STATE OF CONNECTICUT

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SUPERIOR COURT
G.A. 19

DOCKET NO. CV 23-5001382-S	:	2024 APR 16 A 8: SUPERIOR COURT
LUIS VICENTE, #321453	:	
	:	JUDICIAL DISTRICT OF TOLLAND
V.	:	
COMMISSIONER OF CORRECTION	:	APRIL 16, 2024

MEMORANDUM OF DECISION

The petitioner, Luis Vicente, claims in his petition for a writ of habeas corpus that the Department of Correction (DOC) violated his right to due process during the prison disciplinary process. More specifically, the petitioner avers that DOC violated certain timing requirements detailed in Administrative Directive (AD) 9.5. He also claims that DOC violated his substantive due process rights by preventing him from raising self-defense as a defense to his disciplinary ticket for fighting. The respondent's return denies the allegations as well as any due process violations.

The petitioner was found guilty of a class A fighting charge and sanctioned to four days of punitive segregation, loss of mail privileges for fifteen days, and the forfeiture of fifteen days of risk reduction earned credits (RREC). As relief, the petitioner asks the court to dismiss his disciplinary ticket and remove it from his record.

On January 17, 2024, the parties appeared before the court for a trial on the merits. The petitioner called DOC Officer Sergio Reyes and himself as witnesses in support of his claims; the respondent presented testimony from DOC Lieutenant Nathanial Davis. The respondent also entered the petitioner's disciplinary hearing records into evidence.

For the reasons set forth below, the claims raised by the petitioner are denied.

I
FACTUAL FINDINGS

The petitioner, a sentenced prisoner in DOC custody, was charged with a class A offense of fighting resulting based on his involvement in a physical altercation with another inmate, Varela. On April 22, 2022, at 11:28 p.m., the petitioner was working as a tierman in the prison facility when he was attacked by Varela, who struck the petitioner in the face with a broom handle and a closed fist from behind. DOC staff responded to separate the inmates, and the petitioner informed them that he had been defending himself from an assault. A disciplinary report drafted that same day by Officer Thornton indicated that he witnessed the petitioner exchange punches with Varela, and the petitioner ignored his commands to stop fighting until responding DOC staff arrived in the unit. The disciplinary report further noted that Officer Grasso delivered notice to the petitioner the following evening on April 23, 2022.

Officer Reyes, the disciplinary investigator, met with the petitioner on April 26, 2022 and informed him that self-defense was not a viable defense because the petitioner engaged with Varela. Officer Reyes testified that had the petitioner retreated instead of fighting back, he would not have received a disciplinary ticket. Officer Reyes informed the petitioner that he would reduce the sanctions the petitioner received if he pleaded guilty due to the mitigating nature of the circumstances. The petitioner signed the disciplinary report indicating that he was pleading guilty to the fighting charge. Next to his signature, the petitioner wrote "under duress." A disciplinary process summary report, dated that same day, found the petitioner guilty of the fighting offense pursuant to his voluntary guilty plea.

Officer Reyes testified that he did not notice that the petitioner wrote "under duress" until after he had returned to his office. Pursuant to A.D. 9.5, the inmate must sign the disciplinary report "acknowledging that a guilty plea is made voluntarily and no appeal is

permitted.... Any additional comments acronyms or abbreviations written by the inmate in the guilty section of a...Disciplinary Report, other than their signature, shall not be accepted by the Disciplinary Investigator." As a result, Officer Reyes received a letter in August from the district administrator instructing him to vacate the petitioner's plea and restart his disciplinary process because the petitioner's guilty plea signature violated the directives. Officer Reyes met with the petitioner again and, in a disciplinary investigation report dated August 15, 2022, noted that he gave the petitioner a copy of the disciplinary report and advised the petitioner of the process of the investigation and hearing. The petitioner pleaded not guilty and declined the services of an advisor and inmate witness statements.

A disciplinary hearing was held on August 25, 2022. A disciplinary process summary report was prepared by the hearing officer, Lieutenant Davis. In the report, Lieutenant Davis noted that the petitioner's defense was that he was "struck with a broomstick by my cellmate" who should not have been out of his cell at that time. Lieutenant Davis testified that he considered the petitioner's self-defense argument, but he viewed the video evidence and the petitioner fought back rather than retreating. Lieutenant Davis also testified that he took into account the totality of the evidence, including what was presented at the hearing, before rendering his outcome. The report concluded that, pursuant to the evidence and testimony given, the petitioner was guilty of the class A fighting charge and sanctioned to four days of punitive segregation, loss of mail privileges for fifteen days, and the forfeiture of fifteen days of RREC. Lieutenant Davis further indicated that he took the circumstances of the assault into consideration when issuing the petitioner's sanctions. The report also noted that the disciplinary hearing was a re-hearing due to the petitioner's improper signature on the original disciplinary report.

