



Officer Ognoskie's uncle, a lieutenant or captain, in February, 2008.

To establish retaliation, a petitioner must allege the violation of a specific constitutional right and demonstrate that but for the retaliatory motive, the incident complained of would not have occurred. *Woods v. Smith*, 60 F.3d 1161, 1166 (5th Cir. 1995). The petitioner "must provide direct evidence of motivation or, the more probable scenario, allege a chronology of events from which retaliation may be plausibly inferred." *Id.* Mere conclusory allegations by a petitioner are insufficient. The petitioner must allege more than his personal belief that he has been the victim of retaliation. *Jones v. Greninger*, 188 F.3d 322, 325 (5th Cir. 1999).

Petitioner has failed to satisfy this standard. He has not provided direct evidence of a retaliatory motive. Moreover, as the grievance was written against Officer Ognoskie's uncle more than eight years prior to petitioner's disciplinary case, he has failed to allege a chronology of events from which a retaliatory motive could be plausibly inferred. He had provided no more than his personal belief that the disciplinary proceeding was motivated by a desire to retaliate against him.

Finally, petitioner asserts there was no evidence to support the disciplinary conviction. He states Officer Ognoskie wrote in the offense report that petitioner told Officer Jeurgen that he wanted to marry her one day. Petitioner states he did not make this statement. However, in order to withstand federal habeas review, a finding of guilt in a prison disciplinary proceeding requires only the support of "some facts" or "any evidence at all." *Gibbs v. King*, 779 F.2d 1040, 1044 (5th Cir. 1986). The statement in the offense report constituted some evidence of petitioner's guilt. *Hudson v. Johnson*, 242 F.3d 534, 536-37 (5th Cir. 2001) (Information provided in a written incident report, standing alone, can satisfy the "some evidence" standard.) As a result, there was sufficient evidence to support the disciplinary conviction.

#### ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in accordance with the recommendation of the Magistrate Judge.

In addition, the court is of the opinion petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying federal habeas relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner need not demonstrate that he would prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the petitioner. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir. 2000).

In this case, petitioner has not shown that the issues presented are subject to debate among jurists of reason. The factual and legal questions raised by petitioner have been consistently resolved adversely to his position and the questions presented are not worthy of encouragement to proceed further. As a result, a certificate of appealability shall not issue in this matter.

**So Ordered and Signed**

Apr 16, 2018



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Ron Clark, United States District Judge