IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-2787

Summary Calendar

ROBERT JOSEPH ZANI,

Plaintiff-Appellee,

versus

JAMES A. COLLINS, Director
Texas Department of Criminal
Justice Institutional Division,

Respondent-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-88-1600)

(March 16, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Robert Zani sued seeking reinstatement of lost good time credits and release from administrative segregation. We affirm the lower court's decision in his favor.

A prisoner facing the loss of good time credits should be

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

allowed to present evidence at disciplinary hearings and to call witnesses when calling witnesses would not be hazardous to institutional safety or correctional goals. Wolff v. McDonnell, 418 U.S. 539, 566, (1974); Moody v. Miller, 864 F.2d 1178, 1180 (5th Cir. 1989). The magistrate judge found that TDCJ deprived Zani of his right to call witnesses and present evidence based on Zani's sworn testimony at the evidentiary hearing. We review this factual finding using a clearly erroneous standard, giving the magistrate particular deference because his findings rest on the determination of a witness's credibility. E.g., Dadar v. Lafourche Realty Co., 985 F.2d 824, 827 (5th Cir. 1993). We find adequate support for the magistrate's conclusions in the record to satisfy this deferential standard of review. See generally Wilson v. UT Health Center, 973 F.2d 1263, 1268 (5th Cir. 1992), cert. denied, 113 S. Ct. 1644 (1993).

The state urges that the magistrate improperly shifted the burden of proof away from Zani to the state. The magistrate judge did state that "[f]ollowing the testimony of Zani, the burden shifted to Respondent to disprove the medical condition of Zani and his claim that he requested medical witnesses and records. Respondent did not attempt to meet that burden of production." As a comment on the burden of proof, this statement is wrong. See Williford v. Estelle, 672 F.2d 552, 555 (5th Cir.), cert. denied, 459 U.S. 856 (1982). In the context of the evidentiary hearing and the magistrate judge's report, however, the magistrate judge's remark appears more as a comment on the respondent's presentation of evidence than as a comment on a shifting burden of proof. This

remark is at worst gratuitous and does not present a ground for reversal.

AFFIRMED