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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MICHAEL LAWRENCE SHINE,)	No. CV 08-05462-VBK
)	
Petitioner,)	ORDER DENYING PETITION FOR WRIT
)	OF HABEAS CORPUS PURSUANT TO 28
v.)	U.S.C. §2241
)	
NORWOOD, WARDEN,)	
)	
Respondent.)	
_____)	

INTRODUCTION

Petitioner Michael Lawrence Shine ("Petitioner"), proceeding pro se, filed a Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. §2241 by a Person in Federal Custody ("Petition"). Respondent, Joseph Norwood, Warden ("Respondent") filed a Response, and Petitioner filed a Reply Brief.

Petitioner asserts that his constitutional rights were violated during a Disciplinary Hearing Officer ("DHO") procedure concerning an incident report involving the introduction of illicit drugs into the prison facility. Petitioner contends in his first claim that there was absolutely no evidence showing he was involved in any manner in the alleged incident, and that the DHO failed to make the requisite findings

1 based on conflicting evidence. (Petition at 3.) In his second ground,
2 Petitioner asserts that he had no involvement in any plan to bring
3 illicit drugs into the institution, and that he was not provided a
4 hearing within 72 hours as required by Federal Bureau of Prisons ("BOP")
5 policy. (Id.)

6 Petitioner has exhausted his available administrative remedies (see
7 Klein Declaration, Exhibits ["Exs."] 4 and 5.)

8 Pursuant to 28 U.S.C. §636(c), all parties have consented that this
9 matter may proceed before the Magistrate Judge.

10 After reviewing the Petition, the Government's Response, and
11 Petitioner's Reply Brief, the Court concludes that the Petition is
12 without merit, and must be dismissed.

13
14 **PETITIONER'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED BY THE DHO PROCESS**

15 Pursuant to 28 U.S.C. §2241, it is Petitioner's burden to
16 demonstrate that he is "in custody in violation of the Constitution or
17 laws or treaties of the United States." 28 U.S.C. §2241(c)(3). See
18 Rose v. Hodges, 423 U.S. 19, 21 (1975)(citing 28 U.S.C. §2241.)

19
20 **A. Factual Background.**

21 Petitioner arrived at the United State Penitentiary in Terre Haute,
22 Indiana on September 21, 2005. (See Klein Declaration Ex. 3.)

23 On August 16, 2006, prison staff recovered an express mail
24 cardboard mailer which was addressed to inmate Cedric King. Secreted
25 inside the package, which included certain legal papers, was marijuana.
26 (See Alexander Declaration, Ex. 1.)

27 Following an administrative investigation, on December 22, 2006,
28 Petitioner was charged under Code 111, Introduction of Narcotics. That

1 investigation concluded that Petitioner, with other inmates, was
2 involved in an attempt to introduce marijuana into the prison facility.
3 A copy of the report was delivered to Petitioner on December 22, 2006.
4 (Id.)

5 A Report of Investigation dated January 10, 2007 indicated that
6 Petitioner was interviewed by Lt. Lovett, advised of his rights to
7 remain silent during the disciplinary process, and advised that his
8 silence may be used to draw an adverse inference at any stage of the
9 disciplinary process. Petitioner was provided with a copy of the report
10 and elected not to make a statement or have any witnesses. Lt. Lovett
11 found that the charge warranted further proceedings and forwarded the
12 report to a Unit Discipline Committee ("UDC") for further disposition.
13 (Id.)

14 On January 16, 2007, Petitioner appeared before a UDC for a
15 hearing, was advised of his rights and stated he had no involvement with
16 the incident. UDC referred the matter to the DHO for appropriate
17 sanctions. (Id.)

18 A hearing was held before a DHO on June 1, 2007. The DHO reviewed
19 all evidence, and found that Petitioner committed the prohibited act of
20 Attempted Introduction of Narcotics. The DHO prepared a report which
21 was provided to Petitioner. (See Alexander Declaration, Ex. 2.)

22 Petitioner received a sanction of loss of 41 days Good Conduct
23 Time, 60 days Disciplinary Segregation, and Loss of Visiting Privileges
24 for one year followed by one year of visits by family only. (Id.)

25 Petitioner was thereafter transferred on October 3, 2007 to USP
26 Victorville. (Klein Declaration, Ex. 3.)

27 Petitioner filed administrative appeals on November 28, 2007, and
28 May 5, 2008, which were denied. (See Klein Declaration, Ex. 4, 5.)

1 Petitioner thereafter brought this Petition pursuant to 28 U.S.C. §2241.
2

3 **B. Applicable Law.**

4 The requirements of procedural due process in the prison discipline
5 context were established in Wolff v. McDonnell, 418 U.S. 539 (1974).
6 There, the Supreme Court established the following five elements
7 required to satisfy procedural due process in this context: (1) written
8 notice of the charged misconduct at least 24 hours before the hearing;
9 (2) an impartial hearing body; (3) an opportunity to present witnesses
10 and documentary evidence; (4) assistance for illiterate inmates or in
11 complex cases; and (5) a written statement of the evidence relied upon
12 and reasons for the sanction. (418 U.S. at 563-568.)

