NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted October 4, 2023*
Decided October 11, 2023

Before

DIANE S. SYKES, *Chief Judge*

DIANE P. WOOD, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 22-3253

BOGDAN NICOLESCU,
Petitioner-Appellant,

v.

DAVE BOBBY, Warden,
Respondent-Appellee.

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

No. 2:21-cv-00441-JRS-MJD

James R. Sweeney II,
Judge.

ORDER

Bogdan Nicolescu, a federal prisoner, lost 27 days' good-time credit after a disciplinary-hearing officer determined that, while speaking in Romanian to his mother on the phone, he threatened a prison guard. He petitioned for a writ of habeas corpus under 28 U.S.C. § 2241, contending that he lost the good-time credit without the

* We have agreed to decide the case without oral argument because the briefs and 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).

required due process. The district judge concluded that Nicolescu was notified of the charges, had the opportunity to review the evidence against him, and was permitted to present witnesses. Because those procedures comport with due-process, we affirm.

In November 2020, while at the federal penitentiary in Marion, Illinois, Nicolescu called his mother, whom he frequently called and emailed. He spoke with her for 15 minutes in Romanian, their native language, and an interpreter later translated the recorded phone call into English. During the call, Nicolescu briefly mentioned a prison guard who was standing nearby and who had issued Nicolescu an incident report. According to the translation, Nicolescu said: "[T]hat idiot got me a restriction at the store for 2 weeks. But it doesn't matter, I'll attack *him* anyways. I piss on him." (Emphasis added.)

Nicolescu later received an incident report alleging that he violated prison policy when, during the call, he threatened another with bodily harm. A partial transcript of the translated conversation was attached to the report. The report also notified him of the date for his hearing. See 28 C.F.R. § 541.3 tbl. 1, Offense 203. Nicolescu denied the allegations, insisted that the translation should have said "I'll attack *it* anyways," not "I'll attack *him* anyways." He contended that no Romanian speaker would construe his statements as threatening. Two days before the hearing, Nicolescu urged his staff representative to ask the interpreter to correct the translation, but the representative did not do so. He then asked to contact the interpreter directly, but several other prison officers refused that request. Nonetheless, ten minutes before the hearing Nicolescu received and reviewed a full transcript of the call. With the transcript in hand, in response to an inquiry by the hearing officer, he stated that he did not seek to present other documents or witnesses. Only portions of the transcript were used at the hearing.

Nicolescu testified at the hearing. He defended his comments by explaining that they had a nonliteral meaning in Romanian. For example, he argued that the phrase "I piss on him" in Romanian is properly rendered as "screw him" in English. Moreover, he contended, the present tense "I piss" is not a threat because it does not suggest future harm; some other verb tense, such as the future "I will piss," is necessary to convey a threat. He reiterated that the word "him" in the transcript should have been translated as "it." So corrected, he concluded, the transcript showed only that he planned to attack the disciplinary report through the approved mechanisms, not to assault the prison guard physically.

The hearing officer was unpersuaded by Nicolescu's testimony and found him guilty of threatening the guard. The officer wrote that he considered the transcript, an email Nicolescu sent to his mother, and the arguments Nicolescu and his staff

representative raised at the hearing. The disciplinary officer ticked a box stating that Nicolescu waived his right to call other witnesses.

Nicolescu next unsuccessfully petitioned for a writ of habeas corpus in federal district court. He argued that the prison denied him due process by (1) refusing to grant him adequate access to the call transcript and witnesses, (2) presenting insufficient evidence of a threat (because, he insisted, his remarks were exculpatory), and (3) issuing the charge for retaliatory reasons. In denying the petition, the judge first pointed out that Nicolescu did receive the full transcript of the phone call. As for witnesses, the court noted that Nicolescu waived that right in response to a direct question at the hearing. He was thus not denied the opportunity to call witnesses or present exculpatory evidence. The transcript of the call, the judge ruled, provided enough evidence of Nicolescu's guilt. Finally, the judge explained that Nicolescu is not entitled to habeas corpus relief based on an alleged retaliatory motive for the charge, because it was based on the translated phone call and the hearing procedures were adequate.

On appeal, Nicolescu continues to argue that he was denied due process at the hearing. A disciplinary hearing comports with due process when the prisoner receives notice of the hearing and the charges; the opportunity to present witnesses and evidence at the hearing (consistent with prison security); and a written statement of the evidence the decisionmaker relied on. *Wolff v. McDonnell*, 418 U.S. 539, 563 (1974). Substantively, "some evidence" must support the decision. *Superintendent v. Hill*, 472 U.S. 445, 454 (1985).

Nicolescu received this process. He concedes that he received a written notice of the alleged infraction. Regarding the opportunity to present witnesses and evidence, he was allowed to testify on his own behalf, and he waived his right to call other witnesses or present other evidence. We recognize that, at one point, Nicolescu asked that his staff representative contact the original translator, but the representative's failure to do so on Nicolescu's behalf did not violate his due process rights. See *Miller v. Duckworth*, 963 F.2d 1002, 1004 (7th Cir. 1992) (stating that prisoners have no general right to a lay advocate's services in disciplinary proceedings). Furthermore, Nicolescu has furnished no evidence that the *hearing officer* refused to let him call the translator (or any other witness) in his defense. We accept as true that Nicolescu was told by several prison officers prior to the hearing that he could not contact the translator. That fact, however, does not change our assessment. It is one thing for a prisoner informally to ask guards or others for access to someone outside the hearing context; it is quite another for the prisoner to request the officer presiding over a disciplinary hearing to call a witness on his behalf. Considerations of security and orderly procedure might well cause prison

officials to reject informal requests, but at the same time to permit a hearing officer to grant access to necessary witnesses. That is what happened here. Even though we assume that Nicolescu felt discouraged when his earlier efforts to obtain access to the translator failed, that does not excuse his unilateral decision to tell the hearing officer that he did not wish to call any witnesses. The latter statement operated as a waiver of his right to call the translator as a witness, and he offers no reason on appeal for us to find this waiver invalid. Thus, the prison did not violate Nicolescu's due-process rights at the disciplinary hearing. See *Ponte v. Real*, 471 U.S. 491, 499 (1985).

Nicolescu offers a few more arguments, but none persuades us. First, he contends that he was denied an adequate opportunity to review the full transcript of the phone call, which he considers exculpatory, because he did not receive it until ten minutes before the hearing. But due process does not mandate a specific time to review evidence. See *Superintendent*, 472 U.S. at 454. In any case, nothing prevented Nicolescu from asking for more time to review the transcript, nor does he explain how more time to review it would have enhanced his defense.

He next argues that the hearing officer's report was constitutionally deficient in two ways: the explanation of the hearing officer's decision was too terse; and the conclusion was not supported by the evidence. Our own review satisfies us that the officer said enough. He set forth the evidence on which he relied, and he explained why he found transcribed translation more persuasive than Nicolescu's defense. No more was required. See *id.* Nicolescu also argues the hearing officer was biased because he ruled against Nicolescu, but that reason alone is not enough to show partiality. See *Prude v. Meli*, 76 F.4th 648, 657–58 (7th Cir. 2023).

Sufficiency of the evidence arguments are hard to sustain in the prison-disciplinary context, and this case is no exception. The transcript offers "some evidence" that Nicolescu threatened a guard, while he was speaking in Romanian and perhaps thinking (erroneously) that prison officials would not understand him. Nothing more is required. See *Superintendent*, 472 U.S. at 454. Indeed, Nicolescu admits that the transcript is correct as a literal matter. He relies on the more nuanced argument that no Romanian speaker would interpret his words as a threat. This dispute over the proper interpretation does not render the fact-finding in this case arbitrary. Because some evidence supports the disciplinary officer's decision, it may stand. See *id.*

Finally, Nicolescu argues that his loss of good-time credit was an unlawful penalty for exercising his right under the First Amendment to speak freely with his mother. The short answer to this is that First Amendment rights may be curtailed in prison, when the restriction is rationally related to prison security. See *Turner v. Safley*,

482 U.S. 78, 89 (1987); *Kervin v. Barnes*, 787 F.3d 833, 835 (7th Cir. 2015) (prisons may curb abusive or insolent speech). That is the case here.

For these reasons, we AFFIRM the judgment of the district court.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

January 8, 2024

Before

DIANE S. SYKES, *Chief Judge*

DIANE P. WOOD, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 22-3253

BOGDAN NICOLESCU,
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v.

