

Appendix (A)

(1) 4th Cir. Judgment / unpublished opinion

FILED: June 4, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-6206
(1:22-cv-00274-LCB-JEP)

LELAND CORSO, JR.

Petitioner - Appellant

v.

TODD ISHEE

Respondent - Appellee

J U D G M E N T

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

PER CURIAM:

Leland Corso, Jr., seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on Corso's 28 U.S.C. § 2254 petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See* *Buck v. Davis*, 580 U.S. 100, 115-17 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Corso has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

Appendix (B)

- (1) U.S. District Court, Dec. 13, 2023 Recommendation
- (2) U.S. District Court, Jan. 30, 2024 Order
- (3) Feb. 22, 2024 Notice of Appeal

B(1)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

LELAND CORSO, JR.,

Petitioner,

v.

TODD ISHEE,

Respondent.

1:22CV274

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a prisoner of the State of North Carolina, filed a Petition [Doc. #2] seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner does not challenge the convictions that led to his incarceration, but instead attacks prison disciplinary convictions which occurred on June 3, 2021, at Scotland Correctional Institution. Petitioner was convicted of one charge of threatening staff and one charge of disobeying a direct order, but a third charge of interfering with staff was dismissed due to insufficient evidence. (Petition at 1, 32.) The convictions resulted in sanctions that included totals of 30 days of restricted housing, 50 days of credit time loss, 80 hours of extra duty, 50 days of canteen and visitation suspension, 60 days of telephone suspension, and three months of limited canteen draw. (*Id.* at 29.) After Respondent filed a Motion for Summary Judgment [Doc. #15], Petitioner filed a Response [Doc. #21], and Respondent filed a Reply [Doc. #22]. Respondent's Motion is now before the Court.

Facts

The basic facts as claimed by the parties at Petitioner's disciplinary hearing are reflected in the disciplinary packet (Respondent's Brief [Doc. #16], Ex. 2) from that hearing unless otherwise noted and are as follows. According to Sergeant Anderson, on April 21, 2021 at 9:40 pm, he was called to Tan 2 F Pod based on a report that Petitioner was causing a disturbance, and he observed Petitioner not complying with staff orders. He ordered Petitioner to submit to handcuffs and Petitioner initially complied. However, after a cuff was placed on Petitioner's left hand, Petitioner turned with his right fist balled up toward another officer, causing Anderson to use pepper spray on Petitioner. Petitioner then allowed himself to be handcuffed and was taken to a medical area. Once there, he kicked over a scale and had to be resecured by staff. Other officers reported that after being initially handcuffed to be taken to the medical area, Petitioner was irate, tried to break free, and attempted to jump or throw himself down a set of stairs. Officers had to place him on a flat surface to regain control. He was then taken for decontamination and escorted to restricted housing.

According to Petitioner, he was told to submit to handcuffs and did so. However, the first cuff pinched his wrist and he flinched from the pain. Anderson then pepper sprayed him, he was cuffed, and the officers maintained control of him all the way to the medical area. Once there, he was forced onto a scale, but then asked if the handcuffs could be loosened. After being told no, he refused to be weighed. Officers then slammed him to the ground, knocking over the scale in the process. He reported noticing swelling and cuts on his left wrist and stated that he had scars from the incident. Officers present during the incident did not

report seeing any injuries to Petitioner's wrist. However, other officers or prison employees did see minor injuries to Petitioner's left wrist after the fact. (Petition at 37.)

The hearing officer attempted to view video camera footage of the events in question. However, the disciplinary decision states that footage from Tan Unit was unavailable for the incident due to recent upgrades in the camera system. There was also video of only the entrance and exit to the medical area, none of the inside of the area.

Petitioner's Claims

Petitioner raises two potential grounds for relief in his Petition. He contends first that he requested video camera footage of the incident that led to his convictions, but that the hearing officer denied access to the footage "for the reason that it was unavailable due to recent upgrades to the cameras." (Petition at 6). Second, he claims that he was denied a fair and impartial factfinder during the disciplinary hearing and during his appeal of that hearing because there was insufficient evidence to support the claims had "proper weight been given to conflicting facts." (Petition at 8).