13 In the prison disciplinary context, a finding of culpability at the
14 administrative level must be supported by some evidence. See
15 Superintendent, Massachusetts Correctional Institution, Walpole v. Hill,
16 472 U.S. 445 (1985); Zimmerlee v. Keeney, 831 F.2d 183, 186 (9th Cir.
17 1987).

18
19 **C. Petitioner's Administrative Disciplinary Process Complied with**
20 **Due Process Requirements as Established by the Supreme Court.**

21 Reviewing the five elements required for procedural due process
22 established by Wolff v. McDonnell, supra, the evidence clearly indicates
23 that Petitioner was not deprived of his constitutional rights. In
24 order, the first requirement of written notice was satisfied by the
25 notice provided to Petitioner on December 22, 2006. While Petitioner
26 contends he did not receive written notice until January 16, 2007 (Reply
27 Brief at 3), it is apparent that Petitioner received this notice well
28 over 24 hours before his appearance before the DHO which occurred on

1 June 1, 2007.

2 Wolff also requires that the hearing be conducted by an impartial
3 body, and there is no indication that the certified DHO, Eleanor
4 Alexander, was not an impartial officer. (Id.)

5 The third requirement in Wolff is that Petitioner had the
6 opportunity to present witnesses and documentary evidence. It is clear,
7 also, that this occurred, as Petitioner submitted two written witness
8 affidavits on his behalf, one from a fellow inmate and one from his
9 aunt. (Id.)

10 The fourth Wolff requirement, that assistance be provided for
11 illiterate inmates or in complex cases, is not applicable in this case,
12 as Petitioner makes no claim that he comes within the ambit of this
13 requirement.

14 The final procedural due process requirement of Wolff is that a
15 written statement of the evidence relied upon and reasons for the
16 sanction be provided to Petitioner. The evidence does indicate that
17 Petitioner was provided with a copy of the DHO report that contained a
18 written statement of the evidence relied upon and the reasons for the
19 sanction. (Alexander Declaration, Ex. 2.)

20 In sum, Petitioner's procedural due process objections were adhered
21 to fully.

22 Petitioner also claims that the findings of DHO were not supported
23 by some evidence, as required by Supreme Court precedent. (See Reply
24 Brief at 4, et seq.) The Court disagrees. The Alexander Declaration
25 (see ¶ 7, and Ex. 2) summarizes the evidence relied upon to reach a
26 conclusion that Petitioner was guilty of the infraction. The DHO report
27 indicates that according to the evidence, Petitioner financed the
28 attempted introduction of illicit drugs into the institution by sending

1 money to an individual named Kristen Henderson through Petitioner's
2 brother, Andre Taylor. The hearing officer listened to numerous
3 recorded telephone calls establishing Petitioner's involvement. In
4 particular, the hearing officer summarized in detail two telephone calls
5 of July 18, 2006, which occurred at 6:19 p.m. and 8:37 p.m. Other phone
6 calls summarized by the hearing officer indicated that Petitioner had
7 direct involvement in the financial aspect of the transaction, which
8 involved Petitioner's brother, and his aunt, Debra Davis. (Id.)

9 Petitioner places reliance upon the signed affidavits of inmates
10 Cedric King and Richard Armstrong, who assertedly pled guilty at their
11 own DHO hearing, that Petitioner had no involvement in the plan to
12 introduce illicit drugs into the institution. (See Ground 2, Petition at
13 3.) The DHO report, however, indicates that these statements, along
14 with Petitioner's own statement, were considered by the hearing officer
15 and that the finding of Petitioner's involvement was based upon a
16 weighing of all the evidence. The hearing officer was not required to
17 accord credibility to these witness statements, or Petitioner's own
18 statement, and in fact, discharged her obligation to weigh the evidence.
19 In any event, this Court must only determine if there was any evidence
20 which supports the conclusion of the DHO. (See Zimmerlee, 831 F.3d at
21 186.) It is clear that the DHO conclusion was supported by the weight
22 of the evidence.

23 Petitioner's final contention is that the timing of the incident
24 report and the disciplinary hearing was violative of his constitutional
25 rights, because the UDC hearing was not held within 72 hours. But these
26 are not constitutional requirements, but simply BOP guidelines. The
27 preparation of Incident Reports is ordinarily done within 24 hours, and
28 the appearance before the UDC is ordinarily within 72 hours. See 28

1 C.F.R. §541.11 (Table 2). Moreover, Petitioner cannot establish that he
2 was prejudiced by any asserted delay in these proceedings. Petitioner's
3 due process rights were protected by the fact that he received advance
4 written notice of the violation, with a written statement of the
5 evidence relied upon and the reasons for the discipline imposed. (See
6 Bostic v. Carlson, 884 F.2d 1267, 1270 (9th Cir. 1989).) Petitioner has
7 not demonstrated that he suffered prejudice from any asserted delay, or
8 that any delay was unreasonable.

9 Based on the foregoing conclusions, the Court finds no merit in the
10 Petition, and orders that it be dismissed with prejudice.

11
12 DATED: December 9, 2009

/s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE