



REPORT OF CONDUCT
State Form 39590 (R4 / 11-13)
INDIANA DEPARTMENT OF CORRECTION

Appendix-A

IWS 18-07-0002

Case number

WVE 18-07-0168

Date assigned (month, day, year)

7-24-18

INSTRUCTIONS: Type or Print clearly

NOTE TO REPORTING EMPLOYEE: This report is to be filled out in triplicate. All copies shall be forwarded to the screening officer, in accordance with the Disciplinary Code for Adult Offenders.

WVS

A 1112

Name of offender	DOC number of offender	Facility	Housing unit	
Martin, Kevin	169789	WVEF	SCU A	
Date of incident (month, day, year)	Time of incident	AM <input type="checkbox"/> PM <input checked="" type="checkbox"/>	Place of incident	Date report written (month, day, year)
7-23-2018	1:20	PM	A WEST 1100 RANGE	7-23-2018
Offense				Code number
Threatening				B-213

DESCRIPTION OF INCIDENT (If more space is needed, attach additional sheets in triplicate.)

I C/o M. Foster, on 7-23-2018 at approximately 1:20 pm, had just spoken to offender Martin, Kevin, Doc# 169789, approximately 10 minutes prior (1:10 pm) and informed him that he would receive his property as soon as the property officer got time today.

Offender Martin, Kevin, Doc# 169789 proceeded to screen for the sergeant, I stepped out onto the Range and Martin, Kevin stated "Wait until I get my hands on one of you PUNK ASS B*T*HS". I then asked Martin, Kevin Doc# 169789 If he is aware that is a threat and he confirmed that he "damn sure" did threaten and continued to curse me. I informed him of this write up.

Disposition of physical evidence, if any

Witness Statement attached

Witness(es), if any

Caseworker J. Meeks

Signature of reporting employee

GO M. Foster

Name and title (please print)

No M Foster

Screening officer

Go M

Signature of immediate supervisor

Frank Bubly

Name and title (please print)

Frank Bubly Sgt.

Date (month, day, year)

7-23-18

Time AM PM

2:45

FOR SCREENING OFFICERS ONLY

Copy of report delivered to offender by:

C62

Date report delivered (month, day, year)

7-26-18

Signature of offender receiving copy

Unable Restraint

Note here if offender refuses to sign

C62 Williams

Ex A

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DISTRIBUTION: Original - Offender; Copy - Central Office; Copy - Facility Packet

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APPENDIX-C

WVS-18-07-0002

Wadhwan, [REDACTED]

From: Busby, [REDACTED]
Sent: Friday, July 27, 2018 9:28 AM
To: Wadhwan, Laura
Subject: RE: Witness statement

I Talked to Offender Martin after this Incident happened. It was all over him not getting his A/S property on time.

From: Wadhwan, [REDACTED]
Sent: Friday, July 27, 2018 9:24 AM
To: Busby, [REDACTED] <FLBusby@idoc.IN.gov>
Subject: Witness statement

On 7-23-18 Offender Martin, Kevin was written up on a B213 by Officer Foster. He is requesting a witness statement from you... what this whole situation is all about.

Thank you
L. Wadhwan

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Appendices - D

Wadhwan, [REDACTED]

WVS-18-07-0602

From: Gilstrap, [REDACTED]
Sent: Friday, July 27, 2018 10:45 AM
To: Wadhwan, Laura
Subject: RE: witness statement

He did receive his allowed property on Monday 07-23-18

From: Wadhwan, [REDACTED]
Sent: Friday, July 27, 2018 9:22 AM
To: Gilstrap, [REDACTED] <dgilstrap@idoc.IN.gov>
Subject: witness statement

On 07-23-18 Offender Martin, Kevin 169789 was written up on B213 Threatening. He is requesting a witness statement from you as to why you did not give him his property.

Thank You
L. Wadhwan

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Appendix-E)

WVS 18-07-0002



REPORT OF DISCIPLINARY HEARING VIDEO EVIDENCE REVIEW

State Form 55721 (R / 2-15)
DEPARTMENT OF CORRECTION

Name of offender MARTIN, KEVIN		DOC number 169789	Case number WVS 18-07-0002
Date of Incident (month, day, year) 7/23/18	Time of Incident 1:20PM	Place of Incident SCU A-WEST RANGE 11 (CELL 1112)	
Date of review (month, day, year) 07/30/18		Physical location (server) of video file VIDEO EVIDENCE NORTH	

The Disciplinary Hearing Board has determined that allowing the offender to view video recorded evidence would would not jeopardize the safety and/or security of the facility as set forth in Policy and Administrative Procedure 02-04-101, "The Disciplinary Code for Adult Offenders."

SUMMARY OF VIDEO RECORDING BY THE DISCIPLINARY HEARING BOARD

If the video was not used as evidence in the hearing, please explain why. If more space is needed, please use a separate sheet of paper.

The IDOC does not allow offenders to view videos because it will jeopardize the safety and security of the facility.

01:16:47 (TIME ON CAMERA) OFFICER FOSTER ALONG WITH ANOTHER OFFICER ESCORT AN OFFENDER TO CELL-1111.

01:17:54 BOTH OFFICERS EXIT RANGE 11.

