25-1571-cv
Stroud v. Stover

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 5th day of November, two thousand twenty-six.

PRESENT:

SUSAN L. CARNEY,
MICHAEL H. PARK,
SARAH A. L. MERRIAM,
Circuit Judges.

Marcus Stroud,

Petitioner-Appellant,

v. **25-1571**

Stover, Warden, Federal Bureau of Prisons,

Respondents-Appellees.

FOR PETITIONER-APPELLANT Marcus Stroud, pro se,
Atlanta, GA.

FOR RESPONDENTS-APPELLEES: John W. Larson, Assistant United States Attorney (Elena Lalli Coronado, Assistant United States Attorney, *on the brief*), *for* David X. Sullivan, United States Attorney for the District of Connecticut, New Haven, CT.

Appeal from a judgment of the United States District Court for the District of Connecticut (Nagala, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Marcus Stroud, an incarcerated person proceeding pro se, appeals from the district court's judgment denying his habeas petition under 28 U.S.C. § 2241. While incarcerated at FCI Danbury, Stroud was found to have violated Bureau of Prisons Code 297, which prohibits prisoners from "circumvent[ing]" prison efforts to monitor the frequency, content, and destination of calls from prisoners. 28 C.F.R. § 541.3 tbl. 1. As a result, Stroud lost 27 days' good-time credits as well as 90 days' commissary and phone privileges. Stroud filed a § 2241 petition, challenging the disciplinary process and resulting sanctions. He argued, among other things, that Code 297 is unconstitutionally

vague, the sanctions were unduly severe, the disciplinary investigation was "tainted" by a reporting officer's presence and interruptions when Stroud offered his statement, and the hearing report failed to describe accurately the conduct for which he was disciplined.[1] Resp. App'x at 10. The Government moved to dismiss the petition. The district court granted the motion in part and denied it in part. As relevant on appeal, the court rejected Stroud's void-for-vagueness arguments and concluded that the hearing report did not violate procedural due process, but denied the Government's motion as to Stroud's arguments concerning the severity of the sanctions and the "tainted" investigation. *Stroud v. Stover*, 23-CV-1687, 2024 WL 4513070 (D. Conn. Oct. 17, 2024). After further briefing, the district court denied the remainder of Stroud's § 2241 petition, concluding that the sanction did not violate the Eighth Amendment, and that the investigation, even if "tainted," did not violate due process. *Stroud v. Stover*, No. 23-CV-1687, 2025 WL 1581782 (D. Conn. June 3, 2025). We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

[1] Stroud also alleged that the hearing officer misunderstood the allegations and exhibited bias; that he received ineffective assistance during the disciplinary proceedings; that he was denied the opportunity to call his grandmother as a witness; and that the hearing officer's reasoning was based on a false conclusion that Stroud made a "three-way call" rather than a "third-party call." Resp. App'x at 12. Stroud does not pursue these arguments on appeal and has thus abandoned them. *See LoSacco v. City of Middletown*, 71 F.3d 88, 92–93 (2d Cir. 1995) ("[W]e need not manufacture claims of error for an appellant proceeding *pro se*, especially when he has raised an issue below and elected not to pursue it on appeal.").

"We review de novo a district court's grant or denial of a habeas petition brought under 28 U.S.C. § 2241." *Black v. Decker*, 103 F.4th 133, 142 (2d Cir. 2024). "A writ of habeas corpus under § 2241 is available to a federal prisoner who does not challenge the legality of his sentence, but challenges instead its execution subsequent to his conviction." *Carmona v. U.S. Bureau of Prisons*, 243 F.3d 629, 632 (2d Cir. 2001); *see also Thompson v. Choinski*, 525 F.3d 205, 209 (2d Cir. 2008). Accordingly, a "petition to expunge the Bureau [of Prison]'s disciplinary sanctions . . . including the loss of good time credits . . . is properly brought via an application for a writ under § 2241." *Carmona*, 243 F.3d at 632.[2]

We conclude that the district court properly denied Stroud's § 2241 challenge to his disciplinary sanctions. The district court correctly rejected his arguments that BOP Code 297 was unconstitutionally vague, that the sanction imposed was unduly severe, and that the disciplinary proceeding violated due process.

