

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.

OPINION

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 the Magistrate Judge in the first instance) (citing *Greenhow v. Sec'y of Health & 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. 1 | Hill, 472 U.S. 445, 455 (1985).

The evidence that was presented met that standard. 2 | Dkt. 11-1 at 6-7. 3 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