Discussion

In evaluating Petitioner's claims, the Court first notes that most of the punishments for his disciplinary convictions—extra duty, suspension of privileges, and limitations on trust account draws—do not give rise to a federal habeas corpus claim. See, e.g., Malchi v. Thaler, 211 F.3d 953, 958 (5th Cir. 2000) ("Clearly, [a] thirty-day loss of commissary privileges and cell restriction do not implicate due process concerns."); Cobb v. Mendoza-Powers, No. FDCV-08-1920, 2010 WL 364453, at *5 (C.D. Cal. Jan. 25, 2010) ("[Since] the assessment of

40 hours of 'extra duty' prison work . . . did not implicate the fact or duration of Petitioner's sentence, Petitioner's claim concerning that punishment is not cognizable in a § 2254 habeas action"). Segregation can give rise to a habeas claim where it "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Bevarati v. Smith, 120 F.3d 500, 502 (4th Cir. 1997) (quoting Sandin v. Conner, 515 U.S. 472, 484 (1995)). However, Petitioner alleges no facts to support such a claim here. Instead, Petitioner's claim must rest on his loss of good time credits. Loss of such credits can support a claim for habeas corpus relief. Wilkinson v. Dotson, 544 U.S. 74, 78-79 (2005). Nevertheless, a prisoner's rights during disciplinary hearing, and thus the Court's review of claims based on such a hearing, are very limited. The Supreme Court has set out the minimum requirements for due process in prison disciplinary hearings where such an interest is implicated:

1. Giving the prisoner written notice of the charges at least 24 hours before he appears for his disciplinary hearing;
2. Providing the prisoner a written statement by the fact finder(s) as to the evidence relied on and reasons for the disciplinary action;
3. Allowing the prisoner to call witnesses and present documentary evidence in his defense, when permitting him to do so will not be an undue hazard to institutional safety or correctional goals;
4. Permitting the prisoner the aid of a fellow prisoner, or if that is forbidden, aid from staff or a competent inmate designated by staff, if the prisoner is illiterate or the

complexity of the issue makes it unlikely that the prisoner will be able to collect and present the evidence necessary for an adequate comprehension of the case; and

5. Providing impartial fact finders.

Wolff v. McDonnell, 418 U.S. 539, 563-67 (1974)). In addition, the factfinder's decision must find some support in the evidence. Superintendent, Mass. Corr. Inst. v. Hill, 472 U.S. 445, 454-55 (1985). "This standard is met if there [is] some evidence from which the conclusion of the administrative tribunal could be deduced." *Id.* (internal quotation omitted).

Petitioner's first claim is that he was denied a chance to present evidence, specifically Tan Unit camera footage, to support his contentions that staff used excessive force and injured his wrist. "[P]rison video surveillance evidence constitutes documentary evidence subject to the procedural due process protections recognized in Wolff." Lennar v. Wilson, 937 F.3d 257, 269 (4th Cir. 2019). Therefore, "upon request, an inmate is entitled to access prison video surveillance evidence pertaining to his or her disciplinary proceeding unless the government establishes that disclosure of such evidence would be, under the particular circumstances of the case, 'unduly hazardous to institutional safety or correctional goals.'" *Id.* (quoting Wolff, 418 U.S. at 566); see also id. at 270 (holding that "prison officials must consider . . . requests for video surveillance evidence[] on an individualized basis" (internal quotation marks omitted)). "[P]rison officials bear the burden to come forward with evidence of the reasons for denying an inmate's request for access to . . . video surveillance footage." *Id.* at 270.

