

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

IN THE MATTER OF THE
PERSONAL RESTRAINT OF:

CHAYCE ARDEN HANSON,

Petitioner.

No. 83684-6-I

ORDER OF DISMISSAL

Chayce Hanson filed this personal restraint petition challenging the sanctions imposed by the Department of Corrections (DOC) following a prison disciplinary action. In order to obtain relief in this setting, Hanson must demonstrate that he is being “restrained under RAP 16.4(b) and that the restraint is unlawful under RAP 16.4(c).” In re Pers. Restraint of Grantham, 168 Wn.2d 204, 227 P.3d 285 (2010) (quoting In re Pers. Restraint of Isadore, 151 Wn.2d 294, 229, 88 P.3d 390 (2004)). Because Hanson fails to meet this burden, his petition must be dismissed.

BACKGROUND

On June 25, 2021, corrections officers Oscar Tavaréz and Kyle Heinen conducted a suspicion search of Hanson’s cell. Hanson received two search reports documenting this incident. The search report form has blank spaces to list the “search employee(s)”, items confiscated during the search, the disposition of each item, and whether or not an infraction report was issued. The first report shows Tavaréz and Heinen as the search employees. It lists multiple items of

confiscated property, one of which was described as "Books (wrong DOC [number] & Altered)." The disposition for this item was marked "Trash" and the infraction report box was checked "No." The second report lists corrections officer Raul Lopez as the search employee. Unlike the original search report, the second report lists only one confiscated item, described as "New American Bible (Altered)." The disposition for this item was marked "Evidence" and the infraction report box was checked "Yes." Although Hanson received the second search report one day after receiving the original report, both were marked with the identical date and time.

On June 30, 2021, DOC charged Hanson with violating WAC 137-25-030(893) (damaging, altering, or destroying any item that results in the concealment of contraband or demonstrates the ability to conceal contraband). The initial serious infraction report, written by Officer Lopez, described the incident as follows:

On 6-25-21 at approximately 1030 hours, ERT officers Tavares and Heinen conducted a suspicion cell search of EB36, housing Hanson 822374. They confiscated several books that were inside of a laundry bag because they were either altered or had wrong doc numbers on them. CO Tavares informed me that one of those books was a New American Bible, which had a large hole cut out in the center of the pages. I examined the bible and observed that the cut out hole appeared to be the shape of a cellphone or an object of the same size. When the bible was closed, you could not see the large cut out hole in the center of it. I photographed the bible and secured it in an evidence bag. When I questioned offender Hanson about the altered bible that they had found in his cell, his reply was that he had taken it from the book cart and placed it inside of a laundry bag with other books, so that he could work out in his cell. I informed offender Hanson that he was possibly subject to a WAC 893 infraction for being in possession of any item that was damaged or altered, that resulted or demonstrated the ability to conceal contraband.

On July 1, 2021, Hanson received and signed a disciplinary notice form informing him of the charge and advising him of his rights and hearing date. The originally scheduled hearing date was continued in order to obtain witness statements requested by Hanson. Prior to the hearing, Hanson also received copies of the hearing continuance form, initial serious infraction report, and incident report.

A disciplinary hearing commenced on July 13, 2021. Hanson attended the hearing and entered a plea of not guilty. Hanson argued that the altered Bible could not have come from his cell because the original search report indicated that the books confiscated from his cell had been placed in the trash. He claimed that he observed Tavares and Heinen dumping the contents of his book-filled laundry bag into a trash bin on the tier below. Hanson also claimed that Tavares and Heinen returned about 45 minutes after the search to ask him, Sidor, and Jones whether the altered Bible belonged to them. On this basis, Hanson argued that the second search report was fabricated and there was no proof the altered Bible was found in his cell. The hearing officer continued the hearing pending receipt of witness statements from Lopez, Tavares, and Heinen.

