

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

PAMELA JEAN ANDERSON,)	
)	
Petitioner,)	Civil Action No. 7:01cv00497
)	
v.)	<u>Memorandum Opinion</u>
)	
PATRICIA L. HUFFMAN, WARDEN,)	
VIRGINIA DEP'T OF CORRECTIONS,)	By: Samuel G. Wilson
)	Chief United States District Judge
Respondent.)	

This is a petition by Pamela Jean Anderson (“Anderson”) for writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging nine prison disciplinary convictions at the Fluvanna Correctional Center for Women in Troy, Virginia. Anderson petitioned the Supreme Court of Virginia for habeas relief on these claims after exhausting her administrative remedies, and the Supreme Court dismissed her petition as frivolous on June 25, 2001. Anderson alleges that the disciplinary proceedings, convictions and resulting punishments violated her rights to due process, her right to refrain from self-incrimination and her right to be free from selective prosecution. Respondant has filed a motion to dismiss Anderson’s petition. Anderson has responded to that motion and filed a motion for summary judgment. For the reasons that follow, the court will dismiss her petition.

I.

From December 10, 1999 through January 16, 2001, prison officials charged and convicted Anderson with nine violations of prison regulations. Anderson claims that all nine of the corresponding disciplinary proceedings violated her rights to due process. Anderson’s punishments included a five dollar fine, loss of commissary of up to twenty days and up to fifteen

days solitary confinement. Anderson did not lose good time credits as a penalty for her convictions. However, Anderson claims that her two convictions on December 10, 1999, for stealing and for unauthorized use of the mail caused her to lose the reduction of her Good Credit Allowance Level, thus depriving her of over ninety days of good time credit. With respect to these two disciplinary proceedings, Anderson claims that prison officials violated her due process rights by contacting her about the charges prior to the hearings, and by not notifying her of the result of her appeals within the period required by prison policy.

Next, Anderson claims that she was selectively prosecuted for possession of contraband which resulted in her conviction on June 22, 2000. Anderson claims that during a quarterly search of the prison wing containing her cell, prison officials discovered in all the inmates' cells materials for making stationary cards, which were supplied by a creative writing volunteer for use in a card making project for the Lousia County Nursing Home. Anderson claims that she was the only inmate on her wing charged with possession of contraband, despite the fact that prison officials found the same materials in all the inmates' cells and allowed all the other inmates to discard them.

Finally, Anderson claims that officials failed to protect her right not to incriminate herself. Anderson alleges that on January 16, 2001, prison officials brought her to a hearing room because they believed she possessed information regarding another inmate's plan to violate prison regulations. Sergeant Armstrong, Paul Rice, Counselor Cox, Secretary Gibson, and two trainees were present at the meeting. Anderson refused to provide the requested information as long as Counselor Cox and Secretary Gibson were present, because she believed they lacked the discretion necessary to avoid letting the inmate know that Anderson had informed on her. When

Anderson refused the officials' request, Sergeant Armstrong threatened to charge her with aiding and abetting a crime. Anderson still refused to provide the information, and was charged and convicted for disobeying a direct order.

II.

Under the Antiterrorism and Effective Death Penalty Act, a federal court may only grant habeas relief with respect to a claim adjudicated on the merits in state court if the state court's adjudication: (1) "resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States," or (2) "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.," 28 U.S.C. § 2254(d)(1), (d)(2). A state court adjudication is considered "contrary to" clearly established federal law if "the state court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law or if the state court decides a case differently than [the Supreme] Court has on a set of materially indistinguishable facts." Williams v. Taylor, 529 U.S. 362, 412-13 (2000). A state court decision constitutes an unreasonable application of clearly established federal law if the court identifies the governing legal principle, but "unreasonably applies that principle to the facts of the prisoner's case." Id. at 413. Where a federal habeas court determines that the state court applied federal law incorrectly, it may not grant relief unless it also finds that the incorrect application is unreasonable. Id. at 411. Pursuant to section 2254(b)(1), a federal court may not grant a writ of habeas corpus unless the petitioner has exhausted his state remedies.

While a summary state court decision is an adjudication on the merits, to the extent the state court fails to articulate the reasoning or basis for its decision, the federal habeas court must

conduct an independent review of the record and applicable law. Bell v. Jarvis, 236 F.3d 149, 163 (4th Cir. 2000). However, the review is not de novo, in that the federal habeas court must not independently determine whether the petitioner's constitutional rights were violated. Id. Instead, the federal habeas court must uphold the state court's decision unless it is clear that the result reached by the state court represents an unreasonable application of clearly established federal law, or an unreasonable determination of the facts in light of the evidence presented. Id.

On direct appeal of her convictions and during the state habeas proceeding, Anderson raised the claims she now raises in her federal petition. Thus, she has exhausted her state claims and her petition is properly before this court. Although the Supreme Court of Virginia summarily dismissed her habeas petition as frivolous, its decision counts as an adjudication on the merits for the purposes of section 2254. Bell, 236 F.3d at 163. Consequently, this court will apply the correct federal law to determine if the result reached by the Virginia Supreme Court was directly contrary to or an unreasonable application of that law, or was based on an unreasonable determination of the facts in light of the evidence presented.

