could have aided his defense. See *Jones v. Cross*, 637 F.3d 841, 847 (7th Cir. 2011); *Piggie*, 342 F.3d at 666. 2. Sufficiency of the Evidence

Johnson argues that there is not sufficient evidence to sustain his conviction because no assault took place and no fight occurred. But, Johnson was charged and found guilty of attempt or conspiracy to commit battery.

The some evidence requiring only that the decision not be arbitrary or *McPherson v. McBride*, 188 F.3d 784, 786 (7th Cir. 1999). A rational adjudicator could readily conclude from the conduct report which stated that Johnson was squaring off in an attempt to fight; conduct report) and attempting to batter the other inmate with a weapon. *Henderson v. United States Parole Comm'n*,

13 F.3d 1073, 1077 (7th Cir. 1993) (a federal habeas court will overturn the . . . [conduct board s] decision only if no reasonable adjudicator could have found . . . [the petitioner] guilty of the offense on the basis of the), cert. denied, 115 S. Ct. 314 (1994); see also *Hill*, 472

1 Johnson was provided a copy of these documents during the briefing of his petition. The Federal Constitution does not require evidence that logically precludes any conclusion but the one rea).

Accordingly, there was some evidence to support the conviction and no relief is warranted on this basis.

3. Impartial decision maker Johnson next claims that he was denied an impartial decision maker. A prisoner in a disciplinary action has the right to be heard before an impartial decision maker. *Hill*, 472 U.S. at arbitrary deprivation of his liberties. *Gaither v. Anderson*, 236 F.3d 817, 820 (7th Cir. 2000) (per

curiam); *Redding v. Fairman*, *Piggie*, 342 F.3d at 666

4. Lay Advocate Johnson also argues that his due process rights were violated because he was not permitted to have a specific lay advocate. *Wolff* only guarantees the right of a lay advocate to inmates who are illiterate or in cases when the complexity of the issues is great. *Wolff*, 418 U.S. at 570; *Miller v. Duckworth*, 963 F.2d 1002, 1004 (7th Cir. 1992). Here, Johnson was provided a lay advocate and he had no right to any particular lay advocate. No relief is warranted on this basis.

5. Department of Correction Policies Johnson argues that violations of Department of Correction policies occurred during his disciplinary proceeding. However, Johnson cannot challenge DOC policy or violations of state law in a habeas petition because violations of state law do not entitle prisoners to habeas corpus relief. *Estelle v. McGuire*, 502 U.S. 62 (1991); *Hester v. McBride*, 966 F.Supp. 765, 774- 75 (N.D. Ind. 1997). D. Conclusion The touchstone of due process is protection of



JOHNSON v. SMITH

2015 | Cited 0 times | S.D. Indiana | September 28, 2015

the individual against arbitrary action of the government. Wolff, 418 U.S. at 558. There was no arbitrary action in any aspect of the charge, disciplinary proceedings, or sanctions involved in the events identified in this action, and there was no constitutional infirmity in the proceeding which entitles Johnson to the relief he seeks. Accordingly, petition for a writ of habeas corpus must be denied and the action dismissed. Judgment consistent with this Entry shall now issue. IT IS SO ORDERED.

Date: 9/28/2015

Distribution: JARED JOHNSON DOC # 150371 PLAINFIELD CORRECTIONAL FACILITY Inmate
Mail/Parcels 727 MOON ROAD PLAINFIELD, IN 46168 All Electronically Registered Counsel

