UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

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ORDER

February 20, 2019

Before

AMY C. BARRETT, *Circuit Judge*
AMY J. ST. EVE, *Circuit Judge*

No. 18-3618	ROBERT WARREN, Plaintiff - Appellant v. BOBBETTE RAMAGE, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 4:16-cv-04267-CSB Central District of Illinois District Judge Colin S. Bruce	

The following are before the court:

1. **AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS**, filed on January 23, 2019, by the pro se appellant.

2. **MEMORANDUM IM SUPPORT OF PLRA MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS**, filed on January 23, 2019, by the pro se appellant.

Upon consideration of appellant's motions, the district court's order pursuant to 28 U.S.C. § 1915(a)(3) certifying that the appeal was filed in bad faith, and the record on appeal, **IT IS ORDERED** that the motion for leave to proceed in forma pauperis on appeal is **DENIED**. See Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000). Warren has not identified a good faith issue that the district court erred in granting the defendants' motion for summary judgment or in denying Warren's motions for counsel. Warren shall pay the required docketing fee within 14 days, or this appeal will be dismissed for failure to prosecute pursuant to Circuit Rule 3(b). See Newlin v. Helman, 123 F.3d 429, 434 (7th Cir. 1997).

"EX. A"

E-FILED
Tuesday, 20 November, 2018 11:59:26 AM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

ROBERT WARREN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 16-cv-4267-CSB
	)	
BOBBETTE RAMAGE, et al.,	)	
	)	
Defendants.	)	

SUMMARY JUDGMENT ORDER

Plaintiff, Robert Warren, who proceeds pro se and is currently incarcerated at Hill Correctional Center ("Hill"), filed suit under 42 U.S.C. § 1983, alleging that Hill's Adjustment Committee wrongfully found him guilty of assaulting another inmate. As a result, Plaintiff was placed in segregation for nearly a year. On January 9, 2017, the Court entered a merit review order [7], finding that Plaintiff stated a claim under the Due Process Clause of the Fourteenth Amendment against Defendants Bobbette Ramage, James Carothers, Anthony Buckley, Gary Millard, and Leslie McCarty.

On July 7, 2017, before the close of discovery, Plaintiff filed a motion for summary judgment [27], arguing that Defendants violated his right to due process by (1) refusing to follow certain regulations contained in Title 20 of the Illinois Administrative Code, (2) failing to provide a meaningful explanation of their finding of guilt, and (3) failing to support their finding of guilt with evidence. On March 13, 2018, the Court denied Plaintiff's motion because (1) prison regulations do not establish what procedures satisfy due process under the Fourteenth Amendment, (2) the Adjustment Committee clearly informed Plaintiff of the evidence on which it relied in reaching its decision, and (3) the Adjustment Committee supported its finding of guilt with information from confidential sources.

"Ex. B"

Now before the Court for consideration is Defendants' motion for summary judgment [50] and Plaintiff's second motion for summary judgment [54]. Based on the parties' pleadings, depositions, affidavits, and other supporting documents filed with the Court, Defendants' motion for summary judgment is GRANTED, and Plaintiff's motion for summary judgment is DENIED.

II. MATERIAL FACTS

On January 24, 2015, during lunch, Plaintiff had a "verbal altercation" with another inmate whose last name is Kelliher. (Pl.'s Dep. 12:6–13:10, ECF No. 50-3.) Plaintiff and Kelliher continued to exchange words while they, along with approximately sixty other inmates, were transported back to their cells from the chow hall. (*Id.*) Approximately fifteen minutes after Plaintiff was secured in his cell, someone said that Kelliher had been assaulted. (*Id.* at 15:18–16:15.) Kelliher was taken to Hill's Health Care Unit ("HCU") with injuries to his forehead. (McLaughlin Incident Report, ECF No. 50-2.) An officer had been advised that Kelliher fell face-forward and struck his head on the pavement. (*Id.*) These facts were later included in an Incident Report that was written by another officer. (*Id.*) According to the Incident Report, "Initially, HCU staff believed Kelliher was having complications due to a pre-existing heart condition." (*Id.*) Due to the severity of his injury, Kelliher was transported to an outside hospital by ambulance and was subsequently transferred to another hospital by helicopter. (*Id.*)

Approximately four hours later, two lieutenants escorted Plaintiff to the HCU. (Pl.'s Dep. 17:21–18:5.) A nurse examined Plaintiff for possible injuries but noted in an Offender Injury Report that Plaintiff had no injuries, marks, swelling, or bruising. (Offender Injury Report, Ex. E, ECF No. 1-1.) The lieutenants then escorted Plaintiff to be interviewed by Defendant Ramage, an investigator in the Internal Affairs Office. (Pl.'s Dep. 19:1–7.) Ramage told Plaintiff, "Kell[i]her got knocked the hell out . . . [and] we have several people that are saying that you hit

him." (*Id.* at 19:9–15.) Plaintiff told Ramage that he "had a verbal argument" with Kelliher but "nothing more." (*Id.* at 20:7–11.) After the interview, Plaintiff was placed in segregation on investigative status where, the next day, he was again interviewed by Defendant Ramage, along with Defendant Carothers, who is also an investigator in the Internal Affairs Office. (*Id.* at 21:1–14.) Plaintiff "repeated exactly what [he] told Ramage in the first interview." (*Id.* at 21:15–18.) The parties do not indicate whether Plaintiff was ever removed from administrative segregation prior to the Adjustment Committee's sentence of disciplinary segregation.

