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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BARBARA STRAIN,

No. C-11-3127 EMC (pr)

Petitioner,

v.

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS**

TEWES, Warden,

Respondent.

I. INTRODUCTION

Barbara Strain, a prisoner at the Federal Correctional Institute - Dublin ("FCI - Dublin"), has filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging a disciplinary decision. The petition is now ready for a decision on the merits of the petition. For the reasons discussed below, the petition will be **DENIED**.

II. BACKGROUND

Strain is serving a 650-month sentence from the United States District Court for the District of Alaska upon her conviction of two counts of bank robbery, three counts of using a firearm in relation to a crime of violence, three counts of being a felon in possession of a firearm, and one count of interference with commerce by robbery. Her projected release date is in 2044. Her habeas petition does not challenge that conviction, and instead challenges a 2009 prison disciplinary decision that resulted in a time credit forfeiture. Strain contends that her due process rights were violated in that the disciplinary decision was not supported by sufficient evidence.

1 A. The Disciplinary Charges Against Strain

2 On August 7, 2009, Susan Canales, a Special Investigative Supervisor's ("SIS") Technician
3 at FCI - Dublin wrote an incident report charging Strain with various rule violations. Canales'
4 incident report stated, in part:

5 [O]n 07-09-2009 at approximately 01:50pm Inmate Strain # 13286-
6 006 received a magazine sealed in plastic addressed to her from
7 Akron, OH 44320. Upon inspection of the magazine it was discovered
8 that page 115 was glued together forming a pocket containing non-
9 hazardous contraband. The contraband was 6 pairs of earrings yellow
10 in color, two price tags and a typed address on a small piece of paper.
11 Also contained inside the magazine was (sic) two blank greeting cards
12 with envelopes. An inspection of Inmate Strain's locker was
13 completed to aid in the investigation and to ensure no other contraband
14 existed.

15 The following hazardous contraband was found inside her locked
16 locker: [¶] (476) Four hundred and seventy six individual Flammable
17 alcohol wipes were found in approximate stacks of 100 inside blank
18 envelopes tucked between her stacked clothing and a homemade tool
19 which consisted of a wooden stick with sand paper adhered to it.
20 Flammable items such as the alcohol wipes especially in such a large
21 quantity are hazardous to the safety of staff in a prison environment
22 and sandpaper could be used to aid in an escape.

23 The following non-hazardous contraband was found inside her locked
24 locker: (10) Ten Piroxicam capsules found sealed inside an envelope,
25 a yellow in color watch with the brand name "guess" inscribed on it,
26 and 15 plastic drinking straws. Straws and "guess" watches are not
27 authorized. The drug Piroxicam does not appear on Inmate Strain's
28 patient medication information form and has never been prescribed to
her by FCI Dublin medical staff. Having Piroxicam constitutes the
prohibited act of possessing drugs not prescribed to her by medical
staff.

Also contained in her locker were two letters which had the following
statements: Letter 1 - "Hopefully by now you are feeling a little better
seeing that you did get your magazine order and other items you asked
for" [and] "just wanted to get this in the mail tonight 7/4/09"; Letter 2
- "7/6/09" "Did you read the article on page 115 of the Womens
Health magazine? That was a great article" - Page 115 was the exact
location of the contraband hidden inside the magazine sent to Inmate
Strain.

A review of Inmate Strain's telephone conversations revealed that she
has been using the word "Albert" to identify hiding contraband inside
magazines while speaking on the phone.

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1 Docket # 6-1, pp. 11-13. Canales took pictures of the various items of contraband. *See id.* at 31-44.
2 She also obtained Strain's medication summary list, and Piroxicam was not a listed medication for
3 the inmate. *See id.* at 30.

4 The incident report charged Strain with several offenses: (1) possession of a hazardous tool
5 (Violation Code 108); (2) possession of any narcotics or drug not prescribed for the inmate by the
6 medical staff (Violation Code 113); (3) possession or introduction of a non-hazardous tool or other
7 non-hazardous contraband (Violation Code 331); and (4) unauthorized use of mail (Violation Code
8 410).¹

9 B. The Disciplinary Proceedings

10 A copy of the incident report was provided to Strain on August 7, 2009.

11 The Unit Disciplinary Committee ("UDC") reviewed the incident report and referred it to the
12 disciplinary hearing officer on August 10, 2009, for a hearing. This was in conformance with the
13 regulation, which provides that the UDC conducts the initial hearing on a disciplinary charge and
14 determines whether to resolve the matter at that level or refer it to a disciplinary hearing officer
15 ("DHO") for a full hearing. *See* 28 C.F.R. § 541.15(h) (2009 ed.).