01:19:51 OFFICER FOSTER ALONG WITH ANOTHER OFFICER ESCORT AN OFFENDER TO CELL-1107.

01:20:46 BOTH OFFICERS EXIT RANGE 11.

01:22:09 OFFICER FOSTER ALONG WITH ANOTHER OFFICER ESCORT AN OFFENDER TO CELL-1102.

01:22:35 BOTH OFFICERS EXIT RANGE 11.

01:24:08 OFFICER FOSTER ALONG WITH ANOTHER OFFICER ESCORT AN OFFENDER TO CELL-1103.

01:24:48 BOTH OFFICERS EXIT RANGE 11.

01:26:34 OFFICER FOSTER ALONG WITH ANOTHER OFFICER ESCORT AN OFFENDER TO CELL-1105.

01:27:10 BOTH OFFICERS EXIT RANGE 11.

01:28:57 OFFICER FOSTER ALONG WITH ANOTHER OFFICER ESCORT AN OFFENDER TO CELL-1104.

01:29:33 BOTH OFFICERS EXIT RANGE 11.

Signature of reviewer 	Date reviewed (month, day, year) 7-30-18
Printed name of reviewer John Brusky	Time reviewed 1:00 PM

DISTRIBUTION: Original - Disciplinary Hearing Board file; Copy - Offender packet, facility; Copy - Offender

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NOTICE OF DISCIPLINARY HEARING
(SCREENING REPORT)

State Form 39585 (R7/1/14)

INDIANA DEPARTMENT OF CORRECTION

Appendix-F

Name of offender	Offender's DOC number	Facility	
Martin, Kevin	169789	WVS	
Alleged offense	Code number	Offense date (month, day, year)	
Threatening	213	7/23/2018 A 60	
Reported by	Mental health code	Mental health staff notified	Housing unit
OFC FOSTER, M	A	N/A	AHU 1112

You are being referred for a hearing on the above code violation. You may enter a plea of *guilty* or *not guilty* to this offense, as indicated below. A plea of guilty or a finding of guilt may result in the imposition of sanctions in accordance with the sanctioning guidelines in Policy 02-04-101, "The Disciplinary Code for Adult Offenders." If you choose to plead guilty, you are admitting the material allegations and thus waive the rights indicated below; you will be scheduled to appear, by yourself, for a disposition hearing. If you choose to plead not guilty, you will be scheduled to appear before the appropriate disciplinary hearing body. If you plead not guilty, the following rights shall apply to your hearing:

- The right to lay representation, in accordance with the administrative procedures for Policy 02-04-101.
- The right to request a witness(es) in your behalf, subject to approval.
- The right to a fair hearing before impartial decision makers.
- The right to a minimum of twenty-four (24) hours notice prior to appearing on a given charge.
- The right to present documentary evidence in your behalf.
- The right to be present at the hearing, except while deliberations are in progress.
- The right to speak in your own behalf at the hearing. If you choose to remain silent, your silence may not be held against you.
- The right to a written copy of findings of fact in your case.

My plea in the above cited case is:	Notification date (month, day, year)	Notified by	Time
<input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty	7-26-18	L. Wadhwan	140 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM

I wish to have a lay advocate.	Name and number of advocate
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

I do not wish to call any witnesses.

I wish to call the following witness(es): (Specify name(s) and number(s) or name(s) and title(s) for staff and the expected testimony)

105/SCU AU 1105 - that I was calling control to get the sgt.

106/SCU AU 1106

90 Gilstrap - why he did not give me my property
Sgt Busby - what this whole situation was about

I do not request any physical evidence.

I wish to request the following physical evidence: (Specify the evidence to be considered)

No officer on the Range
we never had contact.

Video 7-23-18 105-130 pm

NOTE: Failure to request witness(es) or physical evidence may waive your right to have the witness' testimony or physical evidence presented / considered at your hearing.

Case number	Date assigned	Earliest date of hearing	Nature of hearing	Waive 24 hour notice of hearing
WVS-18-07-0002	7/24/2018	7-26-18	<input checked="" type="checkbox"/> Full <input type="checkbox"/> Disposition	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No FL

Your case is scheduled for hearing / disposition as noted. You will be notified to appear on or after that date, subject to postponement.

I have been notified of the above cited case filed against me and have been advised of my rights under due process as enumerated above.

Signature of witness

Signature of offender

Unable to restrain

DISTRIBUTION: Original - Facility Packet; Copy - Central Office; Copy - Offender

C/o H. Williams

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Ex B



NOTICE TO LAY ADVOCATE / WITNESS

State Form 35447 (R6 / 9-00)

