

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)