In the present case, the record reflects that the hearing officer reviewed what camera footage existed, but also noted that no camera footage existed from Tan Unit 2 F Pod showing

2023) (internal quotations and citation omitted). See Washington v. Harper, 494 U.S. 210, 234-35 (1990) (citing Wolff for the proposition that “prison officials [are] sufficiently impartial to conduct prison disciplinary hearings.”); Wolff, 418 U.S. at 570-71. To prevail on a claim of bias, a petitioner must present more than conclusory statements of impartiality. See Ali, 2023 WL 2602004 at *14; Lacy v Young, No. 5:20-CV-582, 2021 WL 6498833, *4 (S.D.W.V. Nov. 16, 2021). Petitioner fails to do more than that here. As discussed above, no video footage of the important parts of the incident existed, and there is no support for the claim that the hearing officer denied him access to evidence that existed. In addition, any dispute regarding the existence of an injury to Petitioner’s wrist was at best tangential to the main issue of whether Petitioner disobeyed and threatened officers. The fact that Petitioner’s wrist may have been injured at some point during the events that occurred did not somehow excuse his disciplinary violations if they occurred as the hearing officer concluded that they did. At most any conflicting statements could have impacted officer credibility, but the hearing officer and officers handling Petitioner’s appeal determined that the officers were credible despite the existence of any conflicts regarding the injury to Petitioner’s wrist. The fact that Petitioner lost his arguments does not show any unconstitutional bias, which means that his claim is conclusory and fails as such. Respondent’s Motion should be granted and the Petition should be denied.

IT IS THEREFORE RECOMMENDED that Respondent’s Motion for Summary Judgment [Doc. #15] be granted, that the Petition [Doc. #2] be denied, that this action be dismissed, and that, there being no substantial issue for appeal concerning the denial of a

constitutional right affecting the convictions nor a debatable procedural ruling, a certificate of appealability not issue.

This, the 13th day of December, 2023.

/s/ Joi Elizabeth Peake
United States Magistrate Judge

$B(z)$

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

LELAND CORSO, JR.,

Petitioner,

v.

TODD E. ISHEE, *et al.*,

Respondent.

1:22CV274

JUDGMENT

For the reasons set out in the Order filed contemporaneously with this Judgment,
IT IS ORDERED AND ADJUDGED that Petitioner's Motion to Amend
Objections, (ECF No. 32), is **GRANTED**, that Respondent's Motion for Summary
Judgment, (ECF No. 15), is **GRANTED**, that the Petition for a Writ of Habeas Corpus,
(ECF No. 2), is **DENIED**, and this action is **DISMISSED**, and that, finding no substantial
issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a
debatable procedural ruling, a certificate of appealability is **DENIED**."

This, the 30th day of January 2024.

/s/ Loretta C. Biggs
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

LELAND CORSO, JR.,

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ORDER

On December 13, 2023, the United States Magistrate Judge's Recommendation was filed, and notice was served pursuant to 28 U.S.C. 636. Petitioner filed objections, (ECF No. 31), to the Recommendation within the time limit prescribed by Section 636. Petitioner subsequently filed a Motion to Amend the Objections, (ECF No. 32), and that request will be granted to the extent that the Amended Objections, (ECF No. 33), will also be considered.

The Court has reviewed Petitioner's Objections and Amended Objections de novo and finds that they do not change the substance of the United States Magistrate Judge's Recommendation, (ECF No. 29), which is **affirmed and adopted**.

To the extent that Petitioner has submitted what he describes as new evidence, the Court has reviewed his attachments and concludes that the attachments would not change the ultimate determination in this case. There is still no evidence that any video ever existed showing the actual disciplinary incidents for which Petitioner was convicted. In addition, as discussed in the Recommendation, to the extent there may have been video of Petitioner being escorted in the corridors before or after the disciplinary incidents, the disciplinary hearing officer attempted to obtain the available video in preparation for the hearing, but the video

was not available due to recent upgrades. Finally, Petitioner's objections point primarily to the dismissal of the disciplinary charge for interfering with staff duties, but the dismissal of that charge would not affect the separate disciplinary convictions for threatening to harm or injure staff and refusing to obey an order, and those disciplinary convictions were supported by the evidence as discussed in the Recommendation.

IT IS THEREFORE ORDERED that Petitioner's Motion to Amend Objections, (ECF No. 32), is **GRANTED**, that Respondent's Motion for Summary Judgment, (ECF No. 15), is **GRANTED**, that the Petition for a Writ of Habeas Corpus, (ECF No. 2), is **DENIED**, and this action is **DISMISSED**, and that, finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is **DENIED**."

This, the 30th day of January 2024.

/s/ Loretta C. Biggs
United States District Judge

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