DAVE BOBBY, Warden,
Defendant-Appellee.

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

No. 2:21-cv-00441-JRS-MJD

James R. Sweeney II,
Judge.

ORDER

Plaintiff-Appellant filed a petition for rehearing *en banc* on November 27, 2023. No judge in regular active service has requested a vote on the petition for rehearing *en banc*, and all members of the original panel have voted to deny panel rehearing. The petition for rehearing and rehearing *en banc* is therefore DENIED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

BOGDAN NICOLESCU,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 2:21-cv-00441-JRS-MJD
	)	
B. LAMMER,	)	
	)	
Respondent.	)	

Order Denying Petition for Writ of Habeas Corpus

Bogdan Nicolescu is in custody of the Federal Bureau of Prisons. He brought this 28 U.S.C. § 2241 petition for writ of habeas corpus challenging his disciplinary sanction for threatening another with bodily harm at the United States Penitentiary in Marion, Illinois. For the reasons in this Order, the petition is **denied**.

I. Background

Incident Report 3457940 set forth the basis for Mr. Nicolescu's charge:

> On December 14, 2020, at approximately 11:00 a.m., I conducted a review of a translated phone call in which inmate Nicolescu, Bogdan, Reg. No. 64505-060 placed on November 22, 2020 at 1:00 p.m. to international phone number [omitted]. TRUEVIEW indicates this phone number is associated with his mother, Adriana Breazu. During a review of the translated text, it has been determined inmate Nicolescu has made threatening statements which have been directed towards staff in retaliation for an incident report that was written against him. Specifically, inmate Nicolescu states, "anyways, maybe that idiot got me restriction at the store for 2 weeks. But it doesn't matter, I'll attack him anyways. I piss on him. I'll get him, the hell with him."

Dkt. 1-1 at 17. The incident report includes an excerpt of a translated transcript of the call at issue:

Bogdan:	Anyway, maybe that idiot got me restrictions at the store for 2 weeks. But it doesn't matter. I'll attack him anyways. I piss on him.
Adriana:	But what did he do to you?

Bogdan:	He doesn't even know how to express himself in English. He's illiterate because he makes many mistakes.
Adriana:	What did he do?
Bogdan:	He wrote something stupid about me, but it doesn't matter because the most I'll get is 2 weeks restriction at the store. But maybe they don't even give it to me. I told them.
Adriana:	But what? Did you have an argument with him or what?
Bogdan:	No, he's an idiot; he picks on everybody around here
Adriana:	Ah. Well, you also had in the other place a guy who was picking on everybody.
Bogdan:	I'll get him, the hell with him. The pitcher often goes to the well, but it is broken at last.
Adriana:	Well, you should mind your own business. Don't make troubles there. Let him.
Bogdan:	No, I can't let him go on with this because he'll do it continuously. I must snub him.
Adriana:	Ok, do as you think.
Bogdan:	Ok.
Adriana:	I'm just saying you should do what's best for you.
Bogdan:	It's better to do this than
Adriana:	Ok. When you talk to Dragos, ask him to seriously take care of that Pacer you say, alright?

Id. A transcript of the full conversation was attached to the incident report, as was a November 2020 email from Mr. Nicolescu to his mother elaborating on his ongoing troubles with the staff member mentioned in his telephone call. Dkt. 13-1 at 5, ¶ 14 (S. Wallace declaration); *id.* at 18–25 (full transcript); *id.* at 37 (email). Mr. Nicolescu's petition makes clear that his comments refer to Officer J. Smith. *See, e.g.*, dkt. 1-1 at 15 (noting that a different officer "could have at

least reported that J. SMITH 'picks on everybody around here,'" mirroring the language of his telephone call); *id.* at 35 (prior incident report authored by Officer J. Smith).

Mr. Nicolescu received a copy of the incident report on December 14, 2020. *Id.* at 1–2, ¶ 3. During investigation of the incident, Mr. Nicolescu explained that the translation was inaccurate and that when he said "attack," he meant he was going to fight the incident report, not physically attack Officer Smith. *Id.* at 4, ¶ 9. He further explained that he never intended to hurt any staff member. *Id.* At a unit disciplinary committee hearing, Mr. Nicolescu again contended that the translation was poor and that his words were taken out of context. *Id.*, ¶ 10.

