

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted December 2, 2024*

Decided December 3, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 24-2120

MONWELL DOUGLAS,
Petitioner-Appellant,

v.

DONALD EMERSON,
Respondent-Appellee.

Appeal from the United States District
Court for the Southern District of
Indiana, Indianapolis Division.

No. 1:23-cv-01426-JMS-MKK

Jane Magnus-Stinson,
Judge.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

O R D E R

Monwell Douglas, a prisoner formerly incarcerated at the Plainfield Correctional Facility¹, lost good-time credit when a prison disciplinary board found him guilty of possessing a cell phone. He petitioned for a writ of habeas corpus under 28 U.S.C. § 2254, arguing that the proceedings violated his constitutional right to due process. The district court denied the petition because “some evidence” supported the board’s conclusion and Douglas was not entitled to have new evidence considered on appeal. We affirm.

Douglas was written up in a conduct report for using a cell phone in a bathroom stall. He had been spotted by a Plainfield correctional officer performing a walkthrough. In the conduct report, the officer wrote that Douglas had been hiding “with the pretense of using the toilet,” and that Douglas, when approached, handed over the phone from the pocket of his “altered” gym shorts.

In a screening report, Douglas pleaded not guilty to the charge, rejected assistance from a lay advocate, and requested that officers ask specific questions of two other prisoners present during the search, Lewis and Harris. Lewis was asked whether he was also being watched while using the latrine (he said he was not, but that he had been on other occasions). Harris was asked whether the search was “routine” (he said he did not know, but he did not think so because there were so many officers). Douglas also requested security video from the hallway outside the latrine. Because of security concerns, the prison did not allow Douglas to view the video. The board instead reviewed and summarized the video in writing, stating that it captured an officer as he peered through the window into the latrine, “appearing to notice something suspicious.”

At the disciplinary hearing, the board found Douglas guilty based on the officer’s report. The board acknowledged Douglas’s testimony that the phone already was in the stall when he entered, as well as the submitted statements of Lewis and Harris, but credited the conduct report’s statement that Douglas was using the phone and that Douglas handed over the phone from a pocket in his altered shorts.² Douglas received a

¹ Since filing his appeal, Douglas has been placed in a Community Transition Program.

² Since the hearing, Douglas has repeatedly argued that the shorts were not his and that the phone was in the pocket of the shorts on the floor of the stall. This version,

written reprimand, 30-day loss of privileges, 90-day loss of earned credit time, and a one-level demotion of credit class.

A week after he was found guilty, Douglas obtained an affidavit from a fellow prisoner named Joshua Sutton, who attested that the cell phone was his and that he had ditched it in the stall after an officer saw him through the window using it. Douglas attached Sutton's affidavit to his appeal of the board's decision. The facility head did not acknowledge the affidavit and affirmed the finding of guilt. Douglas then appealed this determination to the Appeal Review Officer, who again affirmed the board's conclusion and noted that Sutton's affidavit was new evidence that could not be considered on appeal.

Douglas then petitioned under 28 U.S.C. § 2254, raising due process challenges to his disciplinary hearing. First, he alleged a due process violation based on the prison's failure to produce either the security video or the confiscated shorts. Second, Douglas alleged that the institution violated his due process rights by not ordering a rehearing after he submitted Sutton's affidavit, which, he insisted, was exculpatory.

The district court denied the petition. Regarding Douglas's argument that he was denied the opportunity to present relevant evidence, the court explained that (1) it had reviewed the video, which—as consistent with the board's summary—was neither material nor exculpatory because it did not show the inside of the restroom; and (2) the absence of the shorts did not raise due process concerns because Douglas had not requested that they be presented at his hearing. *See Piggie v. McBride*, 277 F.3d 922, 925 (7th Cir. 2002) ("We agree that if Piggie failed to ... request [a prison's surveillance tape] either before or at the hearing, then the [board] could not have denied him due process by not considering the request."). As for the sufficiency of the evidence, the district court determined that the officer's conduct report satisfied the requirement that "some evidence" supports the board's decision. *See Superintendent, Mass. Correctional Institution at Walpole v. Hill*, 472 U.S. 445, 455–56 (1985). With regard to Douglas's argument that he was denied due process by not being allowed to have Sutton testify on rehearing, the court found Douglas's request to be untimely, as Douglas did not seek to present evidence from Sutton until his administrative appeal.

however, is inconsistent with Douglas's account in his administrative appeal that he saw the phone on the floor and pushed it away, and that officers confiscated the shorts that he was wearing.

On appeal, Douglas maintains that Sutton's affidavit was newly discovered, exculpatory, and warranted a rehearing. Due process, however, does not require consideration of evidence that could have been presented, but was not, at the original hearing. *See Perry v. Sims*, 990 F.3d 505, 512 (7th Cir. 2021) (citing *McPherson v. McBride*, 188 F.3d 784, 786 (7th Cir. 1999)). In his appeal of the board's decision to the facility head, Douglas admitted knowing before the hearing that the phone belonged to Sutton, yet he took no steps to have Sutton questioned. Regardless, Douglas has not shown that Sutton's affidavit was sufficiently exculpatory. Exculpatory evidence need be considered only to the extent that it undermines the reliability of the evidence relied upon by the institution. *Scruggs v. Jordan*, 485 F.3d 934, 941 (7th Cir. 2007). Even if we accept that the cell phone belonged to Sutton, there was "some evidence" — the correctional officer's report that Douglas pulled the phone from a pocket of altered shorts — to support the board's decision. *Hill*, 472 U.S. at 455–56.

AFFIRMED