On February 3, 2015, Defendant Buckley authored an Offender Disciplinary Report. (Offender Disciplinary Report, ECF No. 50-2.) Buckley reported that on January 24, 2015, an officer found Kelliher lying on the ground unresponsive. (*Id.* at 1.) Buckley wrote, "HCU . . . staff initially assessed [that] the fall and unresponsiveness was from Kelliher['s] pre-existing heart condition." (*Id.*) Buckley stated that the Internal Affairs Office conducted investigative interviews with four confidential sources. (*Id.* at 2.) All four confidential sources stated that they saw Plaintiff walk up behind Kelliher and punch Kelliher in the head with his fist, causing Kelliher to fall to the ground. (*Id.*) Two of the confidential sources stated that they had observed Plaintiff and Kelliher arguing earlier. (*Id.*) Buckley further wrote in the report that Plaintiff admitted during an investigative interview that he got into an argument with Kelliher but denied that he hit Kelliher. (*Id.*) Kelliher stated in an interview that he and Plaintiff got into a dispute, "and the next thing he remembered was waking up in the HCU and his head hurting." (*Id.*)

Defendant Buckley noted in the Offender Disciplinary Report that Kelliher suffered a subarachnoid hemorrhage (brain bleed) as a result of striking his head on the pavement. (*Id.*) He also stated, "The statements provided by the Confidential Sources corroborate each other and therefore they are deemed reliable. The identity of the Confidential Sources is being withheld for

their safety and the safety and security of the Institution." (*Id.*) The Internal Affairs Office charged Plaintiff with "Assaulting Any Person" and submitted its findings to the Adjustment Committee. (*Id.* at 1.)

On February 5, 2015, Plaintiff was served the Offender Disciplinary Report. (*Id.*; Pl.'s Dep. 22:5–12.) On February 10, 2015, the Adjustment Committee held a hearing on the charge against Plaintiff. (Final Summ. Report, ECF No. 50-2.) Plaintiff did not request to present any witnesses at the hearing. (Pl.'s Dep. 22:16–18.) Plaintiff was present at the hearing and pleaded not guilty. (Final Summ. Report 1.) Plaintiff testified that the officer who found Kelliher on the ground had not seen how it happened. (*Id.*; Pl.'s Dep. 24:13–16) He testified that he did not hit Kelliher and that a nurse checked Plaintiff's hands and body but did not find any marks. (Final Summ. Report 1; Pl.'s Dep. 24:17–20.) Plaintiff asked the Adjustment Committee to review the Offender Injury Report, but Defendant Millard, the Adjustment Committee chairperson, allegedly stated, "What report, there's no report here, that's a grievance issue." (Pl.'s Aff. 5, ECF No. 27; Pl.'s Dep. 23:13–24:12.) Plaintiff had not asked the Adjustment Committee to review the Offender Injury Report prior to the hearing. (Pl.'s Dep. 22:19–23:6.)

On March 11, 2015, Plaintiff was served with the Adjustment Committee's Final Summary Report. (Final Summ. Report 3; Pl.'s Dep. 25:10–23.) In the report, the Adjustment Committee recounted the facts that were included in the Offender Disciplinary Report, including HCU staff's initial assessment that Kelliher's fall and unresponsiveness was due to his pre-existing heart condition. (Final Summ. Report 2.) The Adjustment Committee also recounted the statements provided by the four confidential sources. (*Id.*) The Adjustment Committee determined, "The statements provided by confidential sources, and the recorded video footage are deemed reliable, and corroborate each [other], therefore are deemed reliable. The identity of

the confidential sources is being withheld for their safety and the safety and security for the institution." (*Id.*) The Adjustment Committee found Plaintiff guilty on the charge of "Assaulting Any Person." (*Id.* at 1.) The Committee demoted Plaintiff's status, sentenced him to one year in segregation, revoked six months good conduct credit or statutory good time, restricted his commissary and yard privileges for one year, and ordered him to pay restitution. (*Id.* at 3.)

Plaintiff filed grievances on February 27, 2015, and March 4, 2015, wherein he alleged that the evidence did not support the Adjustment Committee's findings. (ARB Resp. 1, Ex. F, ECF No. 1-1.) On August 26, 2015, Defendant McCarty, as chairperson of the Administrative Review Board, sent Plaintiff a letter in which she wrote, "Based on a total review of all available information and a compliance check of the procedural due process safeguards outlined in DR504, this office is reasonably satisfied the offender committed the offenses and recommends the grievance be denied." (*Id.*; Pl.'s Dep. 36:11–21.)

III. SUMMARY JUDGMENT STANDARD

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A movant may demonstrate the absence of a genuine dispute through specific cites to admissible evidence or by showing that the nonmovant "cannot produce admissible evidence to support the [material] fact." Fed. R. Civ. P. 56(c)(1). If the movant clears this hurdle, the nonmovant may not simply rest on his or her allegations in the complaint but instead must point to admissible evidence in the record to show that a genuine dispute exists. *Id.*; *Harvey v. Town of Merrillville*, 649 F.3d 526, 529 (7th Cir. 2011). "In a § 1983 case, the plaintiff bears the burden of proof on the constitutional deprivation that underlies the claim, and thus must come forth with

sufficient evidence to create genuine issues of material fact to avoid summary judgment." *McAllister v. Price*, 615 F.3d 877, 881 (7th Cir. 2010).

At the summary judgment stage, evidence is viewed in the light most favorable to the nonmovant, with material factual disputes resolved in the nonmovant's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A genuine dispute of material fact exists when a reasonable juror could find for the nonmovant. *Id.* at 248.

