

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-1054

NORWOOD COOK,
Appellant

v.

WARDEN, FORT DIX CORRECTIONAL INSTITUTION

On Appeal From the United States District Court
For the District of New Jersey
(D.N.J. Civ. No. 04-cv-5713)
District Judge: Robert B. Kugler

Submitted Under Third Circuit LAR 34.1(a)
December 19, 2006

Before: BARRY, CHAGARES AND ROTH, CIRCUIT JUDGES

(Filed June 20, 2007)

OPINION

PER CURIAM

Norwood Cook appeals from the order of the United States District Court for the District of New Jersey denying his pro se habeas corpus petition. For the reasons below,

we will affirm the District Court's judgment.

On November 19, 2004, Cook filed a pro se habeas petition pursuant to 28 U.S.C. § 2241 against the Warden at the Federal Correctional Institution (FCI) at Fort Dix, New Jersey. Cook challenged the loss of 27 days' good conduct time which was imposed upon him as a disciplinary sanction for committing Prohibited Act 297 (Code 297), a third party call, on May 14, 2003, at the federal correctional institution. See 28 C.F.R. § 541.13, Table 3. The District Court denied the petition. Cook timely appealed.

We have appellate jurisdiction pursuant to 28 U.S.C. § 1291. Our review is plenary. See Gould Elec., Inc. v. United States, 220 F.3d 169, 176 (3d Cir. 2000).

In his petition, Cook argued that: (1) he was denied due process when he did not receive written notice of newly discovered evidence to be used against him; (2) Code 297 as applied is unconstitutionally vague; (3) the hearing officer was not fair or impartial and abused his authority; and (4) he was not given a written copy of the hearing officer's decision within 10 days as required by law.

Cook's original disciplinary hearing was postponed by the Disciplinary Hearing Officer (DHO) for the purpose of obtaining evidence whether Cook had actually received adequate notice of the prohibited act. The "new" evidence used at Cook's reconvened hearing was an Admissions and Orientation handbook from the Federal Detention Center (FDC) in Philadelphia, where Cook was housed before his transfer to FCI-Fort Dix. The DHO determined that the FDC-Philadelphia handbook clearly outlined Code 297 and its sanctions. See Appellee's Appendix, 85, 138. Moreover, the Admission and Orientation

handbook Cook received upon his arrival at FCI-Fort Dix also clearly stated that three-way telephone conversations were prohibited. See Appellee's Appendix, 85, 127. Cook's signature on the acknowledgment of receipt form evidences that he received the FDC-Philadelphia handbook. See D. Ct. Mem., 13. Even if Cook did not receive the Philadelphia handbook, he admitted to receiving the FCI-Fort Dix handbook. See id. Both handbooks delineated prohibited third-party telephone calls and the applicable sanctions. On appeal, Cook argues, not that Code 297 is unconstitutionally vague, but that he was not given adequate written warning or notice that third-party calling was prohibited. Although it concedes that the handbook from FCI-Fort Dix does not provide the same level of detail regarding prohibited calls as the one from FDC-Philadelphia, the Government emphasizes that Cook did receive written material from both FDC-Philadelphia and FCI-Fort Dix regarding what types of telephone activities were prohibited. We agree that Cook had sufficient notice that the type of phone call he made on May 14, 2003, was prohibited. The use of this evidence against him at the hearing thus did not violate his due process rights.

The decision of the DHO is entitled to deference by a reviewing court. See Superintendent v. Hill, 472 U.S. 445, 455-56 (1985). Here, the DHO prepared a detailed, written report identifying the evidence relied upon and explaining the bases for the sanctions imposed. See Appellee's Appendix, 83-86. The record supports the DHO's findings.

We agree with the District Court that there is nothing in the record to show that the

DHO was biased or abused his authority. Finally, we agree with the District Court that, even if Cook did not receive the DHO's written report within 10 days, pursuant to 28 C.F.R. § 541.17(g), the delay had no prejudicial effect on Cook's administrative appeal and thus does not provide a basis for habeas relief.

Based on the foregoing, we will affirm the judgment of the District Court.