The disciplinary hearing resumed on July 20, 2021. Lopez stated that Tavares and Heinen showed him the altered Bible and said they found it in Hanson's cell, and he recorded this on the second search report. Tavares and Heinen denied that the books found in Hanson's cell were placed in the trash and explained that they did not ask Hanson or neighboring inmates about the altered Bible because it was found inside the laundry bag in Hanson's cell.

Next, the hearing officer discussed the surveillance video recorded during the search. The video showed the corrections officers dropping books and papers over the railing onto the concrete below, where another officer picked them up and placed them in a trash bin. The hearing officer observed that the video shows the officers carrying the book-filled laundry bag out of the room and towards the officer's station. He further noted that the altered Bible has a red cover, but none of the items dropped over the railing were red. The hearing officer thus concluded that the video did not support Hanson's claim that the searching officers dumped the laundry bag and its contents into the trash.

Hanson insisted that the original search report was "controlling" and that the second search report was invalid because it was backdated and showed Lopez as the search employee. He asserted that the second search report violated DOC policy. The hearing officer acknowledged that the second search report "wasn't really needed" as the officers could have simply stricken the word "trash" from the original report and replaced it with "evidence," but he did not agree that it violated DOC policy.

Based upon the documentary evidence, including witness statements, search reports, video surveillance footage of the cell search, photographs of the altered Bible, and the altered Bible, the hearing officer found Hanson guilty as charged. In reaching this conclusion, the hearing officer stated:

I am persuaded by the staff reports, witness statements and video review that a book was found in Hanson's cell that has been altered to conceal contraband; it has portions of pages removed, creating a void, resembling the size/shape of a cell phone. The follow-up search report

is not necessary as the original indicates that they removed books from the cell.

Hanson was sanctioned with 45 days loss of gym and yard time. Hanson appealed, and the decision and sanction was affirmed.

DISCUSSION

“Prisoners facing discipline are not entitled to the full panoply of constitutional protections afforded defendants facing criminal charges.” Grantham, 168 Wn.2d at 214-15. Review of prison disciplinary proceedings is limited to a determination of whether the action taken was “so arbitrary and capricious as to deny the petitioner a fundamentally fair proceeding.” In re Pers. Restraint of Reismiller, 101 Wn.2d 291, 294 678 P.2d 323 (1984). The proceeding is not arbitrary and capricious if the petitioner received the minimal due process applicable to the prison disciplinary setting. In re Pers. Restraint of Gronquist, 138 Wn.2d 388, 396, 978 P.2d 1083 (1999). Minimal due process in the prison disciplinary setting “means the prisoner must (1) receive notice of the alleged violation, (2) be provided an opportunity to present documentary evidence and call witnesses when not unduly hazardous to institutional safety and correctional goals, and (3) receive a written statement of the evidence relied upon and the reasons for the disciplinary action.” Gronquist, 138 Wn.2d at 396-97 (citing Wolff v. McDonnell, 418 U.S. 539, 563-66, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974)). The evidentiary requirements of due process are met if there is “some evidence” that the infraction occurred. Superintendent v. Hill, 472 U.S. 445, 455-56, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985). There must be “some reasonable connection between the evidence and the inmate in order to support actions taken by the prison disciplinary board.”

In re Pers. Restraint of Anderson, 112 Wn.2d 546, 549, 772 P.2d 510 (1989). It is not the role of this court to re-weigh the evidence considered by the hearing officer. Johnston, 109 Wn.2d at 497.

Procedural Due Process

Hanson first argues that the search report procedure violated his due process rights. This is so, he contends, because (1) the original search report accurately stated that any altered books found in his cell were placed in the trash and (2) the second search report, which was backdated and signed by Lopez, was false and issued in violation of DOC policy. But the record shows that Hanson received the minimal due process to which he is entitled in this setting. Hanson received notice of the violation and copies of both search reports prior to the hearing; was given an opportunity to present evidence and call witnesses; and received a written statement of the evidence relied upon and the reasons for the disciplinary action.