The disciplinary hearing was held in March 2021. Mr. Nicolescu requested and was assigned a staff representative, but he waived his right to call any witnesses. *Id.* at 12 (disciplinary hearing officer report). He again contended that the translation of his telephone call was inaccurate, explaining that he said he would attack his prior incident report, not physically attack Officer Smith. *Id.* at 13.

After considering Mr. Nicolescu's statements, his staff representative's statements, and the documentary evidence presented—including the full transcript of the telephone call and the November 2020 email—the hearing officer found him guilty of threatening another with bodily harm. *Id.* at 4–5, ¶ 14; *id.* at 13. As a sanction, Mr. Nicolescu lost 27 days of good conduct time and 90 days of commissary, visitation, and telephone privileges. *Id.* at 14. Mr. Nicolescu received a copy of the disciplinary hearing report in April 2021. Dkt. 13-1 at 5, ¶ 17.

II. Discussion

"Federal inmates must be afforded due process before any of their good time credits—in which they have a liberty interest—can be revoked." *Jones v. Cross*, 637 F.3d 841, 845 (7th Cir. 2011). "In the context of a prison disciplinary hearing, due process requires that the

prisoner receive (1) written notice of the claimed violation at least 24 hours before hearing; (2) an opportunity to call witnesses and present documentary evidence (when consistent with institutional safety) to an impartial decision-maker; and (3) a written statement by the fact-finder of the evidence relied on and the reasons for the disciplinary action." *Id.*; *see also Superintendent, Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 454 (1985); *Wolff v. McDonnell*, 418 U.S. 539, 570–71 (1974). In addition, "some evidence" must support the guilty filing. *Ellison v. Zatecky*, 820 F.3d 271, 274 (7th Cir. 2016); *Jones*, 637 F.3d at 845.

In his petition for writ of habeas corpus, Mr. Nicolescu challenges his disciplinary conviction on five grounds:[1]

1. the disciplinary hearing officer failed to consider the full transcript of his phone call and his November 2020 email, both of which were exculpatory;

2. he was denied the opportunity to obtain an accurate translation and call the translator as a witness;

3. the disciplinary hearing officer ignored the context of his statements during the telephone call;

4. the disciplinary proceedings were brought in retaliation for suggesting that he might file a grievance about a prior disciplinary sanction; and

5. "it is not clear" whether he received an adequate written statement explaining the evidence relied upon and the reasons the disciplinary action was taken.

Dkt. 1 at 6–9; dkt. 1-1 at 3–14. But as explained below, Mr. Nicolescu received all the process he was due.

[1] Mr. Nicolescu also raises irrelevant issues and unnecessary insults, none of which require a ruling in this case. *See, e.g.*, dkt. 1-1 at 13–15 (accusing Officer Smith of "linguistic competence"); *id.* at 15 ("Petitioner questions the competency of the staff representative, [disciplinary hearing officer], Regional Director, General Counsel, none of whom appeared to understand any of [his] arguments, thus inducing this litigation through their incompetence.")); *id.* ("The translator was not particularly competent either."); *id.* at 15–16 (accusing officers at Terre Haute of interfering with his legal mail).

A. Opportunity to present evidence to an impartial decisionmaker

Mr. Nicolescu argues that he was not permitted to obtain and present a "corrective translation," which he insists would have been exculpatory. Dkt. 1-1 at 4. But due process does not require prison administrators to "create favorable evidence or produce evidence they do not have." *Manley v. Butts*, 699 Fed. App'x 574, 576 (7th Cir. 2017). Mr. Nicolescu was not entitled to receive a translation that matched his explanation for the recorded statements.

Mr. Nicolescu also argues that he was not permitted to call the translator as a witness at his disciplinary hearing. Dkt. 1-1 at 6–7. But he waived the right to call witnesses. Dkt. 13-1 at 12; *id.* at 13 ("The inmate . . . confirmed he did not request witnesses."). Mr. Nicolescu now argues that he "implicitly called a witness" when he requested a clarification of the translation. Dkt. 1-1 at 7–8; *see* dkt. 13-1 at 12 ("The translation was not right, I did not mean in this way. Would like clarification.").