IV. DUE PROCESS STANDARDS

"Due process requires that prisoners in disciplinary proceedings be given: '(1) advance (at least 24 hours before hearing) written notice of the claimed violation; (2) the opportunity to be heard before an impartial decision maker; (3) the opportunity to call witnesses and present documentary evidence (when consistent with institutional safety); and (4) a written statement by the fact-finder of the evidence relied on and the reasons for the disciplinary action.'" *Scruggs v. Jordan*, 485 F.3d 934, 939 (7th Cir. 2007) (quoting *Rasheed-Bey v. Duckworth*, 969 F.2d 357, 361 (7th Cir. 1992)); *see also Wolff v. McDonnell*, 418 U.S. 539, 563–67 (1974).

"[T]he requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board . . . ." *Superintendent, Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 455 (1985). "Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." *Id.* at 455–56. "[O]nly evidence that was presented to the Adjustment Committee is relevant to this analysis." *Hamilton v. O'Leary*, 976 F.2d 341, 346 (7th Cir. 1992).

In general, it is "immaterial that an accused prisoner presented exculpatory evidence unless that evidence directly undercuts the reliability of the evidence on which the disciplinary authority relied or there are other extraordinary circumstances." *Viens v. Daniels*, 871 F.2d 1328, 1335 (7th Cir. 1989).

When confidential information is the basis for a prison disciplinary decision, there must be some indication of the reliability of the confidential sources. *Dawson v. Smith*, 719 F.2d 896, 899 (7th Cir. 1983). The reliability of confidential sources may be established by:

> (1) the oath of the investigating officer as to the truth of his report containing confidential information and his appearance before the disciplinary committee; (2) corroborating testimony; (3) a statement on the record by the chairman of the disciplinary committee that, he had firsthand knowledge of the sources of information and considered them reliable on the basis of their past record of reliability; or (4) *in camera* review of material documenting the investigator's assessment of the credibility of the confidential informant.

Mendoza v. Miller, 779 F.2d 1287, 1293 (7th Cir. 1985) (internal citations and quotation marks omitted).

V. ANALYSIS

A. Defendants Ramage, Carothers, and Buckley

The above-named Defendants argue that they are entitled to summary judgment because they had no personal involvement in Plaintiff's hearing before the Adjustment Committee. Plaintiff responds that he "never said" these Defendants were personally involved in his hearing before the Adjustment Committee. (Pl.'s Resp. 7, ECF No. 55.) Rather, Plaintiff is seeking to hold these Defendants liable because "[t]hey did not follow administrative rules issued by department authorities, prior to [his] hearing." (*Id.*) Plaintiff argues in his response and in his second motion for summary judgment that certain sections of Title 20 of the Illinois

Administrative Code governing investigation and reporting of disciplinary infractions are non-discretionary. Therefore, he argues, these regulations create a protected liberty interest in being free from segregation while on investigative status. Plaintiff asserts that since Defendants failed to follow the regulations, and because Plaintiff was placed in segregation on January 24, 2015, while on investigative status without being afforded due process protections, Defendants are liable under the Fourteenth Amendment.

As Defendants correctly point out, however, Plaintiff cites to cases that were decided before the Supreme Court decided *Sandin v. Conner*, 515 U.S. 472, 484 (1995), which limits state-created liberty interests to freedom from restraint that "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Assuming Plaintiff was in segregation on investigative status from January 24, 2015, until February 10, 2015, (when he had his hearing before the Adjustment Committee), or even until March 11, 2015, (when the Adjustment Committee found Plaintiff guilty and sentenced him to one year in segregation), this is not an "atypical and significant hardship." Plaintiff was in segregation as a result of the above-named Defendants' actions for, at most, forty-seven days. "[R]elatively short terms of segregation rarely give rise to a prisoner's liberty interest, at least in the absence of exceptionally harsh conditions . . . ." *Hardaway v. Meyerhoff*, 734 F.3d 740, 743 (7th Cir. 2013) (holding that plaintiff's six months and one day in disciplinary segregation did not implicate liberty interest because he was allowed yard time and weekly showers and was not deprived of all human contact or sensory stimuli). Plaintiff has not presented any evidence that the conditions of administrative segregation were "exceptionally harsh."

Moreover, "inmates have no liberty interest in avoiding transfer to discretionary segregation—that is, segregation imposed for administrative, protective, or investigative

purposes." *Townsend v. Fuchs*, 522 F.3d 765, 771 (7th Cir. 2008) (holding that plaintiff did not have a constitutionally protected liberty interest in avoiding placement in administrative segregation pending an investigation because this type of segregation is considered "discretionary segregation," which inmates have "no liberty interest avoiding," and also because plaintiff's placement in segregation "neither was indefinite, nor affected his parole eligibility"); *see also Thomas v. Ramos*, 130 F.3d 754, 761 (7th Cir. 1997) ("Both temporary confinement and investigative status have been determined to be discretionary segregation, and do not implicate a liberty interest."). Therefore, because Plaintiff's initial placement in segregation was for investigative purposes, was only forty-seven days at most, and did not affect his parole eligibility (or at least there is no evidence it did), Plaintiff's placement in segregation before being found guilty by the Adjustment Committee did not implicate a protected liberty interest.

