

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

OPINION

Robert W. Carlson v. Brian Birkholz

PER CURIAM.

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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] intended to give litigants an opportunity to run one version of their case past the 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 event, Petitioner’s inability to present this alleged testimony by Unit Manager Coulson would not establish a violation of due process. An inmate’s inability to present evidence at a disciplinary proceeding may be harmless error “in light of all of the other evidence against him[.]” *Graves v. Knowles*, 231 F. App'x 670, 672 (9th Cir. 2007) (citing *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993)). Here, the evidence against Petitioner, described immediately below, would have rendered any error harmless. Petitioner objects that “some evidence” does not support the disciplinary decision, because the evidence did not show that the cellphone belonged to him.

Dkt. 21 at 3–7. However, the evidence showed that the cellphone contained photographs of Petitioner and his family, his administrative grievances, and his records of communications with his brother. Dkt. 11-1 at 7. The evidence also showed that the cell phone was found in the ceiling above the shower area assigned to Petitioner. *Id.* at 6. This evidence was ample and more than sufficient to satisfy the “some evidence” standard. Petitioner objects the hearing officer refused to accept evidence that Officer Simms had told Petitioner that Petitioner would not be receiving an incident report for possessing the cellphone. Dkt. 21 at 7–8. As the hearing officer found, Officer Simms’s alleged statement, which only Petitioner heard, was not corroborated by staff witnesses. Dkt. 11-1 at 7. The hearing officer was not required to credit Petitioner’s self-serving assertion. Petitioner objects he was penalized for not producing documents and was required to “prove a negative.” Dkt. 21 at 8–9. To the contrary, Petitioner had no burden of proof in the disciplinary proceeding. Instead, it was incumbent upon 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. Dkt. 11-1 at 6-7. Petitioner objects that the prison rule applied here, which prohibits the possession of hazardous tools, such as a portable telephone, is void for vagueness. Dkt. 21 at 9-10. As the Report found, the rule is not vague because it provides fair notice to a person of ordinary intelligence that possession of a cellphone could lead 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