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

| | | |
|---|---|---|
| IN THE MATTER OF THE PERSONAL RESTRAINT OF: | ) | No. 78565-6-I |
| GARY J. ALEXANDER, | ) | ORDER OF DISMISSAL |
| Petitioner. | ) | |

Gary Alexander 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, Alexander 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, 290 (2010) (quoting In re Pers. Restraint of Isadore, 151 Wn.2d 294, 298, 88 P.3d 390 (2004)). Because Alexander fails to meet this burden, his petition is dismissed.

On December 6, 2017, Alexander was infracted for violating WAC 137-25-030 (603) (introducing or transferring any unauthorized drug or drug paraphernalia). The infraction report, written by Robert Howard, a DOC investigator, reads as follows:

> On 12/04/2017 I recovered a handwritten letter in an envelope with the return of: Gary Alexander 7100 Greenwood Ave. N #405 Seattle, WA 98133. The recipient is: Janet Marci 31707 50th Terrace SW #5304 Federal Way, WA 98023. Gary Alexander #943861, is housed at MSU and Janet Marci is his mother, at that address, as listed in OMNI. I read the letter, dated "Dec. 4, 2017". In the letter, Alexander mentions other offenders, both from/at MSU. One was released that day and one is to be released mid-December, 2017. The latter, according to the letter, was to help with getting 'Suboxone' strips and

> a manila envelope stamped “Legal Mail” to Marci, who would then act as overseer as the offenders put together the packet with the hidden Suboxone strips. The offender was then going to send in the packet, exploiting the legal mail system, directly to Alexander. On 12/05/2017 I interviewed Alexander, who admitted his scheme to exploit the legal mail system to get in Suboxone strips, as described, above. His incentive, he said, was to make money selling the strips as he loses 95% of whatever he gets.

Alexander received a disciplinary hearing notice listing his rights. Alexander signed the notice and did not request any witness statements on his behalf.

A disciplinary hearing was held on December 12, 2017. Alexander testified that he drafted the letter as part of an agreement that he made with other inmates who were behaving in a threatening manner toward him. Alexander stated that the letter was a ruse designed to placate the other inmates, who believed he was a snitch, and that he had no intention of actually smuggling drugs into the prison. In addition to Alexander’s testimony, the hearing officer reviewed a written staff statement noting that Alexander admitted to the scheme as a means of making money. After a review of all of the evidence, the hearing officer found Alexander guilty of the infraction and sanctioned him with 9 days in segregation, 30 days of lost good conduct time, 60 days of lost privileges and 60 days of lost visitation.

Review of prison disciplinary proceedings is limited to a determination of whether the action taken was so arbitrary and capricious as to deny the inmate a fundamentally fair proceeding. In re Pers. Restraint of Reismiller, 101 Wn.2d 291, 294, 678 P.2d 323 (1984). A disciplinary proceeding is not arbitrary and capricious if the inmate was afforded the applicable minimum due process protections and the decision was supported by at least some evidence. In re Pers.

Restraint of Krier, 108 Wn. App. 31, 38, 29 P.3d 720 (2001). Due process requires that an inmate facing a disciplinary hearing receive adequate notice of the alleged violation, an opportunity to present documentary evidence and call witnesses when not unduly hazardous to institutional safety and correctional goals, and a written statement of the evidence relied upon and the reasons for the disciplinary action. In re Pers. Restraint of Gronquist, 138 Wn.2d 388, 396-97, 978 P.2d 1083 (1999). The evidentiary requirements of due process are satisfied if there is "some evidence" in the record to support a prison disciplinary decision. In re Pers. Restraint of Johnston, 109 Wn.2d 493, 497, 745 P.2d 864 (1987), (quoting Superintendent, Mass. Correctional Inst. v. Hill, 472 U.S. 445, 455-56, 86 L. Ed. 2d 356, 105 S. Ct. 2768 (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.