A disciplinary hearing officer is only required to honor material and exculpatory witness requests. Mr. Nicolescu's statement that he "would like clarification" is not a witness request. But even if it were a witness request, it did not provide enough information for the disciplinary hearing officer to understand that Mr. Nicolescu was requesting to call a witness who could provide material, exculpatory evidence.

Finally, Mr. Nicolescu asserts that the disciplinary hearing officer "refused to allow" the transcript of his entire telephone call and his November 2020 email. Dkt. 1-1 at 7. There is no evidence to support this assertion. On the contrary, the disciplinary hearing officer has stated under penalty of perjury that they considered both the full transcript and the email, which were included as attachments to the incident report. Dkt. 13-1 at 4–5, ¶ 14; *id.* at 18–25 (full transcript); *id.* at 37 (email).

Mr. Nicolescu therefore has not shown that he was deprived of the opportunity to call a witness or present documentary evidence to an impartial decisionmaker.

B. Written statement

Mr. Nicolescu contends that the written report he received was "self-contradictory," and therefore that it does not satisfy the due process requirement of a written statement. Dkt. 1-1 at 7. But the contradictions Mr. Nicolescu relies upon are either contrived or non-existent.

For example, he asserts that his request for a "clarification" of the translation, as documented in Section III.B of the report, contradicts his waiver of witnesses, as documented in Section III.C. Dkt. 1-1 at 6; *see* dkt. 13-1 at 12. But as explained above, the disciplinary hearing officer was not required to treat "I would like clarification" as a witness request. Mr. Nicolescu also asserts that "Section III.D and Part V [(explaining the evidence relied upon by the disciplinary hearing officer)] are also contradicted by Section III.B of the DHO Report, as they do not state the documentary evidence that Petitioner had explicitly requested." Dkt. 1-1 at 7. It is unclear what documentary evidence Mr. Nicolescu refers to in this statement; regardless, he has not shown that the disciplinary hearing officer failed to consider any available documentary evidence.

The disciplinary hearing officer's "written statement need not be extensive," and in a factually simple case like this one, it need " only to set forth the evidentiary basis and the reasoning supporting the decision." *Jemison v. Knight*, 244 Fed. App'x 39, 42 (7th Cir. 2007). Notwithstanding Mr. Nicolescu's attempt to poke holes in the disciplinary hearing officer's written statement here, it easily clears this low bar.

C. Some evidence

Mr. Nicolescu maintains that when his statements are considered in the context of the full conversation and the November 2020 email, there is not "some evidence" to support the disciplinary hearing officer's finding that he threatened Officer Smith with bodily harm. Dkt. 1 at 6–7; dkt. 1-1 at 3–4, 8–11.

The "some evidence" standard is a "meager threshold." *Scruggs v. Jordan*, 485 F.3d 934, 941 (7th Cir. 2007). It is not the Court's role to "reweigh the evidence underlying the hearing officer's decision" or to "look to see if other record evidence supports a contrary finding." *Rhoiney v. Neil*, 723 Fed. App'x 347, 348 (7th Cir. 2018). Instead, the Court's limited role is to ensure that the disciplinary hearing officer's decision is not "arbitrary or without support in the record." *McPherson v. McBride*, 188 F.3d 784, 786 (7th Cir. 1999).

An inmate violates the code by making a statement threatening bodily harm to another. 28 C.F.R. § 541.3, The evidence presented to the disciplinary hearing officer included a translated transcript of a telephone call in which Mr. Nicolescu said of Officer Smith, "I'll attack him," "I'll get him, the hell with him," and "I piss on him." Dkt. 13-1 at 13. This is some evidence that he violated the code. Mr. Nicolescu offers plausible alternative interpretations of the statements that the disciplinary hearing officer found to be threatening. *See* dkt. 1-1 at 5 ("Instead of the word-by-word 'I piss on him,' a competent translation would have been 'screw him' or something similar."); *id.* at 9–11 (explaining that "I'll attack him" indicated an intent to attack a prior incident report, not an intent to physically attack Officer Smith). He was free to make these arguments to the disciplinary hearing officer. However, because some evidence supports the decision, these alternative interpretations do not warrant habeas relief. There was enough evidence to satisfy due process.