Appendix - g

Name of offender	DOC number	Case number
Martin, Kevin	169789	WVS-18-07-0002
Offense	Code number	Date of alleged offense
Threatening	213 in WVS 18-07-0002	7-23-18
<input type="checkbox"/> LAY ADVOCATE		
Name of requested lay advocate	DOC number	Housing unit
The above-named offender has requested your assistance as Lay Advocate in a Disciplinary Hearing. As the Lay Advocate, you will assist the accused offender in the preparation of the case and you may be requested to assist in an appeal of this case. You are not required to represent this offender as a Lay Advocate.		
<input type="checkbox"/> I AGREE to be Lay Advocate		<input type="checkbox"/> I REFUSE to be Lay Advocate
Signature	Date	Witness
<input type="checkbox"/> LAY ADVOCATE WAS DENIED:		
REASON FOR DENIAL:		
<input type="checkbox"/> WITNESS		
Name of witness	DOC number (if applicable)	Housing unit (if applicable)
Jerome Montgomery	996375	AV 1105
You have been requested by the above-named offender to appear as a witness and testify as to your knowledge of the above-named alleged violation of the Appropriate Disciplinary Code. If you do not appear, you must give a written statement as to your knowledge of this alleged offense. Whether you appear in person or provide a written statement, you are required to tell the truth or be subject to disciplinary action.		
<input type="checkbox"/> WRITTEN STATEMENT IN LIEU OF WITNESS APPEARING AT HEARING. <input type="checkbox"/> STATEMENT OF WITNESS TAKEN AT DISCIPLINARY HEARING.		
<p>mr. martin wasn't talking to ms. foster (all he was talking to the boy not referring to ms. foster he didn't say anything to ms. foster @ all!!)</p>		
The written statement is a true and accurate summary of my knowledge of the incident.		
Signature of requested witness	Date	Witness
<input type="checkbox"/> WITNESS DID NOT APPEAR AT HEARING DUE TO:		
<input type="checkbox"/> Offender in segregation <input type="checkbox"/> Presence of witness would subject witness to substantial risk of harm. <input type="checkbox"/> Testimony of witness would result in irrelevant or repetitive testimony. <input type="checkbox"/> Witness not available to attend hearing (Reason: _____) <input type="checkbox"/> Other (Reason: _____)		
Name of staff person recording witness statement	Title	Date

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NOTICE TO LAY ADVOCATE / WITNESS
State Form 35447 (R6 / 9-00)

Appendix - H.)

Name of offender	DOC number	Case number	
Martin, Kevin	169789	WVS-18-07-0002	
Offense	Code number	Date of alleged offense	
Threatening	213		
LAY ADVOCATE			
<input type="checkbox"/>	Name of requested lay advocate		
	DOC number	Housing unit	
The above-named offender has requested your assistance as Lay Advocate in a Disciplinary Hearing. As the Lay Advocate, you will assist the accused offender in the preparation of the case and you may be requested to assist in an appeal of this case. You are not required to represent this offender as a Lay Advocate.			
<input type="checkbox"/> I AGREE to be Lay Advocate		<input type="checkbox"/> I REFUSE to be Lay Advocate	
Signature	Date	Witness	Date

LAY ADVOCATE WAS DENIED:

REASON FOR DENIAL:

WITNESS

Name of witness	DOC number (if applicable)	Housing unit (if applicable)
Mayfield, Cameron	178522	SCU A 106
You have been requested by the above-named offender to appear as a witness and testify as to your knowledge of the above-named alleged violation of the Appropriate Disciplinary Code. If you do not appear, you must give a written statement as to your knowledge of this alleged offense. Whether you appear in person or provide a written statement, you are required to tell the truth or be subject to disciplinary action.		

WRITTEN STATEMENT IN LIEU OF WITNESS APPEARING AT HEARING. STATEMENT OF WITNESS TAKEN AT DISCIPLINARY HEARING.

K. Martin was yelling for the Control room to get assistance for his situation and he did not Threatening any Staff Member, Correctional Staff etc... Also he (K. Martin) was not pull out of his cell for any reason Threatening because that is serious offense if K. Martin had committed this serious offense.

The written statement is a true and accurate summary of my knowledge of the incident.

Signature of requested witness	Date	Witness	Date
X Cameron Mayfield	1 July 2018		

WITNESS DID NOT APPEAR AT HEARING DUE TO:

- Offender in segregation
- Presence of witness would subject witness to substantial risk of harm.
- Testimony of witness would result in irrelevant or repetitive testimony.
- Witness not available to attend hearing (Reason: _____)
- Other (Reason: _____)

Name of staff person recording witness statement	Title
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WVS-8-070002

7/23/18

WUS 18-07-0002

I caseworker J. meeks did hear from
my office offender. K. martin - 169789 yell
"Wait until I get my hands on you punk ass Bitches"
from A-1100 range.

J. meeks
J. meeks

Appendix. 1

Ex A

pg 2



Case Note

218-CV-00429-
JMS-DLP?Offender ID 169789Offender Name KEVIN MARTINActivity Date: 23-JUL-18Time:Place: SCUNote Type: 90 Days NotesRAP Need:

On today's date Offender Martin started kicking his door over and over screaming for a C/O. When a C/O went out there to see what the issue was he stated that he wanted his property. I went and spoke with offender Martin and advised him that the property officer already knew that he was on A/S status now and would get to his property when he had time. When I left the range again Martin started yelling and kicking his door again. The C/O went back out there to see what the issue was again. Martin informed her that she was going to make him go off and do something to all of our punk asses. A conduct report was written.

Prepared by: Jerricha MeeksDate/time prepared: 23-JUL-18 01:57 PM

(- Ass't end x 1 -)

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Martin000020

Appendix J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

KEVIN L. MARTIN,)
Petitioner,)
v.) No. 2:18-cv-00429-JMS-DLP
WARDEN,)
Respondent.)

