

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

Filed  
Washington State  
Court of Appeals  
Division Two

November 19, 2018

In re the Personal Restraint Petition of  
  
HARMON C. TIMMONS,  
  
Petitioner.

No. 52103-2-II

ORDER DISMISSING PETITION

Harmon Timmons seeks relief from the sanctions imposed<sup>1</sup> following the Department of Corrections' determination that he had violated WAC 137-25-030(728) (possessing sexually explicit materials). We review prison disciplinary proceedings to determine whether the Department's action was so arbitrary and capricious as to deny the petitioner a fundamentally fair proceeding. *In re Reismiller*, 101 Wn.2d 291, 294, 678 P.2d 323 (1984). In doing so, we look to whether petitioner received the due process protections afforded him under *Wolff v. McDonnell*, 418 U.S. 539, 563-65, 41 L. Ed. 2d 935, 94 S. Ct. 2963 (1974). These protections include: (1) advance written notice of the charged violations; (2) the opportunity to present documentary evidence and call witnesses when not unduly hazardous to institutional safety and correctional goals; and (3) a written statement of the evidence relied on and the reasons for the disciplinary action. Timmons received all of these protections.

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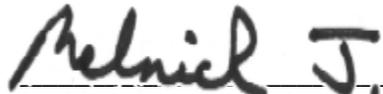
<sup>1</sup>.Seven days of cell confinement, suspended for 60 days. In that Simmons did not lose any good time credits, it is questionable whether he has a protected liberty interest that would allow him to obtain relief through a personal restraint petition. *In re Personal Restraint of Gronquist*, 138 Wn.2d 388, 397, 973 P.2d 1083 (1991). But we will consider his petition, anyway.

First, Timmons argues that he was denied due process when the associate superintendent, rather than the superintendent, decided his agency appeal. But he shows no due process right to have the superintendent decide his appeal.

Second, Timmons argues that the evidence of the infractions is insufficient. When there is “some evidence” in the record, we will affirm the Department's disciplinary decision. *Superintendent v. Hill*, 472 U.S. 445, 86 L. Ed. 2d 356, 105 S. Ct. 2768 (1985); *In re Johnston*, 109 Wn.2d 493, 497, 745 P.2d 864 (1987). The record contains “some evidence” in the form of a photograph of a woman standing in a bra and thong underwear, a photograph of a woman on her hands and knees in thong underwear, with the camera pointed at her buttocks, and Timmons’ admission that he had brought the photographs from another facility. We therefore affirm the Department’s disciplinary decision.

Accordingly, it is hereby

ORDERED that Timmons’ petition is dismissed under RAP 16.11(b).

  
Acting Chief Judge Pro Tempore

cc: Harmon C. Timmons  
Candie M. Dibble