

must remain infraction-free for six months and complete a behavior management program before being returned to the general population.

Although Phipps maintains that he has a protected liberty interest in his custody level and classification, Washington courts have consistently rejected this contention. It is well-settled that inmates in Washington have no constitutional right to remain in the general prison population. In re Pers. Restraint of Galvez, 79 Wn. App. 655, 657, 904 P.2d 790 (1995) (citing Hewitt v. Helms, 459 U.S. 460, 468, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983)). Nor does an inmate have a protected liberty interest in maintaining a favorable custody level. In re Pers. Restraint of Dowell, 100 Wn.2d 770, 773, 674 P.2d 666 (1984); see also Meachum v. Fano, 427 U.S. 215, 225, 96 S. Ct. 2532, 49 L. Ed. 2d 451 (1976) (transfer from general population to maximum security is “within the normal limits or range of custody which the conviction has authorized the State to impose[.]” even when the conditions in maximum security are “substantially more burdensome”). Rather, an inmate’s constitutionally protected rights are only implicated when he or she faces restraint that “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” Sandin v. Conner, 515 U.S. 472, 484, 115 S. Ct. 2293, 132 L. Ed 2d 418 (1995).

Phipps argues that DOC failed to follow its own policies and procedures in placing him on IMS, claiming, amongst other things, that DOC did not provide him adequate notice of the “proscribe [sic] behavior.” However, the authority Phipps cites in support of this argument involves prison disciplinary proceedings.

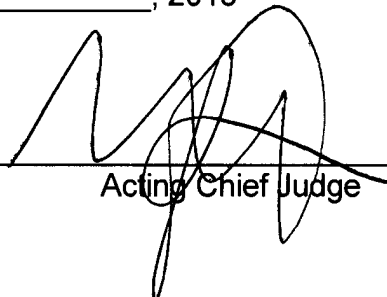
Administrative segregation and IMS are non-punitive placements. See WAC 137-

32-002(8) (“Administrative segregation status’ means segregation of an inmate of an institution for nondisciplinary reasons.”); WAC 137-32-002(9) (“Intensive management status’ means an assignment to administrative segregation for an extended period after other alternatives have been explored.”). Phipps also claims that because this particular infraction was dismissed, there was no basis for his change in custody level and classification. But DOC is authorized to segregate inmates who present a threat to the security of the institution based on a chronic history of behavioral problems. Phipps does not deny that he has a lengthy history of disruptive behavior nor that he has continued to receive infractions for lying to staff and refusing directions while on IMS. As such, his claims are frivolous.

Because Phipps does not demonstrate he is under restraint or that such a restraint is unlawful, we dismiss the petition. Now, therefore, it is hereby

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

Done this 4th day of March, 2013



Acting Chief Judge

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 MAR -4 AM 9:48

RICHARD D. JOHNSON,
Court Administrator/Clerk

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March 4, 2013

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CASE #: 69385-9-I
Personal Restraint Petition of Linniell Phipps, Jr

Counsel:

Enclosed please find a copy of the Order Dismissing Personal Restraint Petition entered by this court in the above case today.

Pursuant to RAP 16.14(c), "the decision is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in Rule 13.5A."

This court's file in the above matter has been closed.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

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enclosure