II
DISCUSSION

In order to bring a successful claim for a denial of procedural due process, an inmate must show that he possessed a protected liberty interest and then demonstrate that he was not afforded the requisite process before being deprived of that liberty interest. "In [Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974)], the United States Supreme Court held that, when a disciplinary hearing may result in the loss of good time credits, due process requires that an inmate receive (1) advance written notice of the disciplinary charges, (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and to present documentary evidence in his defense, (3) an impartial decision maker, and (4) a written statement by the fact finder of the evidence relied on and the reasons for the disciplinary action." Wolff v. McDonnell. supra, 418 U.S. 563-66, 571. In Superintendent v. Hill, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356, the Supreme Court expanded these protections to include a requirement that the fact finder's decision be supported "by 'some evidence' in the record." Id., 454. Our Supreme Court has previously explained that the "some evidence" standard "is a lenient one, requiring only a modicum of evidence to support the challenged decision." Anthony A. v. Commissioner of Correction, 339 Conn. 290, 312-13, 260 A.3d 1199 (2021). "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." Id., 455-56, citing Vandever v. Commissioner of Correction, 315 Conn. 231, 245, 106 A.3d 266 (2014); see also Castro v. Terhune, 712 F.3d 1304, 1314 (9th Cir. 2013) (characterizing test as minimally stringent).

"Because of the unique requirements of prison security, the full panoply of rights due a defendant during a criminal trial are not available in a prison disciplinary hearing." Torres v. Commissioner of Correction, 84 Conn. App. 113, 118, 851 A.2d 1252, cert. denied, 271 Conn. 941, 861 A.2d 517 (2004). "In order to prevail on his due process claim, the [petitioner] must prove that: (1) he has been deprived of a property [or liberty] interest cognizable under the due process clause; and (2) the deprivation of the property [or liberty] interest has occurred without due process of law." Vandever v. Commissioner of Correction, supra, 315 Conn. 241. "The requirements imposed by the [due process] [c]lause are, of course, flexible and variable [depending on] the particular situation being examined.... In determining what is due process in the prison context, [courts] are reminded that one cannot automatically apply procedural rules designed for free citizens in an open society ... to the very different situation presented by a disciplinary proceeding in a state prison.... Prison administrators ... should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." Id., 244, citing and quoting Hewitt v. Helms, 459 U.S. 460, 472, 103 S. Ct. 864, 74 L. Ed. 2d 675 (1983).

Applying the law to the present case, the petitioner has failed to prove the existence of a procedural due process violation. The petitioner was afforded advanced timely written notice of the charge, an opportunity to be heard and to respond to the disciplinary ticket, and a written statement by an impartial fact finder with some evidence in the record supporting the disciplinary action. Any delay that occurred during the disciplinary process was the direct result of the petitioner's improper signature on the original disciplinary ticket.

The petitioner also claims that it was unfair that he was disciplined for defending himself against an attack by another inmate. Officer Reyes, the disciplinary investigator, testified that an inmate cannot claim self-defense at a disciplinary hearing; if an inmate is attacked and defends himself, he will get a ticket no matter how severe the assault.

The petitioner's substantive due process claim must fail because there is no existing binding case law indicating that the right to self-defense constitutes a fundamental constitutional right within the due process clause for purposes of a prison disciplinary proceeding. See, e.g., Sharabi v. Recktenwald, United States District Court, Docket No. 15 Civ. 2466 (VEC) (HBP) (S.D. New York November 7, 2016) (concluding inmates do not have fundamental right to self-defense in prison disciplinary proceedings) (citing White v. Arn, 788 F.2d 338 (6th Cir. 1986), cert. denied, 480 U.S. 917, 107 S.Ct. 1370, 94 L.Ed.2d 686 (1987) (holding that in criminal cases, there is no constitutional right to self-defense founded in the Eighth, Ninth, and Fourteenth Amendments, and that a state may require a defendant to prove self-defense as an affirmative defense to obtain acquittal)).

