

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Robert Carlson v. Brian Birkholz

Carlson v. Birkholz · No. 2:24-cv-08013-FLA (E) · Decided April 3, 2025

SUMMARY

The United States District Court for the Central District of California adopted a magistrate judge’s Report and Recommendation in a federal prisoner’s habeas action challenging a disciplinary sanction for possessing a cell phone. The court granted the petitioner’s motion to file late objections, rejected the objections, granted the respondent’s motion to dismiss, and denied and dismissed the petition with prejudice. The court held that the disciplinary decision was supported by some evidence and that the challenged procedural and vagueness arguments did not warrant relief.

CASE DETAILS

COURT	United States District Court for the Central District of California
JURISDICTION	United States District Court for the Central District of California
DECIDED	April 3, 2025
DOCKET	2:24-cv-08013-FLA (E)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Federal habeas petitioner objected to a magistrate judge's Report and Recommendation recommending dismissal of his petition and grant of the respondent's motion to dismiss. The district court granted petitioner's motion to file late objections, conducted de novo review of the challenged portions of the Report, adopted the Report and Recommendation, granted the motion to dismiss, and denied and dismissed the petition with prejudice.
STANDARD OF REVIEW	The district court conducted de novo review of the portions of the Report and Recommendation to which objections were made. The disciplinary decision was reviewed under the requirement that it be supported by some evidence.
PRECEDENTIAL VALUE	Unknown; federal district court supplemental order.
PARTIES	Robert Carlson v. Brian Birkholz

TOPICS

federal habeas corpus

prisoners rights

post-conviction relief

motions to dismiss

civil procedure

PRACTICE AREAS

federal habeas corpus

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QUESTIONS PRESENTED

1. Whether the district court should consider Carlson's new due-process argument that a unit manager was not asked at the disciplinary hearing whether Carlson had ever been seen in physical possession of the cellphone.
2. Whether the disciplinary decision was supported by some evidence that Carlson possessed the cellphone.
3. Whether any inability to present the alleged testimony constituted prejudicial procedural due process error.
4. Whether the hearing officer was required to credit Carlson's uncorroborated assertion that an officer told him he would not receive an incident report.
5. Whether Carlson had been improperly required to prove that he did not possess the cellphone.
6. Whether the prison rule prohibiting possession of hazardous tools, including portable telephones, was unconstitutionally vague.

HOLDINGS

1. The district court was not required to consider an argument that Carlson had not presented to the magistrate judge in either the petition or his opposition to the motion to dismiss.
2. The disciplinary decision was supported by more than sufficient evidence satisfying the some-evidence standard.
3. Even assuming an inability to present the alleged testimony was error, the error was harmless in light of the other evidence against Carlson.
4. The hearing officer was not required to credit Carlson's self-serving, uncorroborated assertion that Officer Simms told him he would not receive an incident report.
5. Carlson bore no burden of proof in the disciplinary proceeding; prison officials were required to present some evidence supporting the discipline, and they met that standard.
6. The prison rule prohibiting possession of hazardous tools, including portable telephones, was not unconstitutionally vague because it provided fair notice that possessing a cellphone could lead to sanctions.

KEY QUOTATIONS

"In any event, Petitioner's inability to present this alleged testimony by Unit Manager Coulson would not establish a violation of due process." (at 1)

"This evidence was ample and more than sufficient to satisfy the "some evidence" standard." (at 1)

“Instead, it was incumbent upon prison officials to present “some evidence” for the discipline.” (at 2)

“A person of ordinary intelligence also would have understood that prison staff need not necessarily find the cellphone on the person of the prisoner to conclude that, at some point in time, the prisoner had possession of the telephone.” (at 2)

FACTUAL BACKGROUND

Carlson, a federal prisoner, was disciplined for unlawful possession of a cell phone. The phone contained photographs of Carlson and his family, his administrative grievances, and communications records with his brother, and it was found in the ceiling above the shower area assigned to him. Carlson also challenged the disciplinary hearing based on alleged denial of testimony, an uncorroborated statement by an officer, the allocation of the burden of proof, and vagueness of the prison rule prohibiting possession of hazardous tools such as portable telephones.

PROCEDURAL HISTORY

Carlson, a federal prisoner, filed a petition challenging a disciplinary sanction for possessing a cell phone. The magistrate judge recommended granting the respondent's motion to dismiss and denying and dismissing the petition with prejudice. After granting Carlson's request to file late objections, the district court considered and rejected his objections and entered judgment dismissing the petition with prejudice.

DISPOSITION

dismissed

CASES CITED

- Wolff v. McDonnell, 418 U.S. 539 (1974)
- Brook v. McCormley, 837 F. App'x 433, 436 (9th Cir. 2020)
- Greenhow v. Secretary of Health & Human Services, 863 F.2d 633, 638 (9th Cir. 1988)
- United States v. Hardesty, 977 F.2d 1347, 1348 (9th Cir. 1992) (en banc)
- Graves v. Knowles, 231 F. App'x 670, 672 (9th Cir. 2007)
- Brecht v. Abrahamson, 507 U.S. 619, 637 (1993)
- Superintendent v. Hill, 472 U.S. 445, 455 (1985)

OPINION

Robert W. Carlson v. Brian Birkholz

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 11 ROBERT CARLSON, Case No. 2:24-cv-08013-FLA (E) Petitioner,

12 SUPPLEMENTAL ORDER

v. ACCEPTING FINDINGS AND

13

RECOMMENDATIONS OF

14 BRIAN BIRKHOLZ, UNITED STATES MAGISTRATE

JUDGE AND GRANTING

15 Respondent. PETITIONER'S MOTION TO

16 FILE LATE OBJECTIONS

[DKTS. 17, 21, 24]