Contrary to Hanson's claim, the record shows that the hearing officer did not rely on the second search report in determining Hanson's guilt. Rather, he relied on staff reports, witness statements, the surveillance video, and the altered Bible in ascertaining the reason for the disparity between the search reports and concluding that the altered Bible came from Hanson's cell. And Hanson does not argue that the search itself, or the issuance of the original search report, violated DOC policy. The search was conducted by two employees, as recommended by DOC Policy 420.320(IV)(D)(1) ("[c]ell searches should be conducted with a minimum of 2 employees). The search was also documented in a search report, with a copy

given to Hanson as required by DOC Policy 420.320(VII). Any procedural irregularity in issuing a second backdated cell receipt, which informed Hanson of the correct disposition of the altered Bible found in his cell, did not deny Hanson a fundamentally fair proceeding or violate DOC policy.

Hanson further argues that he was denied due process because DOC allegedly failed to provide him with the corrections officers' witness statements 24 hours in advance of the continued hearing. WAC 137-28-285(1)(b) states that an offender charged with a violation has the right to "[w]ritten notice of the alleged violation(s) and a summary of the supporting evidence at least twenty-four hours before the hearing[.]" DOC Policy 460.000(IV)(C) provides that "[t]he offender will be notified of the date, time, and place of the hearing and served DOC 05-093 Disciplinary Hearing Notice/Appearance Waiver not less than 24 hours before the hearing, including DOC 17-076 Initial Serious Infraction Report, supporting non-confidential documents, and summaries of supporting evidence and any confidential information."

Hanson contends that the inconsistencies in the witness statements could have been disputed with more time to rebut the new evidence. But Hanson offers no support for this conclusory assertion. A personal restraint petition must set out the facts underlying the claim and the evidence available to support the factual assertions. In re Pers. Restraint of Rice, 118 Wn.2d 876, 885-86, 828 P.2d 1086 (1992). Bare assertions and conclusory allegations are not sufficient to command judicial consideration and discussion in a personal restraint proceeding. Id. at 886.

Hanson has not shown that he was denied a fundamentally fair proceeding on this basis.

Sufficiency of the Evidence

Hanson argues that the finding of guilt was made in the absence of any evidence connecting him to the altered Bible. This is so, he contends, because the hearing officer based his finding of guilt on the second, invalid search report rather than the original search report. However, as previously discussed, the hearing officer reviewed all of the evidence in the record – most notably the surveillance video – in concluding that the altered Bible came from Hanson’s cell.

Hanson further argues that the altered Bible cannot be used as evidence against him because the second cell search report broke the chain of custody. This argument is conclusory and unsupported by evidence. A personal restraint petition must set out the facts underlying the claim and the evidence available to support the factual assertions. Rice, 118 Wn.2d at 885-86. Bare assertions and conclusory allegations are not sufficient to command judicial consideration and discussion in a personal restraint proceeding. Id. at 886. And the evidence card shows no break in the chain of custody.

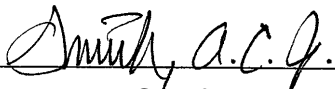
Hanson’s reliance on Reismiller is misplaced. In Reismiller, our Supreme Court held that the prison disciplinary hearing committee’s finding that the petitioner was guilty of possessing marijuana was arbitrary and capricious where “no attempt was made to connect the cigarette to Reismiller.” Reismiller, 101 Wn.2d at 296. Here, in contrast, the witness statements of the corrections officers were read into the record establishing that the altered Bible was found in a laundry bag in

Hanson's cell, the video corroborated their statements, the evidence card shows the chain of custody of the altered Bible, and Hanson admitted to keeping books in the laundry bag

Hanson makes no showing that he was denied a fundamentally fair proceeding or that the finding of guilt was based on less than constitutionally sufficient evidence. Because Hanson fails to establish that his restraint is unlawful, his petition must be dismissed. In re Pers. Restraint of Khan, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015).

Now, therefore, it is hereby

ORDERED that this personal restraint petition is dismissed under RAP 16.11(b).


Acting Chief Judge