To the extent Plaintiff argues that Defendants' alleged failure to follow state regulations caused the Adjustment Committee to find him guilty and sentence him to a year in segregation, the Court notes that this fails to state a claim "where the [required] procedural due process protections . . . are provided." *Hanrahan v. Lane*, 747 F.2d 1137, 1141 (7th Cir. 1984) (finding that allegation of prison guard planting false evidence that implicates inmate in disciplinary infraction fails to state a claim where procedural due process protections required in *Wolff* are provided); *see also Lagerstrom v. Kingston*, 463 F.3d 621, 624–25 (7th Cir. 2006) (holding that plaintiff received the required due process protections and the fact that "evidence against [the plaintiff] had been made up would . . . not cast doubt on the basic procedures that were followed"); *McKinney v. Meese*, 831 F.2d 728, 734 (7th Cir. 1987) (holding that a "hearing before an independent disciplinary committee ma[kes] irrelevant any retaliatory motives on [a prison official's] part in [filing charges against the prisoner]"). As discussed below, the Court

finds that Plaintiff received the required due process protections. Therefore, any alleged misconduct on the part of Defendants prior to the hearing fails to state a claim.

Finally, to the extent Plaintiff argues that Defendants are liable because they allegedly violated certain sections of Title 20 of the Illinois Administrative Code, the Court has already addressed this argument in Plaintiff's first motion for summary judgment. State regulations do not establish what procedures satisfy due process under the Fourteenth Amendment. *See Smith v. Shettle*, 946 F.2d 1250, 1254 (7th Cir. 1991) ("[T]he amount of due process that is due is defined by federal rather than by state law . . . ."); *see also Scott v. Edinburg*, 346 F.3d 752, 760 (7th Cir. 2003) ("42 U.S.C. § 1983 protects plaintiffs from constitutional violations, not violations of state laws or, in this case, departmental regulations and police practices.").

Therefore, for all these reasons, the Court grants summary judgment to Defendants Ramage, Carothers, and Buckley, and denies summary judgment to Plaintiff.

B. Defendant McCarty

Defendant McCarty argues that she is entitled to summary judgment because she had no personal involvement in Plaintiff's hearing before the Adjustment Committee. Plaintiff argues in his second motion for summary judgment that although McCarty did not "commit the due process violations, she became 'responsible for them' when she failed to correct them in the course of her supervisory responsibilities." (Pl.'s 2d Mot. Summ. J. 8–9, ECF No. 54.) Plaintiff, however, presents no evidence that McCarty supervised Defendant Ramage, Carothers, Buckley, or Millard. Rather, the evidence indicates that McCarty serves on the Administrative Review Board.

"Only persons who cause or participate in [constitutional] violations are responsible." *George v. Smith*, 507 F.3d 605, 609 (7th Cir. 2007). "Prison officials who simply processed or

reviewed inmate grievances lack personal involvement in the conduct forming the basis of the grievance." *Owens v. Evans*, 878 F.3d 559, 563 (7th Cir. 2017). "Ruling against a prisoner on an administrative complaint does not cause or contribute to [a constitutional] violation. A guard who stands and watches while another guard beats a prisoner violates the Constitution; a guard who rejects an administrative complaint about a completed act of misconduct does not." *George*, 507 F.3d at 609–10; *see also Soderbeck v. Burnett County*, 752 F.2d 285, 293 (7th Cir. 1985) ("[I]f all the committee had done was to turn down [the plaintiff's] appeal, the members of the committee . . . would not be liable under section 1983.").

The Court concludes that Seventh Circuit case law precludes any finding of liability regarding Defendant McCarty for her role in reviewing and responding to Plaintiff's grievances. Therefore, the Court grants summary judgment to Defendant McCarty and denies summary judgment to Plaintiff.

C. Defendant Millard / Due Process Violations

Plaintiff is suing Defendant Millard because he is the chairperson of the Adjustment Committee, who allegedly personally violated Plaintiff's due process rights. As noted earlier, whether Plaintiff received constitutionally adequate due process is also relevant to Plaintiff's claims against Defendants Ramage, Carothers, and Buckley because any claim that they engaged in misconduct during their investigation of Plaintiff are not cognizable if Plaintiff received constitutionally adequate due process. *See Hanrahan*, 747 F.2d at 1141. Moreover, a finding that Plaintiff received adequate due process would be an additional ground on which to grant summary judgment in favor of Defendant McCarty because there would be no underlying violation for which she could be found liable *even if* Plaintiff had evidence that she supervised the other defendants.

1. Parties' arguments

Defendants argue that they are entitled to summary judgment because Plaintiff (1) received advance notice of the charges; (2) was given the opportunity to be heard before an impartial decision maker; (3) did not request to call witnesses or present documentary evidence; and (4) received the Adjustment Committee's Final Summary Report, which outlined the evidence it relied on and the reasons for its decision. Defendants also argue that the Adjustment Committee supported its finding of guilt with "some evidence" by relying on the statements of four confidential sources that were deemed reliable because they corroborated each other. Defendants provided the Court with an unredacted copy of the investigative file for *in camera* review, which has been filed under seal.

Plaintiff, on the other hand, argues that he is entitled to summary judgment because (1) the evidence relied on by the Adjustment Committee does not support a finding of guilt; (2) exculpatory evidence exists that contradicts the statements from the confidential sources, undercuts the sources' reliability and credibility, and shows that Plaintiff is not guilty; and (3) the Final Summary Report simply incorporated the language used in the Offender Disciplinary Report and did not include an explanation of why the exculpatory evidence was discounted.