17 18 19 20 21 22 23 24 25 26 27 28 1 Pursuant to 28 U.S.C. § 636, the court has reviewed the
Petition, the records 2 on file, and the Report and Recommendation of the United States
Magistrate Judge 3 ("Report"). Further, the court has considered Petitioner's objections, Dkt. 21,
and 4 engaged in a de novo review of those portions of the Report to which objections 5 have been
made.¹ 6 In this habeas action, Petitioner, a federal prisoner, challenges a disciplinary 7 sanction
for unlawful possession of a cell phone. Dkt. 1 at 3. The Report 8 recommends the grant of
Respondent's motion to dismiss and the denial and 9 dismissal of the Petition with prejudice. Dkt.
17. Petitioner's objections to the 10 Report, Dkt. 21, do not warrant any change to the Report's
findings or 11 recommendations. 12 Petitioner objects that he was denied his procedural due
process rights under 13 *Wolff v. McDonnell*, 418 U.S. 539 (1974). Dkt. 21 at 2–3. Specifically,
Petitioner 14 argues his rights were violated because Unit Manager Coulson was not asked at the
15 disciplinary hearing whether Petitioner had ever been seen in physical possession of 16 the
cellphone. *Id.* Because Petitioner did not raise this argument before the 17 Magistrate Judge in
either the Petition or the opposition to the motion to dismiss,

18 Dkt. 1, 15, the court has no obligation to consider it. See *Brook v. McCormley*, 837

19 F. App'x 433, 436 (9th Cir. 2020) (novel arguments should have been presented to 20 the
Magistrate Judge in the first instance) (citing *Greenhow v. Sec'y of Health & 21 Hum. Servs.*, 863
F.2d 633, 638 (9th Cir. 1988) ("[T]he Magistrates Act was [not] 22 23 1 On February 3, 2025, the
Magistrate Judge filed a Report and Recommendation. Dkt. 17. On February 26, 2025, the
Magistrate Judge extended the deadline for 24 Petitioner to file objections from February 24,
2025, to March 11, 2025. Dkt. 20. 25 On March 17, 2025, the court received Petitioner's
objections, which Petitioner executed on March 12, 2025. Dkt. 21. On March 24, 2025, the court
received 26 Petitioner's Motion for Further Extension of Time to File Objections, which 27
Petitioner executed on March 7, 2025. Dkt. 24. As Petitioner appears to have sought an extension
timely, the court exercises its discretion and GRANTS 28 1 intended to give litigants an
opportunity to run one version of their case past the 2 magistrate, then another past the district
court."), overruled on other grounds, 3 *United States v. Hardesty*, 977 F.2d 1347, 1348 (9th Cir.
1992) (en banc). In any 4 event, Petitioner's inability to present this alleged testimony by Unit
Manager 5 Coulson would not establish a violation of due process. An inmate's inability to 6

present evidence at a disciplinary proceeding may be harmless error “in light of all 7 of the other evidence against him[.]” *Graves v. Knowles*, 231 F. App’x 670, 672 8 (9th Cir. 2007) (citing *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993)). Here, the 9 evidence against Petitioner, described immediately below, would have rendered any 10 error harmless. 11 Petitioner objects that “some evidence” does not support the disciplinary 12 decision, because the evidence did not show that the cellphone belonged to him.

13 Dkt. 21 at 3–7. However, the evidence showed that the cellphone contained 14 photographs of Petitioner and his family, his administrative grievances, and his 15 records of communications with his brother. Dkt. 11-1 at 7. The evidence also 16 showed that the cell phone was found in the ceiling above the shower area assigned 17 to Petitioner. *Id.* at 6. This evidence was ample and more than sufficient to satisfy 18 the “some evidence” standard. 19 Petitioner objects the hearing officer refused to accept evidence that Officer 20 Simms had told Petitioner that Petitioner would not be receiving an incident report 21 for possessing the cellphone. Dkt. 21 at 7–8. As the hearing officer found, Officer 22 Simms’s alleged statement, which only Petitioner heard, was not corroborated by 23 staff witnesses. Dkt. 11-1 at 7. The hearing officer was not required to credit 24 Petitioner’s self-serving assertion. 25 Petitioner objects he was penalized for not producing documents and was 26 required to “prove a negative.” Dkt. 21 at 8–9. To the contrary, Petitioner had no 27 burden of proof in the disciplinary proceeding. Instead, it was incumbent upon 28 prison officials to present “some evidence” for the discipline. See *Superintendent v. Hill*, 472 U.S. 445, 455 (1985). The evidence that was presented met that standard. 29 Dkt. 11-1 at 6-7. 30 Petitioner objects that the prison rule applied here, which prohibits the 4 || possession of hazardous tools, such as a portable telephone, is void for vagueness. 5 || Dkt. 21 at 9-10. As the Report found, the rule is not vague because it provides fair 6 || notice to a person of ordinary intelligence that possession of a cellphone could lead 7 || to sanctions. Dkt. 17 at 7. A person of ordinary intelligence also would have 8 || understood that prison staff need not necessarily find the cellphone on the person of 9 || the prisoner to conclude that, at some point in time, the prisoner had possession of 10 || the telephone. *Jd.*

11 ORDER

12 It is ORDERED that (1) the Report and Recommendation of the Magistrate 13 || Judge is accepted and adopted; (2) Respondent’s motion to dismiss is granted; and 14 || (3) Judgment shall be entered denying and dismissing the Petition with prejudice. 15 16 || Dated: April 3, 2025 17 18 United States District ludge 19 20 21 22 23 24 25 26 27 28