ENTRY DENYING MOTION FOR LEAVE TO FILE EXHIBIT *EX PARTE*

Mr. Martin has filed a case note authored by Case Worker Jericha Meeks documenting her account of the incident underlying his disciplinary conviction. Mr. Martin has not identified any reason why the Court should restrict access to this document. And if the document was indeed created by Ms. Meeks in her role as Mr. Martin's Case Worker, the Court presumes that the respondent already has (or has access to) the document.

Therefore, Mr. Martin's motion for leave to file the case note *ex parte*, dkt. [16], is denied.

The clerk is directed to remove the *ex parte* restriction currently applied to dkt. 16-1.

IT IS SO ORDERED.

Date: 7/15/2019

Jane Magnus-Stinson
Hon. Jane Magnus-Stinson, Chief Judge
United States District Court
Southern District of Indiana

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Appendix J

Distribution:

KEVIN L. MARTIN
169789
WABASH VALLEY - CF
WABASH VALLEY CORRECTIONAL FACILITY - Inmate Mail/Parcels
6908 S. Old US Hwy 41
P.O. Box 1111
CARLISLE, IN 47838

Katherine A. Cornelius
INDIANA ATTORNEY GENERAL
katherine.cornelius@atg.in.gov

APPENDIX K

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

KEVIN L. MARTIN,)
Petitioner,)
v.) No. 2:18-cv-00429-JMS-DLP
WARDEN,)
Respondent.)

**ENTRY DENYING PETITION FOR WRIT OF HABEAS CORPUS
AND DIRECTING ENTRY OF FINAL JUDGMENT**

Kevin Martin's petition for a writ of habeas corpus challenges his conviction in a prison disciplinary proceeding identified as WVS 18-07-0002. For the reasons explained in this Entry, Mr. Martin's petition is denied.

I. Overview

Prisoners in Indiana custody may not be deprived of good-time credits or of credit-earning class without due process. *Ellison v. Zatecky*, 820 F.3d 271, 274 (7th Cir. 2016); *Scruggs v. Jordan*, 485 F.3d 934, 939 (7th Cir. 2007); *see also Rhoiney v. Neal*, 723 F. App'x 347, 348 (7th Cir. 2018). The due process requirement is satisfied with: 1) the issuance of at least 24 hours advance written notice of the charge; 2) a limited opportunity to call witnesses and present evidence to an impartial decision-maker; 3) a written statement articulating the reasons for the disciplinary action and the evidence justifying it; and 4) "some evidence in the record" to support the finding of guilt. *Superintendent, Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 454 (1985); *see also Wolff v. McDonnell*, 418 U.S. 539, 563-67 (1974).

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B. Screening and Evidence Requests

On July 26, 2018, Mr. Martin received a screening report notifying him that he had been charged with threatening in violation of Code B-213. Dkt. 7-2. The screening report indicates that Mr. Martin's hands were in restraints such that he was unable to sign his name or write. *Id.* However, an officer noted on the screening report that Mr. Martin requested multiple pieces of evidence, including surveillance video and testimony from two witnesses.

1. Surveillance Video

The screening report documents that Mr. Martin requested "video 7-23-18 105-130 pm." *Id.* The report also features the following note: "No officer on the Range. We never had contact." *Id.* The Court understands these notations to indicate that Mr. Martin requested surveillance video of the area where Officer Foster alleged that he threatened her for the purpose of showing that they did not interact as she alleged in the conduct report.

Mr. Martin was not permitted to view the range video, but the hearing officer watched it and prepared a written summary of its contents. Dkt. 7-3 at 2. The hearing officer reviewed the video beginning at 1:16:47 P.M. and continuing through 1:29:33 P.M.¹ *Id.* The hearing officer observed that, in those thirteen minutes, Officer Foster appeared on the screen six times. *Id.* Each time, she and another officer escorted an inmate to his cell, then left the range before returning shortly thereafter with another inmate. *Id.* The hearing officer did not document that Officer Foster ever entered the range except in this fashion. The hearing officer also did not document that Officer Foster did anything during this time except escort inmates to their cells.

The respondent filed a copy of the range video for the Court to review *in camera*. See dkt. 15. The copy provided to the Court is only five minutes and forty-three seconds long—obviously

¹ Nothing in the record explains why the hearing officer did not begin reviewing the video at 1:10 P.M. as Mr. Martin requested.

shorter than the video the hearing officer reviewed—and is not time stamped. The video shows Officer Foster and another officer enter the range six times to escort inmates to their cells. The Court infers that this video has been edited to cut out the times when Officer Foster was off camera.

The Court notes that Officer Foster does not appear on the range except in these six instances. She does not appear to interact with anyone except her fellow officer and the inmates she is escorting. She does not engage in any activity except those described by the hearing officer.

2. Witness Testimony

The screening report documents that Mr. Martin also asked to call two witnesses: Correctional Officer Gilstrap and Sergeant Busby. *See* dkt. 7-2.