Some of Defendants' arguments can be addressed summarily. First, Plaintiff presents no evidence that he did not receive notice, and in fact, the evidence shows that Plaintiff was served with the Offender Disciplinary Report five days before the hearing. Second, Plaintiff presents no evidence that any member of the Adjustment Committee was not impartial. Third, Plaintiff presents no evidence that he was denied the opportunity to call witnesses or present evidence at the hearing. To the extent Plaintiff argues that Defendant Millard did not make an effort to obtain

the Offender Injury Report when Plaintiff mentioned it during the hearing, the Court has already addressed this argument in its order on Plaintiff's first motion for summary judgment:

> Plaintiff argues that the Adjustment Committee failed to consider the Offender Injury Report, which indicates that on the day of the incident Plaintiff had no injuries or marks on his body. The Due Process Clause affords Plaintiff the right to *present* evidence. Plaintiff offers no evidence that he presented the Offender Injury Report to the Adjustment Committee. Therefore, the Adjustment Committee cannot be faulted for not considering evidence that Plaintiff failed to present. *See, e.g.*, *Whitford v. Boglino*, 63 F.3d 527, 532 (7th Cir. 1995) (stating that if a prisoner believed that the disciplinary committee should have considered exculpatory evidence, "he retained the right to submit" it to the committee). Nevertheless, even though the Adjustment Committee did not consider the Offender Injury Report, they considered Plaintiff's testimony that a nurse checked Plaintiff's hands and body but did not find any marks.

(Summ. J. Order 9–10, Mar. 13, 2018, ECF No. 48.)

With these arguments disposed of, the remaining arguments are those raised by Plaintiff: Whether the Adjustment Committee supported its finding of guilt with "some evidence"; whether the exculpatory evidence directly undercuts the confidential sources' reliability; and whether the Adjustment Committee's Final Summary Report adequately informed Plaintiff of the evidence on which it relied and the reasons for its actions.

2. Some evidence of guilt

Plaintiff argues that the evidence relied on by the Adjustment Committee does not support a finding of guilt. Information from confidential sources alone may satisfy the "some evidence" standard for a finding of guilt so long as there is "some indication of the reliability of confidential sources." *Dawson*, 719 F.2d at 899. The reliability of confidential sources may be established by the Court's "*in camera* review of material documenting the investigator's assessment of the credibility of the confidential informant." *Mendoza*, 779 F.2d at 1293. A

court's "review of the determination of reliability is deferential because, 'it is inherently dangerous to even attempt to determine the reliability of an informant since such effort could jeopardize lives and the willingness of informants to continue providing information.'" *Id.* (quoting *Dawson*, 719 F.2d at 899). "Prison officials are given broad discretion when balancing the inmate's due process interests against the government's interests in institutional safety and an efficient disciplinary system." *Id.*

Defendants provided the Court with an unredacted copy of the investigative file for *in camera* review. The Court has reviewed the investigative file and finds that it provides "some evidence" for the Adjustment Committee's finding of guilt. The evidence in the file, including interviews with multiple witnesses, indicates that the four confidential sources are reliable. Moreover, the sealed investigative file contains no exculpatory evidence that directly undercuts the reliability of the sources or any other evidence the Adjustment Committee relied on in reaching its decision. Therefore, the Court finds that the Adjustment Committee supported its finding of guilt with some evidence.

3. Exculpatory evidence

Plaintiff argues that exculpatory evidence exists that contradicts the statements from the confidential sources, undercuts the sources' reliability and credibility, and shows that Plaintiff is not guilty. Specifically, Plaintiff points to the HCU staff's initial assessment that Kelliher fell because of a pre-existing heart condition, and the Offender Injury Report indicating that four hours after the incident, Plaintiff had no injuries or marks on his body. In general, it is "immaterial that an accused prisoner presented exculpatory evidence unless that evidence directly undercuts the reliability of the evidence on which the disciplinary authority relied or there are other extraordinary circumstances." *Viens*, 871 F.2d at 1335.

The HCU staff's initial assessment that Kelliher fell because of a pre-existing heart condition was just that, an "initial" assessment. The witnesses who later came forward and attributed Kelliher's fall to Plaintiff punching Kelliher in the head shed more light on the circumstances surrounding Kelliher's fall. Since the Adjustment Committee found the confidential sources reliable, it apparently determined that the HCU staff's initial assessment turned out to be wrong. Moreover, after the HCU staff examined Kelliher, they transferred him to an outside hospital. Kelliher's medical records from that hospital, which are part of the sealed investigative file, do not indicate that Plaintiff fell because of a heart condition. For all these reasons, the Court finds that the HCU staff's initial assessment does not directly undercut the reliability of the confidential sources.

Approximately four hours after Kelliher fell on January 24, 2015, a nurse examined Plaintiff for possible injuries but noted in an Offender Injury Report that Plaintiff had no injuries, marks, swelling, or bruising. Plaintiff has not presented any evidence to establish that punching someone in the head will leave a mark on the aggressor that is visible hours later. In fact, it is entirely possible for someone to punch someone in the head without leaving a visible mark on the person's hand. Consequently, the fact that Plaintiff had no visible marks four hours after the incident does not directly undercut the witnesses' accounts that Plaintiff hit Kelliher in the head, as both could be true. Therefore, the Court finds that the Offender Injury Report does not directly undercut the reliability of the confidential sources.

4. Adequate written statement

Lastly, Plaintiff argues that the Final Summary Report simply incorporated the language used in the Offender Disciplinary Report and did not include an explanation of why the exculpatory evidence was discounted. "The written statement requirement . . . is not onerous."