16 On August 10, 2009, prison officials provided Strain with a written notice of her rights in the
17 disciplinary proceedings and provided her notice of the hearing before the DHO. Strain requested a
18 staff representative and indicated she did not want to call witnesses.

19 The disciplinary hearing was conducted by a DHO on August 19, 2009. *See* 28 C.F.R.
20 § 541.16(c) (2009 ed.) (DHO shall "conduct hearings, make findings, and impose appropriate
21 sanctions for incidents of inmate misconduct referred for disposition following the hearing required
22 by § 541.15 before the UDC.") At the hearing, Strain made several arguments in her defense. She
23 argued that the sandpaper item was for pedicures and that she had it for years. Strain admitted to
24 receiving the pills from a "Spanish lady" and was using them for pain. *See* Docket # 6-1, p. 21.
25 Strain denied that she made phone calls in code about introducing contraband. She denied having

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27 ¹ Strain also was charged with using the telephone for abuses other than criminal activity
28 (Violation Code 297). She was not found guilty or disciplined for this charge. Although Strain was
not found guilty, the DHO "considered the transcript of the telephone conversation as an indication
[Strain was] aware of the items [she] received in the mail." Docket # 6-1, p. 22.

1 any knowledge of the earrings hidden in the magazine, and denied that the letters in her locker
2 connected her to those earrings.

3 Based on the evidence, the DHO found that Strain committed four of the five accused
4 prohibited offenses, *i.e.*, Strain was found guilty of possessing a hazardous tool, possessing drugs
5 not prescribed for her, possessing or introducing a non-hazardous tool or contraband, and
6 unauthorized use of the mail. The discipline imposed included time in segregated housing, loss of
7 privileges, and commissary restrictions. More significantly, the discipline imposed included a
8 disallowance of 30 days of good conduct time for the possession of a hazardous tool offense, 41
9 days of good conduct time for the drug possession offense, and 13 days of good conduct time for the
10 possession or introduction of a non-hazardous tool or contraband offense.

11 Strain appealed the disciplinary decision. *See* Docket # 6-1, p. 49. The BOP Regional
12 Director denied her appeal on November 10, 2009, and the National Inmate Appeals Administrator
13 denied her further appeal on June 3, 2010. *Id.* at 53.

14 III. DISCUSSION

15 A district court may entertain a petition for writ of habeas corpus challenging the execution
16 of a federal sentence on the ground that the sentence is being executed "in violation of the
17 Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *United States v.*
18 *Giddings*, 740 F.2d 770, 772 (9th Cir. 1984).

19 A federal prisoner has a statutory right to good time credits. *See* 18 U.S.C. § 3624. The
20 prisoner also has a right to due process before those credits may be taken away. *See*
21 *generally Sandin v. Conner*, 515 U.S. 472, 487 (1995) (prisoner has right to due process before
22 deprivation that will inevitably affect the duration of confinement). The process due in such a prison
23 disciplinary proceeding includes written notice, time to prepare for the hearing, a written statement
24 of decision, allowance of witnesses and documentary evidence when not unduly hazardous, and aid
25 to the accused where the inmate is illiterate or the issues are complex. *See Wolff v. McDonnell*, 418
26 U.S. 539, 564-67 (1974). The revocation of good-time credits does not comport with the minimum
27 requirements of procedural due process in *Wolff* unless the findings of the prison disciplinary
28 decision-maker are supported by some evidence in the record. *Superintendent v. Hill*, 472 U.S. 445,

1 454 (1985). There must be "some evidence" from which the conclusion of the decision-maker could
2 be deduced. *Id.* at 455. An examination of the entire record is not required nor is an independent
3 assessment of the credibility of witnesses or weighing of the evidence. *Id.* The relevant question is
4 whether there is any evidence in the record that could support the conclusion reached by the
5 disciplinary decision-maker. *Id.* This standard is considerably lower than that applicable in criminal
6 trials. *Id.* at 456. The evidence also must have some indicia of reliability. *See Cato v. Rushen*, 824
7 F.2d 703, 705 (9th Cir. 1987)

8 The only procedural protection Strain alleges she did not receive was the evidentiary one.
9 That is, her petition urges that the evidence was not sufficient to support the determination that she
10 was guilty of the several offenses. Each of the findings will be considered.