According to the screening report, Mr. Martin asked to call Officer Gilstrap to testify about why he did not give Mr. Martin his property. *Id.* The screening officer e-mailed Officer Gilstrap on July 27, 2018, to obtain a statement. Dkt. 7-3 at 6. Officer Gilstrap responded, “He did receive his allowed property on Monday 07-23-18.” *Id.*

According to the screening report, Mr. Martin asked to call Sergeant Busby to testify about “what this whole situation was about.” Dkt. 7-2. The screening officer e-mailed Sergeant Busby on July 27, 2018, to obtain a statement. *See* dkt. 7-3 at 4. Sergeant Busby responded, “I Talked to Offender Martin after this incident happened. It was all over him not getting his A/S property on time.” *Id.*

It does not appear that Mr. Martin received an opportunity to review either statement before the hearing or to call either witness to testify at the hearing.

C. Hearing and Administrative Appeals

Mr. Martin was convicted at a disciplinary hearing on July 30, 2018. Dkt. 7-3 at 1. Mr. Martin argued that the conduct report and Officer Meeks’ statement were false. *Id.* The hearing

officer also noted that Mr. Martin argued that he was charged for exercising his First Amendment rights. *Id.* Based on the documents Mr. Martin has presented in support of his petition, the Court understands this to mean he believed he was charged in retaliation for bringing grievances and lawsuits against officers at the prison. The hearing officer stated that he considered the conduct report, Mr. Martin's statement, the officers' statements, and the video, and ultimately found the conduct report and the officers' statements to be true. *Id.*

The hearing officer assessed sanctions, including the loss of 60 days' earned credit time and a suspended demotion in credit-earning class. *Id.* Mr. Martin unsuccessfully appealed his conviction to the facility head and the final reviewing authority. *See* dkts. 7-4, 7-5.

III. Analysis

Mr. Martin seeks habeas relief on grounds that his conviction is not supported by sufficient evidence and that he was wrongly denied evidence, including portions of the surveillance video he requested, testimony from Officer Gilstrap and Sergeant Busby, and one or more administrative grievances he filed. For the reasons set forth below, Mr. Martin is not entitled to habeas relief on any of these grounds.

A. Sufficiency of the Evidence

“A hearing officer’s decision need only rest on ‘some evidence’ logically supporting it and demonstrating that the result is not arbitrary.” *Ellison*, 820 F.3d at 274. The “some evidence” standard is much more lenient than the “beyond a reasonable doubt” standard. *Moffat v. Broyles*, 288 F.3d 978, 981 (7th Cir. 2002) “[T]he relevant question is whether there is *any evidence* in the record that could support the conclusion reached by the disciplinary board.” *Hill*, 472 U.S. at 455–56 (emphasis added). *See also Eichwedel v. Chandler*, 696 F.3d 660, 675 (7th Cir. 2012) (“The

some evidence standard . . . is satisfied if there is any evidence in the record that could support the conclusion reached by the disciplinary board.”) (citation and quotation marks omitted).

The evidence against Mr. Martin is not flawless. In fact, in some respects, it is troubling. Nevertheless, there is *some* evidence supporting Mr. Martin’s disciplinary conviction, and that is enough to satisfy the respondent’s minimal evidentiary burden.

Officer Foster’s conduct report, which set the whole proceeding in motion, is problematic because her account is not reflected in the range video. Officer Foster states in the conduct report that Mr. Martin screamed for the sergeant, she stepped out onto the range in response, he made a threatening statement, and she spoke with him. The video does not show Officer Foster stepping onto the range except to escort inmates to their cells, and it does not show her interacting with anyone but those inmates or the officer who was assisting her.

Ms. Meeks’ case note suffers from the same fatal flaw: It rests on the premise that Officer Foster entered the range in response to an outburst by Mr. Martin, that Mr. Martin made the threatening statement while she was there, and that she then interacted with him. *See dkt. 16-1.* The range video shows that this sequence of events did not occur as either Officer Foster or Ms. Meeks described it.

The last piece of evidence that might support the hearing officer’s decision is Ms. Meeks’ handwritten statement:

I case worker J. Meeks did hear from my office Offender K. Martin 169789 yell “wait until I get my hands on you punk ass bitches” from A 1100 range.

Dkt. 7-1 at 2. An inmate violates the “threatening” provision by communicating “to another person an intent to physically harm, harass or intimidate that person or someone else.” Dkt. 7-6 at 1. Ms. Meeks’ statement documents that she heard Mr. Martin make a statement that could easily be understood as communicating that he intended to harm or intimidate a person.

Because Ms. Meeks' statement supports Mr. Martin's conviction for threatening, it makes no difference that her own case note and Officer Foster's conduct report are contradicted by the video evidence. When assessing the sufficiency of the evidence in a habeas proceeding, the Court may not "reweigh the evidence underlying the hearing officer's decision" or "look to see if other record evidence supports a contrary finding." *Rhoiney*, 723 F. App'x at 348 (citing *Webb v. Anderson*, 224 F.3d 649, 652 (7th Cir. 2000)). Instead, the Court must limit its inquiry "to whether *any reliable evidence* exists to support the conclusions drawn by the hearing officer." *Id.* (emphasis added). Ms. Meeks' statement satisfies this standard and provides sufficient evidentiary support for the hearing officer's conclusion.