Scruggs, 485 F.3d at 941. "The statement need only illuminate the evidentiary basis and reasoning behind the decision." *Id.* "[T]he kind of statements that will satisfy the constitutional minimum will vary from case to case depending on the severity of the charges and the complexity of the factual circumstances and proof offered by both sides." *Culbert v. Young*, 834 F.2d 624, 631 (7th Cir. 1987) (finding brief statement from disciplinary board sufficient when the only issue was relative credibility of prison guard and prisoner). "[W]here a prison inmate produces exculpatory evidence that directly undermines the reliability of the evidence in the record pointing to his guilt, he is 'entitled to an explanation of why the [disciplinary board] disregarded the exculpatory evidence and refused to find it persuasive.'" *Meeks v. McBride*, 81 F.3d 717, 720 (7th Cir. 1996) (quoting *Whitford v. Boglino*, 63 F.3d 527, 537 (7th Cir. 1995)); *see also Allen v. Parke*, 114 Fed. Appx. 747, 750–51 (7th Cir. 2004) ("[A] prisoner is only entitled to an explanation of why exculpatory evidence was disregarded, when that evidence directly undermines the evidence in the record pointing to the prisoner's guilt.").

The Adjustment Committee included in their Final Summary Report statements provided by four confidential sources, each of whom stated that Plaintiff hit Kelliher, which caused Kelliher to fall to the ground. The Adjustment Committee also included statements from Plaintiff and Kelliher, each of whom stated that the two of them had argued earlier that day. The Adjustment Committee stated that the statements from the confidential sources are reliable because they corroborate each other. Given the "complexity of the factual circumstances and proof offered," the Court finds that the Adjustment Committee clearly informed Plaintiff of the evidence on which they relied and the reasons for their finding of guilt.

As previously discussed, the exculpatory evidence Plaintiff refers to does not directly undercut the reliability of the confidential sources. As such, Plaintiff was not entitled to an

explanation of why the Adjustment Committee "disregarded the exculpatory evidence and refused to find it persuasive." *See Meeks*, 81 F.3d at 720; *Allen*, 114 Fed. Appx. at 750–51 ("[B]ecause [the plaintiff's] exculpatory evidence did not directly undermine the validity of the conduct report, but merely provided an alternative to the conclusions in the conduct report, [the plaintiff] was not entitled an explanation of why exculpatory evidence was disregarded.").

IT IS THEREFORE ORDERED:

1) Pursuant to Federal Rule of Civil Procedure 56, Defendants' motion for summary judgment [50] is GRANTED, and Plaintiff's second motion for summary judgment [54] is DENIED. The Clerk of the Court is directed to enter judgment in favor of Defendants and against Plaintiff. The case is terminated, with the parties to bear their own costs. All deadlines and internal settings are vacated. All pending motions not addressed in this Order are denied as moot. Plaintiff remains responsible for any unpaid balance of the filing fee.

2) If Plaintiff wishes to appeal this judgment, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a)(4). A motion for leave to appeal in forma pauperis MUST identify the issues Plaintiff will present on appeal to assist the Court in determining whether the appeal is taken in good faith. *See* Fed. R. App. P. 24(a)(1)(c); *see also Celske v Edwards*, 164 F.3d 396, 398 (7th Cir. 1999) (stating that an appellant should be given an opportunity to submit a statement of his grounds for appealing so that the district judge "can make a reasonable assessment of the issue of good faith"); *Walker v O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000) (providing that a good faith appeal is an appeal that "a reasonable person could suppose . . . has some merit" from a legal perspective). If Plaintiff does choose to appeal, he will be liable for the $505.00 appellate filing fee regardless of the outcome of the appeal.

3) Plaintiff's motion for status [60] is DENIED as moot.

Entered this 20th day of November 2018.

/s/ Colin S. Bruce
COLIN STIRLING BRUCE
UNITED STATES DISTRICT JUDGE

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Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

ROBERT WARREN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 16-cv-4267-CSB
	)	
BOBBETTE RAMAGE, et al.,	)	
	)	
Defendants.	)	

ORDER

On November 20, 2018, the Court granted Defendants' motion for summary judgment [62]. Judgment in favor of Defendants was entered the same day [63]. On December 4, 2018, Plaintiff filed a timely Rule 59(e) motion to alter or amend judgment [64]. Before the Court ruled on Plaintiff's motion, Plaintiff filed, on December 11, 2018, a notice of appeal [65] and a motion for leave to appeal *in forma pauperis* [66]. Under the Federal Rules of Appellate Procedure, Plaintiff's notice of appeal is suspended until the Court rules on Plaintiff's Rule 59(e) motion. *See* Fed. R. App. P. 4(a)(4)(B)(i); *Florian v. Sequa Corp.*, 294 F.3d 828, 830 (7th Cir. 2002). Plaintiff has also filed a motion to request counsel on appeal [68].

For the following reasons, Plaintiff's Rule 59(e) motion [64] is DENIED, Plaintiff's motion for leave to appeal *in forma pauperis* [66] is DENIED, and Plaintiff's motion to request counsel on appeal [68] is DENIED.

Rule 59(e) Motion

"Rule 59(e) allows a court to alter or amend a judgment only if the petitioner can demonstrate a manifest error of law or present newly discovered evidence." *Obriecht v. Raemisch*, 517 F.3d 489, 494 (7th Cir. 2008). "[A] Rule 59(e) motion is not a fresh opportunity to present evidence that could have been presented earlier." *Edgewood Manor Apartment Homes,*

"EX. C"

LLC v. RSUI Indem. Co., 733 F.3d 761, 770 (7th Cir. 2013); *see also Vesely v. Armslist Ltd. Liab. Co.*, 762 F.3d 661, 666 (7th Cir. 2014) ("[A] Rule 59(e) motion is not to be used to 'rehash' previously rejected arguments . . . ."). "Rule 59(e) requires that the moving party clearly establish a manifest error of law or an intervening change in the controlling law or present newly discovered evidence." *Romo v. Gulf Stream Coach, Inc.*, 250 F.3d 1119, 1121 n.3 (7th Cir. 2001).

