NONPRECEDENTIAL DISPOSITION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 March 13, 2024*
Decided March 18, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2894

DAVID PANNELL,
Petitioner-Appellant,

v.

BRIAN ENGLISH,
Respondent-Appellee.

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

No. 1:20-cv-01834-JMS-DML

Jane Magnus-Stinson,
Judge.

O R D E R

David Pannell, an Indiana state prisoner disciplined for battery, appeals the denial of his motion to amend the judgment on his habeas petition. In his motion,

* 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).

Pannell primarily sought to challenge certain facts that he had previously conceded and which the court had relied on to deny his petition. Because a post-judgment motion is not an appropriate vehicle to raise this argument, we affirm.

In December 2019, Pannell—about 23 years into his 60-year prison sentence for murder—got into a fight with another prisoner at Correctional Industrial Facility, an Indiana state prison. An officer witnessed the fight and issued a conduct report. The officer wrote that he saw the other prisoner punch Pannell, and then saw Pannell pull "weapons from inside his shirt" and "strike [the other prisoner] in a downward motion." The officer's report listed the offense as "battery," which the Indiana Department of Correction defined in its 2018 prison codes—the version in force at the time of Pannell's fight—as "[k]nowingly or intentionally touching another person in a rude, insolent, or angry manner."

The next month, Pannell had a disciplinary hearing on his offense. Before the hearing, Pannell received a notice that labeled the alleged offense as "battery [with a] weapon." Pannell submitted a three-page statement before the hearing that argued that there was insufficient evidence that he had used a weapon, but the disciplinary hearing officer found him guilty. He was sanctioned with the loss of 180 days of good-time credit, and his administrative appeals were unsuccessful.

Pannell then petitioned for a writ of habeas corpus, primarily challenging the sufficiency of the evidence related to his use of a weapon. In a response opposing Pannell's petition, the warden argued that Pannell was found guilty of "battery" under the prison's 2018 codes—an offense that did not have any weapon requirement—and thus evidence that Pannell had (or had not) used a weapon was beside the point. The prison's 2015 codes had proscribed "battery with a weapon," the warden explained, but those outdated codes did not apply to Pannell's offense. Pannell "accept[ed] the Respondent's assertion" that "battery" under the 2018 codes was the applicable offense, but Pannell maintained that the evidence was insufficient to find him guilty.

The district court denied the petition and dismissed the case because sufficient evidence showed that Pannell committed "battery" under the 2018 codes. The court noted his concession that the 2018 codes applied to his offense and concluded that whether he used a weapon was immaterial because "[a]ny knowing or intentional touching in a rude, insolent, or angry manner could fit this charge."

Pannell then moved under Rule 59(e) of the Federal Rules of Civil Procedure to amend the judgment. He first argued that the notice he received in advance of his hearing was procedurally deficient because it listed his offense as "battery with a weapon" rather than mere "battery." He next argued, in the alternative, that prison officials *had* found him guilty of "battery with a weapon" under the 2015 codes, and thus the court erred by assessing the sufficiency of the evidence for "battery" under the 2018 codes. In support of that second argument, Pannell asserted that he had discovered additional prison records—"unequivocal evidence," in his view—documenting that he was found guilty of "battery with a weapon."

The court denied the motion, ruling that none of Pannell's arguments warranted amending the judgment. His argument about advance notice was untimely, the court explained, because he did not raise it in his habeas petition. Next, he could not use a motion under Rule 59(e) to undo his earlier concession that the offense of "battery" under the 2018 codes applied to his case. Finally, the records that Pannell had discovered did not unequivocally show that he was found guilty of "battery with a weapon," and in any event, Pannell had not explained why he was unable to discover these records before the court rendered judgment.

Pannell appeals the decision denying his motion to amend, repeating the arguments that he raised in the district court. But the court acted well within its discretion to deny the motion. A Rule 59(e) motion must either show that the court "committed a manifest error of law or fact" or that "newly discovered evidence precluded entry of judgment." *Cincinnati Life Ins. Co. v. Beyrer*, 722 F.3d 939, 955 (7th Cir. 2013). Panell's argument about deficient notice fails because he raised it for the first time in his motion to amend, and "a Rule 59(e) motion is not an appropriate vehicle for advancing arguments or theories that could and should have been made before the district court rendered a judgment." *Ben-Yisrayl v. Neal*, 857 F.3d 745, 747 (7th Cir. 2017) (internal quotation marks omitted). Nor may Pannell "rehash" previously rejected arguments, *see Vesely v. Armslist LLC*, 762 F.3d 661, 666 (7th Cir. 2014), such as his contention that he was found guilty of "battery with a weapon" under the 2015 codes, an argument that the court reasonably set aside after accepting his eventual concession that "battery" under the 2018 codes applied. Last, the court reasonably concluded that the attached prison records did not qualify as "newly discovered evidence" because Pannell made no showing that he could not have obtained them earlier with reasonable diligence. *Cincinnati Life Ins. Co.*, 722 F.3d at 955.

AFFIRMED