B. Denial of Evidence

"Inmates have a due process right to call witnesses at their disciplinary hearings when doing so would be consistent with institutional safety and correctional goals." *Piggie v. Cotton*, 344 F.3d 674, 678 (7th Cir. 2003) (citing *Wolff*, 418 U.S. at 566). However, "prisoners do not have the right to call witnesses whose testimony would be irrelevant, repetitive, or unnecessary." *Pannell v. McBride*, 306 F.3d 499, 503 (7th Cir. 2002). Moreover, a claim for habeas relief based on the denial of witness testimony in a prison disciplinary proceeding is subject to harmless error review. *Jones v. Cross*, 637 F.3d 841, 846–47 (7th Cir. 2011).

Similarly, due process requires "prison officials to disclose all material exculpatory evidence," unless that evidence "would unduly threaten institutional concerns." *Id.* at 847 (citation and quotation marks omitted). In the prison disciplinary context, "the purpose of [this] rule is to insure that the disciplinary board considers all of the evidence relevant to guilt or innocence and to enable the prisoner to present his or her best defense." *Id.* (citation and quotation marks omitted). Evidence is exculpatory if it undermines or contradicts the finding of guilty, *see id.*, and

it is material if disclosing it creates a “reasonable probability” of a different result, *Toliver v. McCaughtry*, 539 F.3d 766, 780-81 (7th Cir. 2008).

Mr. Martin’s arguments that he was denied evidence all fall short because he has failed to demonstrate a harmful error or that the evidence he was denied was exculpatory.

1. Range Video

Mr. Martin contends that he was denied due process because he requested that about 25 minutes of range video be reviewed, but the hearing officer reviewed only about 13 minutes. Even so, the 12 minutes of video that were not reviewed would not have been material or exculpatory. The video that was reviewed actually favors Mr. Martin because it shows that Officer Foster did not enter the range and interact with Mr. Martin as described in the conduct report. The 12 minutes that were not reviewed could not be more helpful to Mr. Martin: At best, that video would show that Officer Foster did not interact with him during those 12 minutes, and, at worst, it would show that they did interact and undermine Mr. Martin’s case. More importantly, there is no audio component to the range video, so no additional video evidence would undermine Ms. Meeks’ statement that she heard Mr. Martin yell the threatening statement from her office.

To the extent Mr. Martin contends that he was denied due process because he was provided only with a summary of the video and was not allowed to view it himself, this argument fails for the same reason. Whether Mr. Martin could see the video or not, the video evidence ultimately was not exculpatory or material. Because Mr. Martin’s motion for summary judgment, dkt. [13], and motion for hearing, dkt. [14], both rest on this issue, they are denied.

2. Witness Testimony

Mr. Martin has claims a violation due to his inability to present testimony from Officer Gilstrap or Sergeant Busby at the hearing. However, he fails to demonstrate that his inability to call them as witnesses or review their statements before the hearing prejudiced his defense.

To be sure, the screening report documents that Mr. Martin requested to call these witnesses at his hearing—not just to obtain written statements from them. Dkt. 7-2. Moreover, the statements Officer Gilstrap and Sergeant Busby provided were brief, and Sergeant Busby's statement in particular was vague. *See* dkt. 7-3 at 3–4.

However, Mr. Martin has not asserted what would be different if he had the opportunity to review their responses before the hearing, call them as witnesses, and ask them follow-up questions. Mr. Martin has not stated that either Officer Gilstrap or Sergeant Busby could testify that he was nearby on the afternoon in question and never heard Mr. Martin make the threatening statement of which he is accused. Nor has Mr. Martin stated that either Officer Gilstrap or Sergeant Busby knew that Officer Foster and Ms. Meeks made false reports so they could charge him with threatening in retaliation for his grievances. Without any indication that these witnesses would testify to that effect, the Court must find that any error was harmless.

3. Administrative Grievances

Finally, Mr. Martin argues that he was not provided with copies of one or more administrative grievances he would have used to bolster his argument that Officer Foster and Ms. Meeks created a false conduct report to retaliate against him. There is no evidence that Mr. Martin requested these documents before or during his disciplinary hearing. But had he done so, there remains no indication that they would be material or exculpatory. Mr. Martin presented his retaliation theory to the hearing officer. *See* dkt. 7-3 at 1. There is no indication that the hearing

officer doubted that Mr. Martin actually filed the grievances that he says provoked the disciplinary action. In fact, the hearing officer's report indicates that he considered Mr. Martin's statement but found Officer Foster's and Ms. Meeks' statements to be more trustworthy. *See id.* The critical piece of evidence against Mr. Martin is Ms. Meeks' statement that she heard him make the threatening statement from her office. It is not clear to the Court—and Mr. Martin has not offered any explanation—why paper copies of his grievances would have done more than Mr. Martin's own assertion to undermine Ms. Meeks' statement or increased his likelihood of success.

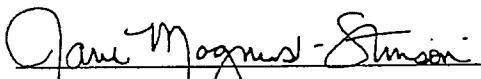
IV. Conclusion

“The touchstone of due process is protection of the individual against arbitrary action of the government.” *Wolff*, 418 U.S. at 558. Mr. Martin’s petition does not identify any arbitrary action in any aspect of the charge, disciplinary proceeding, or sanctions that entitles him to the relief he seeks. Accordingly, his petition for a writ of habeas corpus must be denied and the action dismissed with prejudice. Additionally, for the reasons discussed in Part III(B)(1) above, Mr. Martin’s motion for summary judgment, dkt. [13]; and motion for hearing, dkt. [14], are denied.