The Sixth Circuit's analysis in Rowe v. DeBruyn, 17 F.3d 1047, 1049-50 (1994), is instructive. There, inmate John Rowe was charged with hitting another inmate and was found to have violated prison rules. He was ordered to serve one year in disciplinary segregation, but the penalty was suspended due to the mitigating nature of the attack on Rowe. Rowe did not bring a procedural due process claim against the prison but argued instead against the state's ability to deprive him of his right to claim self-defense. Id. at 1051. The court noted that such a claim is most properly understood to allege a violation of substantive due process. Id. The Sixth Circuit considered whether the right to self-defense is a fundamental constitutional right within the Due Process Clause and determined that it was not. Id. at 1052.

The court noted first that it found no precedent establishing a constitutional right of self-defense in the criminal law context. Id. (citing, White v. Arn, 788 F.2d 338 (6th Cir.1986), cert. denied, 480 U.S. 917, 107 S.Ct. 1370, 94 L.Ed.2d 686 (1987) (holding that in criminal cases, there is no constitutional right to self-defense founded in the Eighth, Ninth, and Fourteenth Amendments, and that a state may require a defendant to prove self-defense as an affirmative defense to obtain acquittal), although some courts have commented on the matter, see generally, Griffin v. Martin, 785 F.2d 1172, 1187 n. 37 (4th Cir.), aff'd & op. withdrawn, 795 F.2d 22 (1986) (en banc), cert. denied, 480 U.S. 919, 107 S.Ct. 1376, 94 L.Ed.2d 691 (1987) (stating in dictum, "It is difficult to the point of impossibility to imagine a right in any state to abolish self defense altogether, thereby leaving one a Hobson's choice of almost certain death through violent attack now or statutorily mandated death through trial and conviction of murder later."); Isaac v. Engle, 646 F.2d 1129 (6th Cir.1980) (en banc) (*Merritt, J.* dissenting on other grounds), rev'd, 456 U.S. 107, 102 S.Ct. 1558, 71 L.Ed.2d 783 (1982) ("I believe that the Constitution prohibits a state from eliminating the justification of self-defense from its criminal law.")).

The court then noted that even if a substantive due process right has been clearly established in Fourteenth Amendment criminal jurisprudence, it will not necessarily apply to prison inmates in disciplinary proceedings. Id. "Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." Wolff, supra, 418 U.S. at 556, 94 S.Ct. at 2975. The Supreme Court has "settled that a prison inmate 'retains those [constitutional] rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system.'" Turner v. Safley, 482 U.S. 78, 96, 107 S.Ct. 2254, 2259, 96 L.Ed.2d 64 (1987) (quoting Pell v. Procunier, 417 U.S. at 822, 94 S.Ct. at 2804)).

The court noted that applying a novel constitutional due process right in the context of a prison disciplinary proceedings would be especially fraught because such a right "threatens to undermine prison discipline by encouraging inmates to combat violence with more violence" and "subverts a core prison function of ensuring order and safety within the institution." Id. at 1052-53. The court further explained that even if Rowe had a constitutional right to self-defense, the policy of denying a prisoner the right to raise it as a complete defense to a disciplinary ticket is reasonably related to legitimate penological interests. Id. at 1053. "The policy purportedly advances prison security by discouraging all physical violence amongst inmates. It acts as a didact by warning prisoners that violence against another inmate is a unilaterally condemned and perpetually sanctionable violation of prison rules." Id. Finally, the court noted that the policy in question also allowed the disciplinary body to consider self-defense in mitigation. Id. "Given that prison security and the reduction of violence are certainly legitimate penological interests, and that appellee's self-defense policy does not absolutely deprive a prisoner of his ability to prove and benefit from a claim of self-defense," the Sixth Circuit concluded that the policy did not impermissibly infringe on Rowe's substantive due process rights. Id.

This same analysis applies to the case at hand. This court has likewise been unable to find authority establishing the right to self-defense as a fundamental constitutional right, and the DOC policy withstands rational basis review because it is reasonably related to legitimate penological interests. Accordingly, the petition must be denied.

III
CONCLUSION

The petitioner has not met his burden of proving that a due process violation occurred during his prison disciplinary proceeding. The petition for a writ of habeas corpus is therefore denied and judgment shall enter for the respondent.

BY THE COURT,

/s/ Emily Wagner, Juris #444516
Hon. Emily Wagner

Copies sent to:
Luis Vicente w/petcert/apfee - by mail
Attorney Jacob McChesney - by JDVO
Judge Bhatt

by: Kathryn Stackpole, First Asst. Clerk
4/16/2024