

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2936
Summary Calendar

WILLIAM E. SPAULDING, III,

Petitioner-Appellant,

VERSUS

WAYNE SCOTT,
Director, Texas Department of Criminal Justice,
Institutional Division,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 93 591)

(August 23, 1994)

Before SMITH, WIENER, and PARKER, Circuit Judges.

PER CURIAM:*

William Spaulding appeals the denial of his state prisoner's petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Finding no error, we affirm.

* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Spaulding was a state inmate who, on April 4, 1991, received a notice charging him with attempting to escape by possessing a forged court order that would have given him 861 days of good time credit leading to an early release. On April 8, 1991, a prison disciplinary hearing was conducted before the disciplinary hearing officer.

At the hearing, Major Thompson, a prison official, testified that an inmate reported to him that Spaulding had prepared the forged order, filed it, and received extra good time. Thompson testified that he had no reason to doubt that the inmate informant was reliable and explained that the inmate did not report the information to him in a "snitching type way," but rather as a request for assistance in "trying to find a way to obtain legal good time." Thompson faxed a copy of the order to the judge whose name appeared on it, and the judge subsequently told Thompson that he had previously sent a document to Spaulding that had nothing to do with good time credits and that his signature appearing on the order awarding good time credits was forged. The forged order contained Spaulding's name and number and awarded the good time solely to him.

The disciplinary hearing officer found Spaulding guilty of the charges, relying upon the officer's report, the charging officer's statement, Thompson's statement, confidential information from the inmate informant, the document purporting to award good time credits to Spaulding, and a letter from the judge stating that the

document bearing his signature was a forgery. Spaulding was sentenced to 1 to 15 days of solitary confinement, the loss of 1,460 days of good time credit, and demotion from trusty class III to line class III. Although the 1,460 days of good time credit ultimately were restored, Spaulding's demotion to line status meant that he was ineligible for the accrual of good time at the same rate as when he was a trusty.

II.

After appealing the adverse decision of the disciplinary hearing officer through the grievance process afforded by the TDCJ, Spaulding filed the instant petition. Following an evidentiary hearing, the magistrate judge concluded that Spaulding's due process rights were not violated at the disciplinary hearing and that sufficient evidence existed to support the disciplinary hearing officer's finding of guilt and recommended that Spaulding's habeas petition be denied; the district court adopted the recommendation.

III.

Spaulding has filed a request for a certificate of probable cause ("CPC") with this court. The issuance of CPC is required to take an appeal from a final order in a habeas corpus proceeding only "where the detention complained of arises out of process issued by a State court." See 28 U.S.C. § 2253. Spaulding is asserting that his due process rights were violated by a prison

disciplinary hearing, resulting in the loss of good time credits. Because the detention complained of does not arise out of a process issued by a state court, the issuance of CPC is not necessary to provide appellate jurisdiction. So we deny the request for CPC as unnecessary.

Because Spaulding is not challenging the legality of his conviction or the validity of his initial sentence, he is not entitled to relief under § 2254. See United States v. Gabor, 905 F.2d 76, 77-78 (5th Cir. 1990). Spaulding is attacking the manner in which his sentence is being executed; thus, his petition may be construed as seeking relief pursuant to § 2241. Id. at 78.

IV.

Spaulding argues that his due process rights were violated at the prison disciplinary hearing because the disciplinary hearing officer found him guilty based solely upon information from the inmate informant, whose reliability was not established at the hearing. The requirements of due process are satisfied if "some evidence" supports the decision by the prison disciplinary board to revoke good-time credits. Superintendent, Mass. Correctional Inst. v. Hill, 472 U.S. 445, 455 (1985). Prison disciplinary proceedings will be overturned "only where there is no evidence whatsoever to support the decision of the prison officials." Reeves v. Pettcox, 19 F.3d 1060, 1062 (5th Cir. 1994).

"Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of

the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." Hill, 472 U.S. at 455-56. "Federal Courts will not review the sufficiency of the evidence at a disciplinary hearing; a finding of guilt requires only the support of 'some facts' or 'any evidence at all.'" Gibbs v. King, 779 F.2d 1040, 1044 (5th Cir.), cert. denied, 476 U.S. 1117 (1986) (citation omitted).

Spaulding is correct that under the prison rules, an inmate may not be charged with a disciplinary infraction if the sole evidence against him is from a confidential informant. The informant's testimony must be corroborated by evidence from other sources. As we have stated, however, the information from the inmate informant was not the only evidence against Spaulding.

Spaulding cites no authority from this circuit for his assertion that the disciplinary hearing officer must make independent findings of an informant's reliability on the record. See Smith v. Rabalais, 659 F.2d 539, 546 (5th Cir. Unit A Oct. 1981), cert. denied, 455 U.S. 992 (1982). The disciplinary hearing officer testified at the evidentiary hearing that she relied upon Thompson's testimony that the inmate informant was reliable. Further, Thompson testified that when he provided the information about Spaulding's connection to the order the inmate was not acting in the capacity of a confidential informant, but was merely requesting assistance from Thompson in receiving good time credits.

The other evidence at the disciplinary hearing constituted "some evidence" in the record to support the disciplinary hearing officer's finding of guilt. See Hill, 472 U.S. at 454. Because the decision of the disciplinary hearing officer was supported by "some evidence" in the record, the district court did not err in denying Spaulding's petition.

AFFIRMED.