Judgment consistent with this Entry shall now issue.

IT IS SO ORDERED.

Date: 7/15/2019



Hon. Jane Magnus-Stinson, Chief Judge
United States District Court
Southern District of Indiana

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United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted April 10, 2020*

Decided April 13, 2020

Before

MICHAEL S. KANNE, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 19-2761

KEVIN L. MARTIN,
Petitioner-Appellant,

Appeal from the United States District
Court for the Southern District of Indiana,
Terre Haute Division.

v.

No. 2:18-cv-00429-JMS-DLP

JOHN GALIPEAU,
Respondent-Appellee.

Jane Magnus-Stinson,
Chief Judge.

ORDER

Kevin Martin, an Indiana prisoner, was charged with making a threat. A disciplinary hearing officer found him guilty and revoked 60 days of good-time credit. After exhausting his administrative remedies, Martin filed a petition for a writ of habeas corpus, *see* 28 U.S.C. § 2254, arguing that the disciplinary proceedings did not comport with due process because his conviction was not supported by sufficient evidence and

* We have agreed to decide this case without oral argument because the briefs and the record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

he was wrongly denied evidence. The district court denied Martin's petition. Because some evidence supports Martin's disciplinary conviction, and the evidence he requested could not have helped his defense, we affirm.

Correctional officer M. Foster (whose full name is not in the record) issued a conduct report to Martin, alleging that she heard him make a threat, in violation of the prison's disciplinary rules. Foster reported that at approximately 1:20 p.m., roughly ten minutes after she had spoken to Martin about property he had requested, he began kicking his cell door and yelling for a sergeant. Foster wrote that she "stepped out onto the Range" and heard Martin yell, "Wait until I get my hands on one of you punk ass bitches." According to Foster, she then asked Martin if he knew that what he had said was a threat, and Martin responded that he was "damn sure" it was. Foster attached to the conduct report a handwritten statement from a caseworker, Jerricha Meeks, who wrote that from her office, she had heard Martin yell: "Wait until I get my hands on you punk ass bitches." Later Meeks also typed up a "case note" (the context in which it was prepared is unclear) that essentially restates Foster's account of the incident.

When informed of the charge, Martin pleaded not guilty and requested evidence to defend his case. He asked for four witnesses: two other prisoners, to corroborate his story, one officer to explain "why he did not give me my property," and a sergeant to explain "what this whole situation was about"—that is, why he had been yelling. Martin also requested that the disciplinary hearing officer review the video recording of the range—the common area into which the cell doors open—from 1:05 p.m. to 1:30 p.m. on the date of the incident.

The hearing officer reviewed the portion of the video from 1:16 p.m. to 1:29 p.m. It is unknown why the hearing officer did not begin reviewing the video at 1:05 p.m., as Martin requested. The video, which did not include sound, did not depict Foster interacting with Martin. It also did not show that Foster "stepped out onto the range" other than to pass through six times, escorting inmates with another correctional officer.

The two prisoners who provided witness statements asserted that Martin had been "talking to the range," "not referring" to Foster, and "yelling for the control room to get assistance for his situation." Martin was not allowed to call as witnesses the two officials he identified, neither of whom had been present when he was yelling, but they gave short witness statements in the pre-hearing investigation. The sergeant stated that he spoke with Martin after the incident and was told "it was all over him not getting his [allowed] property on time," and the officer stated that Martin had received his property on the day of the incident.

At the disciplinary hearing, Martin argued that Foster's conduct report and Meeks's statement were false. This evidence, he argued, had been fabricated as retaliation for his prior grievances filed against Meeks. The hearing officer considered Martin's testimony, Foster's report, Meeks's statement, the other prisoners' statements, and the video. Crediting Foster's and Meeks's statements over Martin's denial, the hearing officer found Martin guilty. Among other sanctions, Martin lost 60 days of good-time credit.

After losing his internal appeals, Martin filed this petition under § 2254. He argued that he had been deprived of due process in three ways: First, the evidence supporting his disciplinary conviction was insufficient because the video showed that no officer entered the range at the time of the alleged threat and Foster's and Meeks's statements had been fabricated as retaliation for prior grievances filed against Meeks. Second, he had been wrongly denied evidence—in particular, the earlier segment of the video recording. Third, Martin's witnesses gave written statements but were not permitted to testify. (Martin does not renew this argument on appeal, so we say no more about it.)

The district court denied Martin's petition. The court deemed Foster's conduct "problematic" because the video does not match her account that she stepped onto the range and spoke to Martin in response to his yelling; Meeks's separate case note, which repeats Foster's story, was flawed for the same reason. But Meeks's handwritten statement (attached to Foster's conduct report) states that, from her office, she heard Martin yell a threat. The district court concluded that this statement was enough to support Martin's conviction for making a threat. Further, Martin did not explain how he was prejudiced by the hearing officer viewing less of the video than he requested. The court reasoned that, at best, the video recording would have shown more of the same (that Foster did not interact with Martin). And if it supported Foster's account, Martin was worse off.

On appeal, Martin first argues that neither Foster nor Meeks can be credited because the video contradicts their reports that Foster stepped onto the range to speak with Martin and because Meeks provided evidence against him in retaliation for a grievance he had previously filed against her. Second, Martin insists that the hearing officer's failure to review the first 12 minutes of the video recording prejudiced his defense because it would have confirmed that he never interacted with Foster.

We review the denial of Martin's § 2254 petition de novo. *Scruggs v. Jordan*, 485 F.3d 934, 938 (7th Cir. 2007). In Indiana, a prisoner has a liberty interest in his

earned good-time credits, so the state must follow the appropriate procedures before revoking these credits. *Montgomery v. Anderson*, 262 F.3d 641, 644–45 (7th Cir. 2001). In the prison-disciplinary context, due process requires, among other things, that a conviction be supported by “some evidence.” *Superintendent Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 455 (1985); *Webb v. Anderson*, 224 F.3d 649, 652 (7th Cir. 2000). This standard requires no more than a “modicum of evidence.” *Webb*, 224 F.3d at 652 (quoting *Hill*, 472 U.S. at 455). We ask “whether there is *any* evidence in the record that *could* support the conclusion reached by the disciplinary board.” *Id.* (quoting *Hill*, 472 U.S. at 455–56). The evidence must be sufficiently reliable, *Meeks v. McBride*, 81 F.3d 717, 720 (7th Cir. 1996), but it need not “logically preclude[]” conclusions other than the one the hearing officer reached. *Hill*, 472 U.S. at 457.

Under this standard, sufficient evidence supported the finding that Martin yelled a threat, even though the video does not support Foster’s entire account. Foster reported that she heard Martin yell, “Wait until I get my hands on one of you punk ass bitches,” and Meeks’s same-day handwritten statement corroborates that report: She said she heard the same remark from her office, off of the range. The two other prisoners corroborated that Martin was yelling and upset; they simply denied that Martin directed his remarks at Foster. But that is not relevant to the violation he was charged with: communicating a threat against *anyone*. Martin himself did not deny yelling (though he stated that he was calling for a specific officer to deliver his property and that Foster was not there). Thus, even ignoring the contradicted portions of Foster’s and Meeks’s accounts, there is at least “some evidence” of Martin’s guilt.

Martin argues, however, that the video discredits Meeks and Foster entirely, and so the hearing officer could not rely on any evidence originating with them. But it was up to the hearing officer to weigh the witnesses’ credibility—we do not reweigh the evidence presented at the hearing. *Webb*, 224 F.3d at 652. Meeks’s uncontradicted statement about what she heard was sufficiently reliable for the hearing officer to deem credible. *Meeks*, 81 F.3d at 720.

Further, Martin’s assertion that Meeks provided evidence out of a retaliatory motive is irrelevant to whether he received due process. *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974); *McKinney v. Meese*, 831 F.2d 728, 733 (7th Cir. 1987). The due process protections set forth in *Wolff*—advance written notice of violation, a written explanation of the decision, the right to present witnesses and evidence, and a decision by an impartial body—shield prisoners from arbitrary actions. *McPherson v. McBride*, 188 F.3d 784, 787 (7th Cir. 1999). Once those procedures are followed, our only function is to

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determine if the disciplinary hearing officer's decision was based on "some facts." *Id.* (citation omitted). Here, as explained above, the decision had some factual basis. A § 2254 petition to recover lost good-time credit is not the way to bring a claim that a prison official retaliated against an inmate for the protected activity of filing a grievance. *See Gomez v. Randle*, 680 F.3d 859, 866–67 (7th Cir. 2012) (prisoner's retaliation claim actionable under 42 U.S.C. § 1983).

Finally, Martin argues that he was prejudiced by the disciplinary hearing officer's failure to review the additional 12 minutes of video Martin requested. But he does not explain how this evidence could have undermined or contradicted the evidence supporting the finding that he yelled a threat. *See Jones v. Cross*, 637 F.3d 841, 848 (7th Cir. 2011). As the district court reasoned, the first 12 minutes of the video could have shown nothing more helpful to him than the latter half: that Foster did not directly interact with Martin. And if it did show that Foster approached him, he would have been worse off. Either way, without sound, the additional portion of the video could not prove that Martin was not yelling or did not make the alleged threat. Therefore, Martin was not prejudiced by its absence.

AFFIRMED

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

May 8, 2020

Before

MICHAEL S. KANNE, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 19-2761

KEVIN L. MARTIN,
Petitioner-Appellant,

Appeal from the United States District
Court for the Southern District of
Indiana, Terre Haute Division.

v.

No. 2:18-cv-00429-JMS-DLP

JOHN GALIPEAU,
Respondent-Appellee.

Jane Magnus-Stinson,
Chief Judge.

O R D E R

On consideration of the petition for rehearing filed in the above-entitled cause by *pro se* appellant, Kevin L. Martin, all of the judges on the original panel have voted to deny a rehearing. It is, therefore, ORDERED that the aforesaid petition for rehearing is DENIED.

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