

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY MUSTAFA WILLIAMS : CIVIL ACTION
:
v. :
:
:
GILLIS, et. al. : NO. 00-486

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

June 8, 2001

Anthony Mustafa Williams ("Williams") filed a petition for writ of habeas corpus challenging the constitutionality of his 1998 conviction for simple assault under the Double Jeopardy Clause of the Fifth Amendment. Magistrate Judge Peter B. Scuderi filed a Report and Recommendation ("R&R") that the court deny and dismiss the petition without an evidentiary hearing. Petitioner filed Objections. After de novo review, the Report and Recommendation will be approved and the Objections will be overruled. The petition will be denied and dismissed without an evidentiary hearing.

Background

At all times relevant to this petition, petitioner was an inmate housed at SCI-Coal Township. On October 9, 1996, petitioner was "taken into the [temporary] custody of the Sheriff['s] Department" for a court appearance. Pet. Mem. at 1. While in the "bullpen" at the Lehigh County courthouse, petitioner assaulted sheriff's deputies. Pet. Mem. at 1. As a

result of this incident, prison officials issued a misconduct report citing petitioner for violations of institutional rules including: aggravated assault; disrespect to staff member; threatening an employee, inmate or other with bodily harm or injury; and refusing a direct order. Pet. Ex. A & B. After a disciplinary hearing, petitioner was found guilty of the violations and received 45 days "additional disciplinary segregation time." Pet. Ex. B. Subsequently petitioner was charged criminally for the same incident, convicted of simple assault, and sentenced to five and one-half to twenty-three (5½ - 23) months imprisonment. Pet. at 5.

Petitioner, appealing his conviction, raised the issue of whether the sentence violated the Double Jeopardy Clause. The Superior Court affirmed the trial court's judgment on July 20, 1999. Pet. Mem. at 3; Pet. at 5-6. He filed a petition for allocatur to the Pennsylvania Supreme Court; the petition was denied on November 23, 1999. Pet. at 8. Petitioner has exhausted his state remedies.

DISCUSSION

Petitioner claims his "conviction [was] obtained by a violation of the protection against Double Jeopardy." Pet. at 9. The Double Jeopardy Clause of the Fifth Amendment provides, "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. This

federal protection is made applicable to the states through the Due Process Clause of the Fourteenth Amendment. See Benton v. Maryland, 395 U.S. 784, 795-96 (1969). It prohibits both multiple prosecutions for the same offense, and multiple punishments for the same offense. See United States v. Halper, 490 U.S. 435, 440 (1989).

Petitioner asserts he was punished twice for assaulting sheriff's deputies in the Lehigh County courthouse. Prison officials placed him in administrative segregation for forty-five (45) additional days; then he was sentenced in state court to a term of incarceration. Petitioner argues that the prison officials had no authority to discipline him for conduct occurring outside prison, while he was not in the custody of the Pennsylvania Department of Corrections ("Department"), so the disciplinary segregation was punitive and barred future punishment.

The Magistrate Judge correctly identified Hudson v. United States as the controlling precedent.¹ 522 U.S. 93, 98 (1997).

¹ Prior to Hudson, the Third Circuit had held that sanctions imposed by prison officials upon a prisoner are administrative and do not bar a subsequent criminal prosecution for the same act. See United States v. Newby, 11 F.3d 1143, 1145 (3d Cir. 1993) ("We do not believe that the Double Jeopardy Clause was ever intended to inhibit prison discipline); United States v. Stuckey, 441 F.3d 1104 (3d Cir. 1971), cert. denied, 404 U.S. 841 (1971). But because those decisions predate Hudson, the Magistrate Judge correctly undertook a re-evaluation of the nature of prison discipline under the Hudson framework.

Under Hudson, a court determining whether a sanction bars future prosecution must evaluate: (1) whether the legislature intended the penalty as civil or criminal; and (2) whether the sanction was so punitive in purpose and effect it transformed an intended civil remedy to a criminal penalty. The Court also stated that the factors set forth in, Kennedy v. Menduza-Martinez, 372 U.S. 144 (1963), may be used as "guideposts" for determining the nature of the sanction. See Hudson 522 U.S. at 99-100. The Kennedy factors include: (1) whether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as punishment; (3) whether it comes into play only on a finding of scienter; (4) whether its operation will promote the traditional aims of punishment—retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether there is an alternative purpose to which it may rationally be connected; and (7) whether it appears excessive in relation to that alternative purpose. See id.

The Magistrate Judge found the Pennsylvania legislature intended the discipline of prisoners by the Department of Corrections to be civil/administrative in nature and that any punitive purpose or effect was subordinate to the remedial aspect. R&R, at 10-11. The Magistrate Judge's conclusion is in accordance with the past decisions the Court of Appeals for the

Third Circuit, see United States v. Newby, 11 F.3d 1143, 1145 (3d Cir. 1993)(Disciplinary segregation, transfer and the denial of good time credit by prison authorities for incident that violated prison regulations did not bar subsequent criminal prosecution and punishment for same conduct.); United States v. Stuckey, 441 F.3d 1104 (3d Cir. 1971), cert. denied, 404 U.S. 841 (1971), and the decisions of several other appellate courts. See United States v. Mayes, 158 F.3d 1215, 1224 (11th Cir. 1998); Gilchrist v. United States, 427 F.2d 1132, 1133 (5th Cir. 1970). The court finds the Magistrate Judge's Hudson analysis convincing, and adopts his conclusion that the Pennsylvania Department of Corrections' discipline scheme is generally administrative in nature.

