

NONPRECEDENTIAL DISPOSITION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 December 20, 2023*

Decided December 20, 2023

Before

DIANE S. SYKES, *Chief Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-1585

ROBERT K. DECKER,
Petitioner-Appellant,

v.

DAN SPROUL,
Respondent-Appellee.

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

No. 2:21-cv-00168-JPH-DLP

James P. Hanlon,
Judge.

ORDER

Robert Decker, a federal prisoner, appeals the denial of his petition for a writ of habeas corpus under 28 U.S.C. § 2241, challenging the loss of good-conduct time and

* 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).

visitation privileges after a prison disciplinary proceeding. Because the disciplinary proceeding did not violate Decker's due process rights, we affirm.

In 2019, while at the federal penitentiary in Marion, Illinois, Decker spoke with his lawyer for about 20 minutes during a pre-scheduled telephone call. When no one came to retrieve him at the end of the call, Decker made additional calls that he says were all legal in nature. The prison officer stationed outside the call room noticed that Decker's voice at times softened and that he had moved the phone closer to him. The officer alerted the prison's communications office and asked them to check the log of that phone's outgoing calls. The communications office reported that five calls had been made while Decker used the phone. The officer then charged Decker in an incident report with violating Offense Code 297, 28 C.F.R. § 541.3 (Table 1), which prohibits using a telephone to circumvent prison staff's ability to monitor call frequency, content, or recipient.

At his disciplinary hearing, Decker sought to call a witness from the communications office to show that they in fact were monitoring his calls and to ask how he was able to make multiple calls if doing so was prohibited. The presiding hearing officer denied the request because any testimony from this witness was summarized in the incident report and would not be exculpatory. During the hearing, Decker admitted that he made the phone calls in question but protested that no one told him he could not. The hearing officer found that Decker had circumvented prison officials' ability to monitor his calls and docked him 27 days of good-conduct time and 90 days of visitation. Decker unsuccessfully appealed the decision.

Decker then petitioned under § 2241 to restore his good-conduct time and visitation privileges, asserting that prison officials impermissibly monitored his phone calls and that his staff representative for the hearing was ineffective.

The district judge denied Decker's petition, explaining that Decker received all the process he was due. Even if prison officials were monitoring his calls, the judge ruled, he would not be entitled to relief because none of the incriminating evidence came from the allegedly overheard calls. Decker did not dispute that he made the additional unapproved calls, and the judge found this evidence sufficient to support the prison disciplinary ruling. The judge also concluded that Decker was not constitutionally entitled to a staff representative.

On appeal, Decker first maintains that the disciplinary proceeding violated his due process rights because he was not allowed to call the communications-office

technician as a witness. But prison officials may refuse to call witnesses in disciplinary proceedings whose testimony would be unnecessary. *Wolff v. McDonnell*, 418 U.S. 539, 566–67 (1974). Here, the hearing officer reasonably declined to call the technician because the substance of any testimony would duplicate what already had been summarized in the incident report and would not be exculpatory.

Decker relatedly asserts that the evidence presented at his hearing was insufficient to find him guilty. But that finding need be supported only by “some evidence,” *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 454–55 (1985), and Decker himself admitted that he made additional phone calls despite being authorized only one unmonitored call.

Decker also asserts that his staff representative was ineffective. But as the judge rightly explained, due process did not entitle Decker to the aid of a staff representative because he was not illiterate and the issues were not particularly complex. *See Wolff*, 418 U.S. at 570.

Decker next contends that the district judge erred by not issuing a scheduling order, FED. R. CIV. P. 16(b), or allowing for discovery. But scheduling orders are not required for certain actions exempted by local rules, FED. R. CIV. P. 16(b)(1), and the district court’s local rules exempt habeas corpus petitions. *See S.D. Ind. L. R. 16-1(g)(2)*. Moreover, Decker did not request discovery, which is discretionary and should be ordered only for good cause in habeas petitions. *See Bracy v. Gramley*, 520 U.S. 899, 904 (1997); 28 U.S.C. foll. § 2254, 1(b); *id.* at 6; *Boutwell v. Keating*, 399 F.3d 1203, 1210–11 n.2 (10th Cir. 2005) (district court acts within its discretion when applying § 2254 rules to § 2241 petition).

Finally, to the extent Decker challenges his conditions of confinement by alleging that prison officials improperly listened in on his phone calls, this claim would not affect the duration or fact of confinement and so may not be brought in a habeas action. *Robinson v. Sherrod*, 631 F.3d 839, 840–41 (7th Cir. 2011).

AFFIRMED