



COMMANDER'S LOG

September 2013

Procedural and Substantive Due Process and Loss of Diminution Credits

QUESTION: **Is due process, both procedural and substantive, required in a disciplinary hearing where an inmate could possibly lose diminution credits?**

ANSWER: **Yes. Since there is a recognized “property interest” in diminution credits, the constitutional requirements of procedural and substantive due process must be met.**

CASE: ***Jeffrey Williams v. A. Cartwright*, U.S. District Court, District of Md.**
Decided August 27, 2013

This case concerns inmates and the constitutional right of due process, both procedural and substantive. The facts showed that Plaintiff Jeffrey Williams was incarcerated at Western Correctional Institution (WCI) when, on November 19, 2012, he was seen masturbating by Officer A. Cartwright. Officer Cartwright wrote a report and, as a result of the report, Williams was charged with a violation of Disciplinary Rule 119 which prohibits acts of indecent exposure or masturbation. A hearing was scheduled.

At the hearing, Williams claimed that it was impossible for Officer Cartwright to make rounds at the time she claimed and that other inmates who were gang members would have assaulted him had he committed the act alleged. Officer Cartwright testified at the hearing via telephone. According to Williams, the officer failed to mention some important facts about where Williams was standing at the time of the incident. Cartwright asserted that her testimony was truthful. She testified that she saw Williams with his penis exposed engaging in masturbation and that he did not turn away when he saw her. She identified him by his state identification. Williams asked that the institution’s surveillance video be produced but another officer testified that there was no record found for the video requested. Williams was found guilty of violating Rule 119 and the warden imposes sanctions of 180 days segregation and revocation of 120 days credit. The sentence imposed was a result of Williams having committed the same rule violation on four other occasions.

Williams sued, alleging, in part, that he was denied procedural due process because he was denied the chance to have the institutional surveillance video reviewed at the disciplinary hearing which he maintained would have exonerated him and established that Officer Cartwright lied in her report. The court dismissed Williams’ suit, finding that all procedural due process requirements had been met.

In reaching this result, the court said that in prison/detention disciplinary proceedings where an inmate faces the possible loss of diminution credits, due process protections require: (1) advance written notice of the charges; (2) a written statement of the evidence relied on and the reasons for taking any disciplinary action; (3) a hearing where the inmate is afforded the right to call witnesses and present evidence when doing so is not inconsistent with institutional safety and correctional

concerns, and a written decision; (4) the opportunity to have non-attorney representation when the inmate is illiterate or the disciplinary hearing involves complex issues; and (5) an impartial decision-maker. There is no constitutional right to confront and cross-examine witnesses or to retain and be appointed counsel. As long as the hearing officer's decision contains a written statement of the evidence relied upon, due process is satisfied. Moreover, substantive due process is satisfied if the disciplinary hearing decision was based on at least "some evidence." Here, there was "some evidence" to support the discipline imposed namely Officer Cartwright's testimony. Further, the failure to produce the surveillance video was not intentional or willful---the video did not exist. For these reasons, Williams' suit was dismissed.

NOTE: Federal courts cannot possibly review the correctness of every inmate disciplinary hearing. Consequently, and as a general rule, courts accept the correctness of the hearing officer's finding of fact. The findings will only be disturbed when unsupported by any evidence, or when wholly arbitrary and capricious. As long as there is some evidence in the record to support a disciplinary hearing officer's or committee's factual findings, a federal court will not review their accuracy.

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