11 A. Violation Code 108² Finding

12 Strain was found to be in possession of a hazardous tool. There was sufficient evidence to
13 support this finding based on two different contraband items: the sandpaper stick and the alcohol
14 swabs. At the disciplinary hearing, the DHO considered the written account of SIS technician
15 Canales, who reported that hundreds of flammable alcohol wipes and a homemade tool that
16 consisted of a wooden stick with sandpaper adhered to it were found in Strain's locker. Strain told
17 the DHO that the sandpaper stick was to scrape callouses from her feet, but the DHO was not
18 required to accept her explanation instead of crediting SIS technician Canales' view that the
19 sandpaper stick could be used to aid in an escape. Docket # 6-1, p. 11. Strain also told the DHO
20 that the 476 alcohol swabs were for sanitation purposes, which the hearing officer did not credit over
21 the contrary interpretation of Canales, whose report stated that these flammable items "especially in
22 such a large quantity are hazardous to the safety of staff in a prison environment." Docket # 6-1, p.
23 11.

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26 ² Rule violations are given "Violation Code" numbers and are described in the Code of
27 Federal Regulations. Violation Code 108 is the designation for the "[p]ossession, manufacture or
28 introduction of a hazardous tool (Tools most likely to be used in an escape or escape attempt or to
serve as weapons capable of doing serious bodily harm to others; or those hazardous to institutional
security or personal safety; e.g., hack-saw blade)." 28 C.F.R. § 541.13 - Table 3 (2009 ed.)
(punctuation errors in source).

1 Review of this and the other disciplinary findings illustrates the very limited nature of the
2 "some evidence" inquiry, as this Court cannot re-weigh the evidence and considers only whether
3 there was some evidence in the record to support the prison hearing officer's conclusion.
4 *See Superintendent v. Hill*, 472 U.S. at 457 ("The Federal Constitution does not require evidence
5 that logically precludes any conclusion but the one reached by the disciplinary board.") For
6 example, the finding that sandpaper adhered to a wooden paint stick was a hazardous tool that could
7 be used for a potential escape attempt is not a finding this Court would make if it weighed the
8 evidence independently. But *Superintendent v. Hill* does not permit such a re-weighing of the
9 evidence, and instead commands that the decision be upheld if "there is any evidence in the record
10 that could support the conclusion reached by the disciplinary board." *Id.* at 455-56. Here, the
11 incident report with Canales' interpretation of the contraband items' potential uses, plus the pictures
12 of the items, provided some evidence to support the guilty finding. Further, Strain's admission that
13 she possessed the alcohol swabs and sandpaper stick (although with an allegedly legitimate purpose
14 for each) also supported the finding of guilt on this charge, and satisfied the requirement that the
15 evidence have some indicia of reliability.

16 B. Violation Code 113³ Finding

17 The DHO found Strain guilty of being in possession of a drug not prescribed for her by the
18 prison medical staff. The evidence easily supported the finding of guilt on this charge. At the
19 disciplinary hearing, the evidence included the written account of SIS technician Canales who
20 reported that ten Piroxicam⁴ capsules were found in Strain's locked locker; Strain's statement that
21 she received the pills "from a Spanish lady" for her pain from a fall she suffered while running,
22 Docket # 6-1, p. 21; a photo of the ten pills; and Strain's medication list that showed she had not
23 been prescribed Piroxicam. This was sufficient evidence to support the finding that she was guilty

25 ³ Violation Code 113 is described as "[p]ossession of any narcotics, marijuana, drugs or
26 related paraphernalia not prescribed for the individual by the medical staff." 28 C.F.R. § 541.13 -
Table 3 (2009 ed.).

27 ⁴ Piroxicam is a non-steroidal anti-inflammatory pain reliever for arthritis pain available by
28 prescription. See www.ncbi.nlm.nih.gov/pubmedhealth/PMH0000826 (last visited July 23, 2012).
The brand name for piroxicam is Feldene.

1 of the offense. Strain's suggestion that she had the Piroxicam for pain relief does not aid her, as the
2 rule prohibited the drug's possession without authorization, rather than its possession for any
3 particular purpose.

4 C. Violation Code 331⁵ Finding

5 The DHO found Strain guilty of possession or introduction of a non-hazardous tool or other
6 non-hazardous contraband. There was sufficient evidence to support this finding. The evidence
7 included Canales' written report that described the earrings found in a homemade pocket inserted
8 into page 115 of a magazine mailed to Strain, combined with a letter found in her locker that asked
9 her if she read the article on page 115 of Women's Health magazine. The evidence also included
10 photos of the magazine – although it was a "Good Housekeeping" rather than "Women's Health"
11 magazine – showing the hidden pocket, the earrings found in the pocket, and the plastic pouch in
12 which the magazine arrived addressed to Strain. The evidence also included transcripts of telephone
13 conversations that reasonably could be read to mean that Strain was talking in code about receiving
14 contraband in the mail. *See* Docket # 6-1, pp. 46-47. Strain denied knowledge of the earrings and
15 denied knowing that the letters referred to contraband, but the DHO was not required to credit
16 Strain's professed lack of knowledge about the contraband. Separately, the discovery of 15 straws in
17 Strain's room could have supported the finding of guilt of introduction or possession of contraband.
18 Although Strain contended that the items were stems from spray bottles rather than straws, the
19 photograph of the straws, Docket # 6-1, p. 43, and description of them in Canales' written report
20 provided sufficient evidence to support the DHO's finding that they were non-hazardous contraband.

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26 ⁵ Violation Code 331 is described as "[p]ossession, manufacture or introduction of a non-
27 hazardous tool or other non-hazardous contraband (Tool not likely to be used in an escape or escape
28 attempt, or to serve as a weapon capable of doing serious bodily harm to others, or not hazardous to
institutional security or personal safety; Other non-hazardous contraband includes such items as
food or cosmetics)." 28 C.F.R. § 541.13 - Table 3 (2009 ed.).

1 D. Violation Code 410⁶ Finding

2 The DHO found Strain guilty of unauthorized use of the mail. There was sufficient evidence
3 to support this finding: Canales' written report described the letter in Strain's locker that specifically
4 mentioned page 115 of a magazine and on that page in a magazine sent to Strain there was a secret
5 pocket containing the contraband earrings. Canales' written report also described the recorded
6 telephone conversations and mailings that reasonably could be viewed as showing a coordinated
7 effort between Strain and the other participant in the phone call to cause contraband to be sent to
8 Strain. *See* Docket # 6-1, p. 45 (letter); *id.* at 46-47 (memorandum transcribing telephone calls of
9 July 4, 10, and 11, 2009, with references to "Alfred").

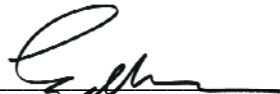
10 The evidence satisfies the "some evidence" requirement for each of the disciplinary offenses.
11 Strain did offer evidence and argument in her defense, but the fact that an inmate offered a defense
12 did not mean that the hearing officer had to accept it as true. The evidence to support the
13 disciplinary decision was constitutionally sufficient and reliable. Strain's right to due process was
14 not violated by the prison official's decision to find her guilty. She is not entitled to the writ of
15 habeas corpus.

16 **IV. CONCLUSION**

17 The petition for writ of habeas corpus is **DENIED** on the merits. The Clerk shall close the
18 file.

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20 IT IS SO ORDERED.

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22 Dated: August 1, 2012

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24 EDWARD M. CHEN
United States District Judge

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26 _____
27 ⁶ Violation Code 410 is described as "[u]nauthorized use of mail . . . (May be categorized
28 and charged in terms of greater severity, according to the nature of the unauthorized use; e.g., the
mail is used for planning, facilitating, committing an armed assault on the institution's secure
perimeter, would be charged as a Code 101 Assault)." 28 C.F.R. § 541.13 - Table 3 (2009 ed.)
(errors in source).