

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

CHRISTOPHER R. PAVEY,)
Petitioner,)
v.) No. 2:09-cv-301-WTL-TAB
BRET MIZE,)
Respondent.)

Entry Discussing Petition for Writ of Habeas Corpus

A federal court may issue a writ of habeas corpus pursuant to 28 U.S.C. § 2254(a) only if it finds the applicant “is in custody in violation of the Constitution or laws or treaties of the United States.” *Id.* Because habeas petitioner Pavey has failed to show that this is the case with respect to the disciplinary proceeding challenged in this case, his petition for a writ of habeas corpus must be **denied** and this action dismissed.

Discussion

In a disciplinary proceeding identified as No. ISR 09-04-0306, Pavey was found guilty of violating prison rules at an Indiana prison, by committing the infraction of attempted intimidation.¹ The evidence favorable to the decision of the hearing officer is that Pavey wrote a letter to a specific female staff member at the Pendleton Correctional Facility intimidating her into having sexual relations with him or he would have her children beaten or raped. Contending that the proceeding was constitutionally infirm, Pavey seeks a writ of habeas corpus.²

¹A hearing officer had found Pavey guilty of intimidation. As a result of his administrative appeal, Pavey’s offense was modified to attempted intimidation.

²Pavey’s challenges to the length of the disciplinary segregation to which he was assigned was never a viable part of this habeas action. *Montgomery v. Anderson*, 262 F.3d 641, 644 (7th Cir. 2001)(when no recognized liberty or property interest has been taken, the confining authority “is free to use any procedures it chooses, or no procedures at all”). Similarly, alleged failure to conform with prison regulations or state statutes will not support habeas corpus relief under 28 U.S.C. § 2254(a). *Evans v. McBride*, 94 F.3d 1062 (7th Cir. 1996); *Colon v. Schneider*, 899 F.2d 660, 672-73 (7th Cir. 1990); see also *Del Vecchio v. Illinois Dept. of Corrections*, 31 F.3d 1363, 1370 (7th Cir. 1994)(habeas corpus jurisdiction is limited to evaluating alleged violations of federal statutory or constitutional law), *cert. denied*, 516 U.S. 983 (1995).

Indiana state prisoners have a liberty interest in their good-time credits and therefore are entitled to due process before the state may revoke them. *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974); *Cochran v. Buss*, 381 F.3d 637, 639 (7th Cir. 2004). The right to due process in this setting is important and is well-defined. Due process requires the issuance of advance written notice of the charges, a limited opportunity to present evidence to an impartial decision-maker, a written statement articulating the reasons for the disciplinary action and the evidence justifying it, and “some evidence in the record” to support the finding of guilt. See *Superintend., Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 454 (1985); *Wolff v. McDonnell*, 418 U.S. 539, 564, 566, 570-71 (1974); *Piggie v. Cotton*, 344 F.3d 674, 677 (7th Cir. 2003); *Webb v. Anderson*, 224 F.3d 649, 652 (7th Cir. 2000).

“The best way to conduct analysis under § 2254 is to assume that the state wants to act exactly as its officers . . . have done, and then ask whether the federal Constitution countermands that decision.” *Hill v. Wilson*, 519 F.3d 366, 370 (7th Cir. 2008) (citing cases). Under *Wolff* and *Hill*, Pavey received all the process to which he was entitled. That is, the charge was clear, adequate notice was given, and the evidence was sufficient. In addition, (1) Pavey was given the opportunity to appear before the conduct board and make a statement concerning the charge, (2) the hearing officer issued a sufficient statement of its findings, and (3) the hearing officer issued a written reason for the decision and for the sanctions which were imposed.

Pavey’s claims that he was denied the protections afforded by *Wolff* are either refuted by the expanded record and based on assertions which do not entitle him to relief. “The touchstone of due process is protection of the individual against arbitrary action of the government.” *Wolff*, 418 U.S. at 558. There was no arbitrary action in any aspect of the charge, disciplinary proceeding, or sanctions involved in the events identified in this action, and there was no constitutional infirmity in the proceeding which entitles Pavey to the relief he seeks. Accordingly, his petition for a writ of habeas corpus must be **denied** and the action dismissed. Judgment consistent with this Entry shall now issue.

IT IS SO ORDERED.

Date: 02/18/2010



Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana