

Renee S. Townsley
Clerk/Administrator

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



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April 19, 2018

Timothy Norman Lang
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Washington Attorney General's Office
1125 Washington St SE
Olympia, WA 98504-0116 **E-MAIL**

Leopoldo Cardenas
#919072
Washington State Penitentiary
1313 North 13th Avenue
Walla Walla, WA 99362

CASE # 356060
Personal Restraint Petition of Leopoldo Cardenas

Dear Counsel and Mr. Cardenas:

Enclosed is a copy of the Order Dismissing Personal Restraint Petition filed by this Court today in the above-referenced case.

In accordance with RAP 16.14(c) and RAP 13.5 A, review of this Order may be obtained only by filing a Motion for Discretionary Review in the Washington State Supreme Court within 30 days after the filing of this Order. A copy must be filed with the Court of Appeals.

The address for the Washington State Supreme Court is Temple of Justice, P. O. Box 40929, Olympia, WA 98504-0929.

Sincerely,

A handwritten signature in cursive script that reads "Renee S. Townsley".

Renee S. Townsley
Clerk/Administrator

RST:bls
Enclosure

FILED
Apr 19, 2018
Court of Appeals
Division III
State of Washington

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Personal Restraint)	35606-0-III
of:)	
)	
)	
LEOPOLDO CARDENAS,)	ORDER DISMISSING PERSONAL
)	RESTRAINT PETITION
Petitioner.)	
)	
)	

Leopoldo Cardenas is serving a sentence in the Washington Department of Corrections (DOC). He seeks relief from personal restraint imposed in a DOC infraction hearing that found him guilty of the serious infraction WAC 137-25-030(555): “Stealing property, possessing stolen property, or possessing another offender’s property.” The hearing officer sanctioned him with 10 days of confinement to his cell. Mr. Cardenas contends he was denied due process because the infraction hearing was held without his presence and he was not allowed to view the video recording of the infraction incident.

Because Mr. Cardenas has had no alternate opportunity for judicial review of the DOC infraction hearing, he need only show that he is unlawfully restrained. RAP 16.4; *In re Pers. Restraint of Grantham*, 168 Wn.2d 204, 214, 227 P.3d 285 (2010). To prove

that the restraint is unlawful, he must show that the action taken at the disciplinary hearing was so arbitrary and capricious that it resulted in a fundamentally unfair proceeding. *In re Pers. Restraint of Gronquist*, 138 Wn.2d 388, 396, 978 P.2d 1083 (1999). Disciplinary proceedings are arbitrary and capricious if they do not provide minimal due process protections. *Id.*

The record shows that Mr. Cardenas was charged with stealing another inmate's Prison Legal News Magazine from a correction officer's desk and then tearing off the page with the other inmate's name so as to hide the fact that it was stolen. An officer observed the act when he reviewed a video surveillance recording of the area. When confronted, Mr. Cardenas told the officer that he just wanted to read the magazine. The hearing on the infraction was continued twice so that the staff could comply with Mr. Cardenas's request to submit the video recording. On the actual day of the hearing, Mr. Cardenas appeared, but when he saw that two other inmates had hearings before his, he left the area before attendance was taken. He claims he left only briefly to use the restroom, but he was told by officers as he was returning that the hearing officer would hold the hearing without him because he was not in attendance at the beginning of the hearing period. He asserts that he was denied due process when the hearing was held without his presence and without his ability to watch the video.

Prison disciplinary hearings are not criminal prosecutions but are civil in nature. *In re Pers. Restraint of Higgins*, 152 Wn.2d 155, 163-64, 95 P.3d 330 (2004).

Consequently, an inmate facing a disciplinary hearing is not entitled to the same due process rights as defendants in criminal trials. *Id.* The minimal due process for serious infractions generally requires that the inmate "(1) receive notice of the alleged violation at least 24 hours before the hearing; (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.

Here, the DOC gave Mr. Cardenas timely notice of the infraction and the scheduled hearing, an opportunity to present documentary evidence in the form of the video recording, and a written statement of the evidence relied upon. As the hearing officer explained to Mr. Cardenas before the hearing date, an inmate is not allowed to view surveillance videos, due to security concerns. *See* WAC 137-28-300(2) (the inmate is not entitled to be present during examination of physical evidence or confidential information). And Mr. Cardenas waived any right to attend the meeting when he absented himself. *See* WAC 137-28-300(2)(b) ("Unless excused, an offender's failure to attend a scheduled hearing will be considered his/her waiver of the right to present at the

hearing”). He received the minimal due process protections that are required for a serious infraction hearing. *Gronquist*, 138 Wn.2d at 396-97.

Mr. Cardenas’s defense was a general denial that he stole the magazine. This is a factual issue to be decided by the hearing officer, and as long as “some evidence” supports the hearing officer’s decision, the evidentiary requirements of due process are satisfied and the decision is not arbitrary and capricious. *Superintendent, Mass. Correctional Inst. v. Hill*, 472 U.S. 445, 455-56, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985); *In re Pers. Restraint of Anderson*, 112 Wn.2d 546, 549, 772 P.2d 510 (1989); *In re Pers. Restraint of Reismiller*, 101 Wn.2d 291, 295-96, 678 P.2d 323 (1984). This court will not independently examine or weigh the evidence. *Hill*, 472 U.S. at 455.

The record here shows that a corrections officer observed on video surveillance Mr. Cardenas steal another inmate’s magazine, and that Mr. Cardenas admitted taking the magazine. The magazine was recovered from Mr. Cardenas and he had removed its back cover, which displayed the name of the magazine’s owner. The hearing officer clearly had “some evidence” to support a finding of guilt.

Because Mr. Cardenas received minimal due process protections and the verdict is supported by some evidence, he does not show that his hearing was fundamentally unfair or that the hearing officer’s decision was arbitrary and capricious. *Gronquist*, 138 Wn.2d at 396. Consequently, the petition is dismissed as frivolous. RAP 16.11(b). The court

No. 35606-0-III
PRP of Cardenas

also denies his request for appointment of counsel. *In re Pers. Restraint of Gentry*, 137
Wn.2d 378, 390, 972 P.2d 1250 (1999); RCW 10.73.150.



REBECCA L. PENNELL
ACTING CHIEF JUDGE