

NONPRECEDENTIAL DISPOSITION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 February 3, 2023*
Decided February 3, 2023

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-1416

JEFFREY R. CROSBY,
Petitioner-Appellant,

v.

STEVEN KALLIS,
Respondent-Appellee.

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

No. 2:21-cv-00203-JRS-DLP

James R. Sweeney II,
Judge.

ORDER

Jeffrey Crosby, a prisoner at the United States Penitentiary in Terre Haute, Indiana, petitioned for a writ of habeas corpus under 28 U.S.C. § 2241 to challenge sanctions he received for possessing alcohol in his cell. The district court determined

* We substitute Steven Kallis as the appropriate respondent under FED. R. APP. P. 43(c)(2). 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).

that the evidence was sufficient to support his disciplinary conviction and therefore denied the petition. We affirm.

Crosby shared a cell with one other prisoner until correctional officers removed his cellmate, who had assaulted someone, to another housing unit. Later that same day, an officer searching the cell found three gallons of a liquid that he suspected contained alcohol. The officer wrote an incident report charging Crosby with alcohol possession and asserting that Crosby was the only prisoner assigned to the cell when he found the liquid—without mentioning that Crosby had a cellmate until earlier that day. Crosby admitted that he knew the liquid was in the cell but asserted that it belonged to his prior cellmate. He further asserted that he saw his cellmate “put the ‘stuff’ together the evening before,” and so it could not have been alcoholic when discovered. During the investigation that followed, a test confirmed that the liquid contained alcohol.

At a first hearing, the presiding officer ordered a reinvestigation to correct a procedural error: the correctional officer who tested the liquid was the same one who investigated the incident report, which violated prison policy. After a second hearing, the hearing officer found Crosby guilty of possessing alcohol and imposed sanctions including the removal of 41 days of good-time credit and a \$500 fine. After Crosby’s administrative appeal, the incident report was amended to include the amount of liquid that was seized and its score on the test for intoxicants. The hearing officer conducted a rehearing on the amended report; he again found guilt and imposed the same sanctions.

Crosby then petitioned for a writ of habeas corpus in district court. He asserted that the officers involved in the disciplinary proceedings violated his constitutional rights in two ways. First, he alleged they violated his due-process rights because they manipulated the evidence: they omitted from the incident report that he had a cellmate on the same day that the officer found the liquid, and they allegedly fabricated the information (the volume of the liquid and the intoxicant test results) added to the amended incident report. Second, Crosby asserted, the \$500 fine was excessive, in violation of his Eighth Amendment rights.

The district court denied the petition. Understanding Crosby to be challenging the sufficiency of the evidence to convict him, it concluded that the record contained “some evidence,” as required. The court also concluded that, under § 2241, Crosby could challenge the disciplinary conviction only as it related to the loss of good time credits. The other sanctions, such as the fine, did not affect the fact or duration of his

confinement and could not be challenged under § 2241. Within 28 days of the judgment, Crosby filed a motion for reconsideration, which the district court denied.¹

On appeal, Crosby argues that the correctional officers violated his due-process rights by manipulating the incident report, that the hearing officer was biased against him, and that the fine is excessive. We review the denial of Crosby's petition de novo. *Santiago v. Streeval*, 36 F.4th 700, 706 (7th Cir. 2022).

Even if the officers concealed and misrepresented information in the incident report, the record contained enough uncontested evidence to convict Crosby of possessing alcohol. Due process requires "some evidence" to support a finding of guilt in a prison disciplinary proceeding. *Superintendent, Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 454 (1985); *Wolff v. McDonnell*, 418 U.S. 539, 564–66 (1974). Here, even if we assume the truth of Crosby's allegations about fabricated evidence and his cellmate's responsibility for the liquid, sufficient other evidence supports his conviction. *See Lagerstrom v. Kingston*, 463 F.3d 621, 625 (7th Cir. 2006). Alcohol was in his cell, and he knew about it (or at least that it was being brewed); further, he provides no basis for questioning the results of the intoxicant test. *See Austin v. Pazera*, 779 F.3d 437, 439 (7th Cir. 2015); *Hamilton v. O'Leary*, 976 F.2d 341, 345 (7th Cir. 1992) (reasoning that there exists "some evidence" of guilt when only a few prisoners have access to contraband). Under § 2241, federal courts do not independently assess witness credibility or weigh the evidence, which is what Crosby wants us to do. *Hill*, 472 U.S. at 455–56. He therefore fails to demonstrate that his conviction was not supported by the required minimal evidence.

Crosby's argument that the hearing officer was biased, depriving him of his due-process right to a neutral decisionmaker, *Wolff*, 418 U.S. at 570–71, is not borne out by the record before us. In any case, it is waived. Crosby did not raise this claim in his petition and cannot do so for the first time on appeal. *Bolton v. Akpore*, 730 F.3d 685, 694 (7th Cir. 2013).

¹ We note that the district court mistakenly based the denial of Crosby's Rule 59(e) motion on a lack of jurisdiction under *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982), because Crosby had filed a notice of appeal before the motion. The district court retained jurisdiction to decide that motion on the merits. *See* FED. R. APP. P. 4(a)(4)(B)(i); *Sultan v. Fenoglio*, 775 F.3d 888, 889 (7th Cir. 2015). The reason for the denial does not affect our analysis, however.

Finally, the district court correctly determined that Crosby's objection to the \$500 fine is not properly raised in a habeas corpus petition. The statute authorizes challenges only to sanctions affecting the fact or duration of imprisonment. 28 U.S.C. § 2241(c)(3). The alleged excessiveness of the fine therefore cannot be grounds for relief in this action. *See Ryan v. United States*, 688 F.3d 845, 849 (7th Cir. 2012).

AFFIRMED