Alexander first contends that the hearing violated due process because Howard omitted material information from his report such as how he obtained the letter and the names of any witnesses involved. He argues that this denied him the opportunity to call witnesses on his behalf. But it is clear from the record that Alexander was provided the opportunity to call witnesses when he received the notice of the infraction. The hearings officer also reiterated at the beginning of the

hearing that Alexander had the right to call witnesses on his behalf. Both times, Alexander chose not do so. Alexander does not establish a due process violation.[1]

Alexander next contends that the hearing officer did not consider the statement Alexander made on his own behalf. The record does not support this claim. Both the infraction report and the transcript show that Alexander explained his reasons for writing the letter at the hearing. The hearing officer acknowledged that Alexander claimed the letter was "a ruse" but nevertheless found that the evidence supported a guilty finding.

Alexander additionally claims that the evidence was insufficient to support the guilty finding. He argues that he cannot be found guilty because the letter itself was not submitted into evidence. He argues that the only evidence supporting the guilty finding was "the incomplete, hearsay summary report" written by Howard. Here, however, the infraction report indicates that the hearing officer reviewed the letter. The record of the proceedings as transcribed by Alexander also shows that the hearing officer reviewed the letter.[2] Moreover, it is clear that "the hearsay report of a prison official who did not witness an infraction can constitute 'some evidence' to support the conclusion of guilt for the infraction." In re Pers. Restraint of Leland, 115 Wn. App. 517, 537, 61 P.3d 357 (2003), abrogated on other grounds by In re Pers. Restraint of Higgins, 152 Wn.2d 155, 95 P.3d 330 (2004).

[1] Moreover, nothing prevented Alexander from obtaining a witness statement from Howard regarding the events.
[2] The letter is also part of the record before this court.

Alexander next argues that the evidence was insufficient to support the infraction because "the infraction requires the actual introduction of drugs" and "[n]o 'conspiracy' was ever charged." But WAC 137-25-030 is clear that "[a]ttempting or conspiring to commit one of the following violations, or aiding and abetting another to commit one of the following violations, shall be considered the same as committing the violation." Here, DOC intercepted a letter in which Alexander clearly asked his mother to participate in a scheme in which she would mail Alexander suboxone in the prison, disguised as Alexander's legal mail. Alexander admitted to the facts supporting the infraction. The evidence in the record exceeds the "some evidence" threshold necessary to support the infraction.

Finally, Alexander argues that Howard blackmailed him into signing a confession and the only reason that he signed the confession was to protect his mother.[3] He also claims that, in retaliation for successfully appealing the sanctions imposed in a prior disciplinary hearing, Howard spread rumors that Alexander was a snitch, necessitating Alexander "to come up with some 'shit' (drugs) or his time on mainline was up." But 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). Unsupported assertions or vague allegations are not sufficient. Rice, 118 Wn.2d at 886 (competent, admissible evidence, such as affidavits, required to establish facts entitling petitioner to relief); see also RAP 16.7(a)(2)(i) (a personal restraint

[3] Alexander claims that Howard stated "your [sic] in alot of trouble, but I will leave your mom alone, and get you out of seg quickly, if you sign this statement."

petition must include as grounds for the requested relief "[a] statement of ... the facts upon which the claim of unlawful restraint of petitioner is based and the evidence available to support the factual allegations."). Alexander does not provide the necessary evidence to support these claims.

Because Alexander 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, the petition is dismissed.[4] Now, therefore, it is hereby

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

Mann, A.C.J.

Acting Chief Judge

[4] In reply, Alexander challenges the sufficiency of the evidence regarding "the WAC 752" infraction. While this is presumably a typographical error, to the extent that Alexander raises new claims in his reply brief, this court will not consider them. See RAP 10.3(a)-(c); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (an issue raised and argued for the first time in a reply brief is too late to warrant consideration).

RICHARD D. JOHNSON,
*Court Administrator/Clerk*

*The Court of Appeals*
of the
*State of Washington*

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

October 18, 2018

Candie M Dibble
Office of the Attorney General
1116 W Riverside Ave Ste 100
Spokane, WA 99201-1113
candied@atg.wa.gov

Gary Joseph Alexander
DOC# 943861
Monroe Corr Center - TRU
PO BOX 888
Monroe, WA 98272

Department of Corrections A.G. Office
Attorney at Law
PO Box 40116
Olympia, WA 98504-0116
correader@atg.wa.gov

CASE #: 78565-6-I
Personal Restraint Petition of Gary Joseph Alexander

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

LAM

enclosure