First, Code 297 is not impermissibly vague, either facially or as applied to Stroud. Code 297 prohibits the "[u]se of the telephone for abuses other than illegal activity which circumvent the ability of staff to monitor frequency of telephone use, content of the call, or the number called." 28 C.F.R. § 541.3 tbl. 1. We agree with the district court that this

[2] "Because petitioner is a federal prisoner and effectively filed his petition pursuant to 28 U.S.C. § 2241, the Antiterrorism and Effective Death Penalty Act's certificate of appealability requirement does not apply to him." *Murphy v. United States*, 199 F.3d 599, 601 n.2 (2d Cir. 1999).

language is not "so fatally indefinite that it cannot constitutionally be applied to anyone." *Copeland v. Vance*, 893 F.3d 101, 110 (2d Cir. 2018). Nor was Code 297 impermissibly vague as applied to Stroud. When deciding an as-applied vagueness challenge, a "court must first determine whether the statute gives the person of ordinary intelligence a reasonable opportunity to know what is prohibited." *Farid v. Ellen*, 593 F.3d 233, 240 (2d Cir. 2010). Code 297 offered Stroud a "reasonable opportunity" to know that using a third-party service to call one number from the prison but connect with a second, different number through call-forwarding was prohibited. Stroud also knew his conduct was forbidden because he had previously been sanctioned for a similar violation of Code 297. His as-applied vagueness argument fails.

Second, the sanction was not unduly severe. 28 C.F.R. § 541.4(a) makes loss of good-time credits a "mandatory disciplinary sanction" for offenders who committed the crimes leading to their imprisonment "on or after April 26, 1996." Stroud's offense of conviction occurred after that date. 28 C.F.R. 541.4(b) provides that such an offender will lose "at least 27 days" of credit if he commits a "High Severity" disciplinary offense, like a violation of Code 297. *See* 28 C.F.R. § 541.3 tbl.1. That provision has not been repealed. So the 27-day sanction was mandatory and not unduly severe. We further agree with the district court that the sanctions Stroud received for violating Code 297 did

not violate the Eighth Amendment. *See generally Trammell v. Keane*, 338 F.3d 155, 163 (2d Cir. 2003) (analyzing prison disciplinary measures under the Eighth Amendment).

Third, the district court correctly rejected Stroud's argument that his interview was "tainted." To satisfy due process in the prison context, an inmate must be provided "advance written notice of the claimed violation," "a written statement of the factfinders as to the evidence relied upon and the reasons for the disciplinary action taken," and the ability "to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." *Wolff v. McDonnell*, 418 U.S. 539, 563, 566 (1974). Stroud's rehearing satisfied these requirements, so even if the initial investigation had been tainted, it would not have denied him procedural due process.

Finally, we agree with the district court that the hearing officer's written report satisfied due process even if the statement's "reason for sanction or action taken" section did not reference Stroud making a "third-party call." Resp. App'x at 25. On appeal, Stroud reiterates that the absence of a reference to a third-party call violated his procedural due process rights. But as the district court explained, "the statement adequately informed [Stroud] that" he was subject to discipline for "his use of the phone in an unauthorized manner," which "pose[d] a serious threat to the ability of the staff to

monitor/control inmate telephone use." *Stroud v. Stover*, No. 23-CV-1687, 2024 WL 4513070, at *9 (D. Conn. Oct. 17, 2024) (internal quotation marks omitted). Furthermore, the hearing officer's report *did* describe Stroud's actions in detail, including that he "was calling a third-party service to re-route his phone call." Resp. App'x at 25.

We have considered all of Stroud's arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court