D. Effectiveness of Staff Representative

Mr. Nicolescu asserts that his staff representative was ineffective for not obtaining and presenting a "corrective" translation. Dkt. 1-1 at 7–8. But unless an inmate is illiterate or the issues are so complex as to prevent him from presenting an adequate defense on his own, "[t]here is no constitutional due process right to a staff representative or lay advocate." *McRae v. Krueger*, No. 2:18-cv-00381-JRS-DLP, 2019 WL 3430571, at *3 (S.D. Ind. July 29, 2019); *See Wolff*, 418 U.S. at 570 (lay advocate or staff representative not required unless "an illiterate inmate is involved" or "the complexity of the issue makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case"). There is no indication in the record that Mr. Nicolescu is illiterate, and the issues are not so complex that Mr. Nicolescu was incapable of presenting an adequate defense on his own. He was therefore not entitled to an effective staff representative.

E. Retaliation

Finally, Mr. Nicolescu alleges that he is entitled to relief because the incident report at issue was written in retaliation for his First Amendment protected activity. Dkt. 1-1 at 11–13. But in the disciplinary habeas context, an officer's "retaliatory motive is not a material factor in deciding whether a prisoner is entitled to relief." *Ybarra v. Warden*, No. 3:21-cv-723-MGG, 2021 WL 7159946, at *1 (N.D. Ind. Dec. 16, 2021); *see also McPherson v. McBride*, 188 F.3d 784, 787 (7th Cir. 1999) ("[W]e have long held that as long as procedural protections are constitutionally adequate, we will not overturn a disciplinary decision based solely because evidence indicates the claim was fraudulent."). Unless a petitioner establishes that "the proper procedures were ignored, or that the evidence relied upon was not sufficient," habeas relief based

on a claim of retaliation is unavailable. *Guillen v. Finnan*, 219 Fed. App'x 579, 582 (7th Cir. 2007).

III. Pending Motions

Mr. Nicolescu has filed several motions seeking discovery and expansion of the record. *See* dkt. 15 at 2 (request for subpoena); dkt. 17 (motion for production of records and evidentiary hearing); dkt. 18 (motion to compel the production of records and impose sanctions). Mr. Nicolescu seeks the original audio recording of the telephone conversation at issue, as well as various other video and audio recordings. Dkt. 18. He also seeks to call the translator of his recorded telephone call as a witness at an evidentiary hearing in this Court. Dkt. 15 at 2; dkt. 17.

"A habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course." *Bracy v. Gramley,* 520 U.S. 899, 904 (1997). Habeas corpus petitioners can conduct civil discovery "if, and to the extent that, the judge in the exercise of . . . discretion and for good cause shown grants leave to do so, but not otherwise." *Id.* (cleaned up). Good cause exists only "where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief." *Id.* at 908–09.

Mr. Nicolescu has not shown good cause for discovery or expansion of the record. He concedes that the transcript relied upon by the disciplinary hearing officer was literally accurate as to the statements at issue and disputes only whether a literal translation was appropriate. *See* dkt. 1-1 at 10 ("[T]he word attack is not restricted to bodily harm, and quite appropriately describes a grievance, which is an avenue of attack."); *id.* at 28 (explaining that his use of "attack him" in the telephone call referred to "using my institutional avenue of attack to complain about the officer's conduct"); *id.* at 5 ("Instead of the word-by-word 'I piss on him,' a

competent translation would have been 'screw him,' or something similar."). But even if Mr. Nicolescu could show that alternative, figurative interpretations of the relevant statements were appropriate, he would be left asking the Court to reweigh the evidence of his guilt, which it cannot do. Accordingly, the motion for subpoena, dkt. [15], motion for production of records and evidentiary hearing, dkt. [17], and motion to compel the production of records and impose sanctions, dkt. [18], are **DENIED**.

IV. Conclusion

Mr. Nicolescu's petition for writ of habeas corpus is **DENIED**. His motion for subpoena, dkt. [15], motion for production of records and evidentiary hearing, dkt. [17], and motion to compel the production of records and impose sanctions, dkt. [18], are all **DENIED**. Final judgment shall now enter.

IT IS SO ORDERED.

Date: 11/30/2022

JAMES R. SWEENEY II, JUDGE
United States District Court
Southern District of Indiana

Distribution:

All ECF-registered counsel of record via email

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