The petitioner does not object to this general holding, but distinguishes his case because the conduct for which he was sanctioned by the Department occurred outside the prison. Obj. at 1. He argues that it is beyond the scope of the Department's authority to impose discipline for conduct occurring when he was not in Department custody, and that his prison discipline could not legitimately serve an administrative purpose. Obj at 2-3. He concludes that the prison discipline was punitive, so that further punishment for the same misconduct is barred by the Double Jeopardy Clause. Obj. at 3. The Magistrate Judge, addressing this consideration briefly, found petitioner's

contention meritless. R&R at 12-13. The Objections to the Report and Recommendation demonstrate that petitioner either did not understand the Magistrate Judge's reasoning or continues to disagree.

The Department's administrative interest in disciplining prisoner misconduct is to maintain institutional order, prevent violent altercations, and encourage good conduct in the prisons. See Newby, 11 F.3d at 1146. The court is required to defer to the prison authorities' judgment on "what is necessary and proper" to achieve those administrative ends. Id. at 1146. If the Department had a legitimate interest in petitioner's behavior at his court appearance and the discipline imposed on petitioner could reasonably serve administrative concerns, the discipline is administrative.

At the time of his misconduct, petitioner was serving a state court imposed custodial sentence, but was in the temporary physical custody of the sheriff's department at the county courthouse. He was housed at SCI-Coal Township and scheduled to return there immediately after his court proceeding. Although he was temporarily not in the physical custody of the Department, his behavior continued to be the concern and responsibility of the Department. Petitioner remained under the supervision and control of the Department during his trip to the courthouse.

Petitioner admits he violently attacked sheriff's deputies

while in their temporary custody. Although the attack did not involve prison officials, the Department could legitimately be concerned that petitioner's hostile behavior toward authorities, if not disciplined, would negatively impact institutional order upon his return to the state correctional facility.

In Mayes, prisoners moving to dismiss criminal indictments contended they had already been subjected to prison discipline and any further punishment would be barred by the Double Jeopardy Clause. Mayes, 158 F.3d 1215, 1218. The prisoners argued that because they were disciplined in a prison different from the prison where the misconduct occurred, the discipline could only serve a punitive purpose. See id. at 1220. The court concluded, without comment, that the punishment remained administrative in nature. See id. at 1224-35.

Given the deference accorded prison officials under Newby, this court concludes the Department had a legitimate administrative interest in dealing with misconduct of a prisoner under its supervision even though the misconduct did not physically occur in the state prison. Petitioner's misconduct could rationally raise concerns about future violence toward officials in the prison. See Mayes, 158 F.3d at 1224 (government has an interest in preventing violent altercations). The prison's interest in preventing such altercations is

administrative, rather than punitive.² See id.

Prison discipline having a legitimate administrative purpose bars future punishment under the Double Jeopardy Clause "only in those exceedingly rare circumstances where the disciplinary sanction imposed is grossly disproportionate to the government's interest in maintaining prison order and discipline." United States v. Hernandez-Fundora, 58 F.3d 802, 807 (2d Cir. 1994), cert. denied, 515 U.S. 1127 (1995); see also Newby, 11 F.3d at 1145. Petitioner received forty-five additional days of disciplinary segregation for the assault at the Lehigh County Courthouse. This discipline was not so severe in relation to prison authorities' remedial goal that it constituted punishment. See Hernandez-Fundora, 58 F.3d at 807 (finding prison discipline of forty-five days administrative segregation for assault "was sufficiently related to the government's remedial interest that it did not constitute punishment for double jeopardy purposes.").

CONCLUSION

Petitioner's discipline served an administrative purpose and was not grossly disproportionate to that purpose. Petitioner's

² Assuming arguendo the court found petitioner's argument that the Department had no power to discipline him for misconduct occurring outside the Department's physical custody compelling, it would not follow that the discipline he received from prison officials would bar a subsequent criminal prosecution. The infliction of discipline by the Department, if unlawful, might entitle petitioner to monetary and injunctive relief under 42 U.S.C. § 1983, rather than relief from the subsequently imposed criminal sanction.

subsequent prosecution and criminal sentence for the same assault was not a violation of the Double Jeopardy Clause. The petition for writ of habeas corpus will be denied.

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ORDER

AND NOW this 11th day of June, 2001, after careful and independent consideration of the petition for a writ of habeas corpus filed under 28 U.S.C. § 2254, review of the Report and Recommendation of Magistrate Judge Scuderi and petitioner's Objections to the Report and Recommendation, and in accordance with the attached memorandum,

it is **ORDERED** that:

1. Petitioner's Objections to the Report and Recommendation are **OVERRULED**.

2. The Report and Recommendation of Magistrate Judge Scuderi is **APPROVED** and **ADOPTED**.

3. The petition filed pursuant to 28 U.S.C. § 2254 is **DISMISSED** and **DENIED** without an evidentiary hearing.

4. There is no basis for the issuance of a certificate of appealability.

Norma L. Shapiro, S.J.