"A 'manifest error' is not demonstrated by the disappointment of the losing party." *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000). Instead, a petitioner satisfies his burden of showing manifest error under Rule 59(e) by demonstrating that the court disregarded, misapplied, or failed to recognize controlling precedent. *Id.*

Plaintiff makes several arguments why this Court should alter or amend the judgment. First, Plaintiff argues that his case was too complex for him to understand and thus, the Court erred by denying his request to recruit counsel. This, however, is not a permissible basis for altering or amending the judgment. *See id.* ("Rule 59 is not a vehicle for rearguing previously rejected motions . . . .").

Second, Plaintiff argues that the Court erred by citing to *Smith v. Shettle*, 946 F.2d 1250, 1254 (7th Cir. 1991), and *Scott v. Edinburg*, 346 F.3d 752, 760 (7th Cir. 2003), for the proposition that the amount of process that is due is defined by federal rather than by state law. Plaintiff submits a copy of a page from a prisoner litigation manual that states, "There are several types of federal law: . . . [including] [a]dministrative rules or regulations . . . ." (Pl.'s Mot., Ex. B, ECF No. 64.) While *federal* administrative rules and regulations are a type of federal law, *state* administrative rules and regulations are not. The sections of Title 20 of the Illinois Administrative Code that Plaintiff cited in his response to Defendants' motion for summary

judgment are *state* administrative rules and therefore do not define the amount of *federal* due process that is required.

Third, Plaintiff argues that the Court erred by conducting an *in camera* review of Plaintiff's investigative file, which Plaintiff argues was not properly before the Court because it was not a sworn affidavit or declaration. Under controlling precedent, however, a district court is permitted to establish the reliability of confidential sources by conducting an "*in camera* review of material documenting the investigator's assessment of the credibility of the confidential informant." *Mendoza v. Miller*, 779 F.2d 1287, 1293 (7th Cir. 1985). This is exactly what the Court did in ruling on Defendants' motion for summary judgment.

Fourth, Plaintiff argues that the Court erred by deciding disputed issues of fact when it ruled that Plaintiff presented no evidence that the Adjustment Committee was not impartial. Plaintiff argues that the impartiality of the Adjustment Committee was disputed because he "did dispute[]" that fact in his deposition and in the disputed material facts section of his response. The part of the deposition Plaintiff cites to includes Plaintiff's testimony that the Adjustment Committee did not explain why it disregarded the Health Care Unit's initial assessment. Not explaining the reason why specific evidence was disregarded, however, is insufficient evidence of partiality. And stating in a conclusory manner that a fact is "disputed" without providing evidence to support the assertion is not enough to defeat a motion for summary judgment.

Fifth, Plaintiff argues that the Court also decided disputed issues of fact when it ruled that the evidence in Plaintiff's investigative file indicates that the four confidential sources are reliable. The Court found that the confidential sources provided "some evidence" from which the Adjustment Committee could find Plaintiff guilty of assaulting Kelliher. Plaintiff states that he

never touched Kellier, and therefore, he argues, a genuine dispute as to a material fact exists, which the Court could not resolve on summary judgment.

Plaintiff seems to believe that his case is about whether he did or did not assault Kelliher. Plaintiff's case, however, involves only whether he received adequate due process under the Fourteenth Amendment. For this type of claim, "courts are barred from assessing the relative weight of the evidence." *Viens v. Daniels*, 871 F.2d 1328, 1335 (7th Cir. 1989). In other words, so long as "some evidence" supports the Adjustment Committee's decision, which the Court found existed, it is immaterial that Plaintiff disputes that he assaulted Kelliher. *See Superintendent, Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 455 (1985) ("[T]he requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke good time credits.").

Lastly, Plaintiff argues that the Court erred by ruling that the Adjustment Committee provided Plaintiff with an adequate written statement of their finding of guilt. Plaintiff argues that the Adjustment Committee simply reiterated the exact words from his disciplinary report, which he argues is inadequate under Seventh Circuit precedent, *Redding v. Fairman*, 717 F.2d 1105, 1114 (7th Cir. 1983), and *Hayes v. Walker*, 555 F.2d 625, 633 (7th Cir. 1977). In *Redding*, the Seventh Circuit found the written statements to be inadequate because the adjustment committee did "not disclose what evidence form[ed] the bases of [its] rulings" but instead simply stated in a conclusory manner that it reached its rulings "based on all available evidence" or "all evidence presented." 717 F.2d at 1115. In *Hayes*, the Seventh Circuit found the written statement to be inadequate because "[r]ather than pointing out the essential facts upon which inferences were based," the adjustment committee simply stated that its "decision [was] based on the violation report as written and upon the report by the special investigator . . . ." 555 F.2d at 631,

633. As stated in the Court's summary judgment order, the Adjustment Committee in Plaintiff's case did not simply state in a conclusory manner that it considered "all the evidence," but instead it disclosed the evidence that formed the basis of its finding of guilt. Accordingly, the Court did not disregard, misapply, or fail to recognize controlling precedent. *See Oto*, 224 F.3d at 606.

For all these reasons, the Court concludes that Plaintiff has not "clearly establish[ed] a manifest error of law or an intervening change in the controlling law or present newly discovered evidence." *Romo*, 250 F.3d at 1121 n.3. Therefore, the Court denies Plaintiff's Rule 59(e) motion.

Motion for Leave to Appeal *in Forma Pauperis*

A party may not proceed on appeal *in forma pauperis* "if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). "Good faith" is not about a party's sincerity in requesting appellate review. Rather, an appeal taken in good faith is an appeal that "a reasonable person could suppose . . . has some merit." *Walker v. OBrien*, 216 F.3d 626, 632 (7th Cir. 2000); *see also Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000) (stating that a frivolous issue is one "that no reasonable person could suppose to have any merit"); *Cruz v. Hauck*, 404 U.S. 59, 62 (1971) (stating that an appeal taken in "good faith" is an appeal that, objectively considered, raises non-frivolous colorable issues).

Plaintiff raises several issues in his notice of appeal. Plaintiff addressed most of these issues in his Rule 59(e) motion, and for the same reasons stated above in denying that motion, the Court finds that no reasonable person could suppose Plaintiff's arguments to have any merit. Plaintiff does raise one issue for appeal that he did not address in his Rule 59(e) motion, which is whether Defendants had any personal involvement in Plaintiff's due process violation. In the Court's summary judgment order, the Court found that Defendant McCarty could not be held

liable for her role in reviewing and responding to Plaintiff's grievances. Under Seventh Circuit precedent, "Prison officials who simply processed or reviewed inmate grievances lack personal involvement in the conduct forming the basis of the grievance." *Owens v. Evans*, 878 F.3d 559, 563 (7th Cir. 2017). In responding to Defendants' motion for summary judgment, Plaintiff presented no evidence that McCarty did anything other than review and respond to Plaintiff's grievance. Therefore, the Court concludes that no reasonable person could suppose that Plaintiff's appeal on the issue of personal involvement has any merit. For these reasons, the Court denies Plaintiff's motion for leave to appeal *in forma pauperis*.

Motion to Request Counsel on Appeal

Plaintiff's case is now on appeal before the United States Court of Appeals for the Seventh Circuit. Therefore, Plaintiff must make his request for counsel to that court, not to this one. Accordingly, the Court denies Plaintiff's motion.

IT IS THEREFORE ORDERED:

1) Plaintiff's Rule 59(e) motion to alter or amend judgment [64] is DENIED.

2) Plaintiff's motion for leave to appeal *in forma pauperis* [66] is DENIED.

3) Plaintiff's motion to request counsel on appeal [68] is DENIED.

4) The Clerk of the Court is directed to send a copy of this order to the United States Court of Appeals for the Seventh Circuit.

January 7, 2019
ENTERED

/s/ Colin S. Bruce
COLIN STIRLING BRUCE
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

March 18, 2019

Before

AMY C. BARRETT, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 18-3618	ROBERT WARREN, Plaintiff - Appellant v. BOBBETTE RAMAGE, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 4:16-cv-04267-CSB Central District of Illinois District Judge Colin S. Bruce	

Upon consideration of the **MOTION TO RECONSIDER EN BANC**, filed on March 14, 2019, by the pro se appellant,

IT IS ORDERED that the motion is **DENIED**. *See* Seventh Circuit Operating Procedure 1(a)(2). Warren shall pay the required docketing fee within 14 days, or this appeal will be dismissed for failure to prosecute to Circuit Rule 3(b). *See Newlin v. Helman*, 123 F.3d 429, 434 (7th Cir. 1997).

"Ex. D"

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
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PLRA C.R. 3(b) FINAL ORDER

April 16, 2019

No. 18-3618	ROBERT WARREN, Plaintiff - Appellant v. BOBBETTE RAMAGE, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 4:16-cv-04267-CSB Central District of Illinois District Judge Colin S. Bruce	

The pro se appellant was DENIED leave to proceed on appeal in forma pauperis by the appellate court on February 20, 2019 and was given fourteen (14)days to pay the $505.00 filing fee. The pro se appellant has not paid the $505.00 appellate fee. Accordingly,

IT IS ORDERED that this appeal is **DISMISSED** for failure to pay the required docketing fee pursuant to Circuit Rule 3(b).

IT IS FURTHER ORDERED that the appellant pay the appellate fee of $505.00 to the clerk of the district court. The clerk of the district court shall collect the appellate fees from the prisoner's trust fund account using the mechanism of *Section 1915(b). Newlin v. Helman, 123 F.3d 429, 433* (7th Cir. 1997).

CERTIFIED COPY

A True Copy:
Teste:

Deputy Clerk
of the United States
Court of Appeals for the
Seventh Circuit

form name: **c7_PLRA_3bFinalOrder**(form ID: **142**)

"Ex. G"

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

NOTICE OF ISSUANCE OF MANDATE

April 16, 2019

To: Shig Yasunaga
UNITED STATES DISTRICT COURT
Central District of Illinois
Davenport , IA 52801-0000

No. 18-3618	ROBERT WARREN, Plaintiff - Appellant v. BOBBETTE RAMAGE, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 4:16-cv-04267-CSB Central District of Illinois District Judge Colin S. Bruce	

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

CHOOSE ONE OF THE FOLLOWING: no record to be returned

DATE OF COURT ORDER: 02/20/2019

NOTE TO COUNSEL:
If any physical and large documentary exhibits have been filed in the above-entitled cause, they are to be withdrawn ten (10) days from the date of this notice. Exhibits not withdrawn during this period will be disposed of.

Please acknowledge receipt of these documents on the enclosed copy of this notice.

Received above mandate and record, if any, from the Clerk, U.S. Court of Appeals for the Seventh Circuit.

Date: April 16, 2019

Received by: s/D. Sjoken

form name: **c7_Mandate**(form ID: **135**)

Additional material from this filing is available in the Clerk's Office.