A. Due Process Claims

Convicted prisoners relinquish many rights upon incarceration. Thus, in order to implement the procedural safeguards of the Fourteenth Amendment's Due Process Clause in the context of prison disciplinary proceedings, a prisoner's punishment must impose an atypical and significant hardship in relation to ordinary prison life, or the institutional conviction must inevitably affect the duration of his sentence. See Sandin v. Conner, 515 U.S. 472 (1995).

Anderson claims procedural due process violations in all nine of her disciplinary convictions. With the exception of her two convictions in December 1999, the court finds that

Anderson's convictions do not implement the procedural protections of the Due Process Clause. Anderson claims that the two convictions in December 1999 deprived her of over 90 days of good time credit because they prevented the reduction of her Good Credit Allowance Level. The court will assume without deciding that these two proceedings against Anderson inevitably affected the duration of her sentence and will thus subject those convictions to due process scrutiny. With respect to the remaining disciplinary proceedings, the court finds that Anderson has presented no allegations suggesting that the punishments she received imposed an atypical and significant hardship in relation to ordinary prison life. Moreover, Anderson has not alleged that the convictions resulted in a loss of earned good time credits. Therefore, except for the convictions in December 1999, the disciplinary proceedings against Anderson do not implement federal due process protection.

If an inmate's disciplinary conviction will inevitably increase the duration of her sentence, the Due Process Clause requires only that prison officials provide the inmate: (1) written notice at least 24 hours before the hearing; (2) the opportunity to call witnesses "if consistent with institutional safety and correctional goals;" and (3) a written statement of the reasons for the action. Wolff v. McDonnell, 418 U.S. 539, 563-67 (1974). The court finds that Anderson's proceedings with respect to her conviction in December 1999 for stealing and for unauthorized use of the mail fully complied with due process. Anderson claims due process violations because the officer who charged her contacted her about the charge before the hearing in violation of prison policy and because her appeals took longer than the time provided by prison regulations. Neither of these allegations, if true, violate the guarantees set forth in Wolff. Accordingly, even if Anderson's disciplinary convictions in December 1999 implemented federal due process

protection by affecting the duration of her sentence, Anderson received all the procedural protection that the Constitution requires.

B. Self-Incrimination Claim

Next, Anderson claims that prison officials violated her constitutional right to refrain from self-incrimination. Anderson erroneously construes the right not to incriminate oneself as the right to remain silent. Rather than affording inmates the right to remain silent, the Fifth Amendment, applicable to the states through the Fourteenth Amendment, provides that “[n]o person shall . . . be compelled in any criminal case to be a witness against himself.” U.S. Const. Amend. V. However, this Fourteenth Amendment protection does not apply in the prison context. See Wolff, 418 U.S. at 563-67 (setting forth the minimum process due in prison disciplinary proceedings); Morrissey v. Brewer, 408 U.S. 471, 480 (1971) (noting that the “full panoply of rights” are not due in prison disciplinary proceedings). Even if the self-incrimination clause were applicable, however, Anderson would have failed to invoke it because she has not alleged that she was forced to incriminate herself, but that she was sanctioned for failing to provide information regarding another inmate. Accordingly, Anderson’s self-incrimination claim must fail.

C. Selective Prosecution Claim

Federal law prohibits the decision to prosecute based on race, religion, other arbitrary classifications, or the exercise of constitutionally or statutorily protected rights. Wayte v. United States, 470 U.S. 598, 608 (1985). In order to prevail on a selective prosecution claim, a defendant must show that enforcement against him “had a discriminatory effect and . . . was motivated by a discriminatory purpose.” Id. Thus, the claimant must “establish both (1) that

[she] has been "singled out" while others similarly situated have not been prosecuted; and (2) that the decision to prosecute [her] was invidious or in bad faith, i.e., based upon such impermissible considerations as race, religion, or the desire to exercise [her] constitutional rights." United States v. Greenwood, 796 F.2d 49, 52 (4th Cir. 1986).

The court finds that Anderson's selective prosecution claim fails because she has not alleged that prison officials prosecution of her for possession of contraband was invidious or in bad faith. Anderson simply alleges that she was the only inmate prosecuted for possessing prohibited materials while the other inmates were permitted to dispose of them. The mere claim that prison officials chose to prosecute Anderson and not others, without allegations that the officials were motivated by racial or religious bias or another unconstitutional discriminatory purpose, does not make out a claim for selective prosecution.

III.

For the foregoing reasons, the court concludes that the Virginia Supreme Court's dismissal of Anderson's habeas petition was not directly contrary to or an unreasonable application of federal law, and was not based on an unreasonable determination of the facts in light of the evidence presented. Accordingly, the court will dismiss Anderson's federal habeas petition. An order in accordance with this opinion will be entered this day.

ENTER: this __ day of March, 2002.

CHIEF UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
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PAMELA JEAN ANDERSON,)	
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Petitioner,)	Civil Action No. 7:01cv00497
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v.)	<u>FINAL ORDER</u>
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PATRICIA L. HUFFMAN, WARDEN,)	
VIRGINIA DEP'T OF CORRECTIONS,)	By: Samuel G. Wilson
)	Chief United States District Judge
Respondent.)	

In accordance with the written Memorandum Opinion entered this day, it is hereby

ORDERED AND ADJUDGED

that Pamela Jean Anderson's petition under 28 U.S.C. § 2254 for writ of habeas corpus is hereby
DISMISSED. This action is stricken from the active docket of the court.

ENTER: This ___ day of March, 2002.

CHIEF UNITED STATES DISTRICT JUDGE