NONPRECEDENTIAL DISPOSITION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.

O R D E R

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.