

**FILED**  
**Apr 05, 2018**  
Court of Appeals  
Division III  
State of Washington

**COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON**

<b>In the Matter of the Personal Restraint</b>	)	<b>35609-4-III</b>
<b>of:</b>	)	
	)	
	)	
<b>CORY JAMES MONAGHAN,</b>	)	<b>ORDER DISMISSING PERSONAL</b>
	)	<b>RESTRAINT PETITION</b>
<b>Petitioner.</b>	)	
	)	
	)	

Cory James Monaghan is serving a sentence with the Washington Department of Corrections (DOC) after his 2010 convictions in Ferry County of first degree murder and first degree arson. He seeks relief from personal restraint imposed in a DOC infraction hearing that found him guilty of a general infraction: WAC 137-28-220(103) (“[f]ailing to follow any oral/written orders, rules, or policies not otherwise included in these rules”). The hearing officer imposed a reprimand and a warning as disciplinary sanctions. Mr. Monaghan contends the infraction is not supported by the evidence.

Because Mr. Monaghan 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, Mr. Monaghan 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 not arbitrary and capricious if they provide minimal due process protections. *Id.* Additionally, 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.

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.” *In re Gronquist*, 138 Wn.2d at 396-97. Restraint may also be unlawful if the DOC failed to comply with its own rules or policies. *In re Pers. Restraint of Cashaw*, 123 Wn.2d 138, 149, 866 P.2d 8 (1994).

On July 3, 2017, Mr. Monaghan was working in the prison vegetable garden as a “garden porter.” Response brief, attachment E. On that date, he was caught giving a vegetable to a fellow inmate, and he was warned not to give produce to other inmates. Five days later, prison staff saw him give onions to three different inmates. When an officer questioned Mr. Monaghan, he stated that the prison superintendent had given him permission to taste and eat the produce. Mr. Monaghan was terminated from his position as garden porter on July 10, 2017 for violating the job expectation sheet he had signed when he was initially hired. The sheet stated that “theft or possession of unauthorized materials from work will result in termination. (NO EXCEPTIONS).” Response brief, attachment E.

On July 15, 2017, the DOC gave Mr. Monaghan a notice that he was charged with a serious infraction: WAC 137-25-030(810) (“Failing to seek/maintain employment or training or maintain oneself financially, or being terminated from a work, training, education, or other programming assignment for negative or substandard performance”). The notice stated that five days after he was warned not to give produce to inmates, he

gave onions to three inmates, and as a result was terminated from the work program. Mr. Monaghan requested three witness statements for the disciplinary hearing, including a document from another garden porter who stated that after vegetable seeds were found in his cell, he was not terminated from the program, but was reassigned.

After Mr. Monaghan's disciplinary hearing on July 28, 2017, the hearing officer reduced the serious infraction to the general infraction of failing to follow rules, WAC 137-28-220(103). Because this was Mr. Monaghan's first infraction of this kind, the hearing officer imposed merely a reprimand and a warning. He appealed and the prison superintendent affirmed, noting that garden porters were allowed to taste the produce, but not to give it away or take it to their cells. The superintendent also noted that Mr. Monaghan violated the job expectations he had acknowledged and signed, and that he had been warned earlier about the same behavior.

This record shows that Mr. Monaghan received the minimal due process protections for a serious infraction, including timely notice, an opportunity to present evidence, and a written statement explaining the basis for the decision. *See Gronquist*, 138 Wn.2d at 396-97. The hearing officer's determination that Mr. Monaghan failed to follow oral and written rules (WAC 137-28-220(103)) is supported by some evidence. Consequently, the decision is not arbitrary and capricious. *See Reismiller*, 101 Wn.2d at 295-96. Furthermore, the infraction did not deprive Mr. Monaghan of a liberty interest,

No. 35609-4-III  
*PRP of Monaghan*

because his sanction was limited to a reprimand and a warning, with no apparent long-term effect on his prison status. *Compare, e.g., In re Pers. Restraint of Higgins*, 152 Wn.2d 155, 164, 95 P.3d 330 (2004) (an inmate has a protected liberty interest in good time credits).

For all of the above reasons, Mr. Monaghan's contention that he is unlawfully restrained is without merit. His petition is dismissed as frivolous. RAP 16.11(b). The court 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.



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**REBECCA L. PENNELL**  
**ACTING CHIEF JUDGE**

Renee S. Townsley  
Clerk/Administrator

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*The Court of Appeals  
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April 5, 2018

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CASE # 356094  
Personal Restraint Petition of Cory James Monaghan  
FERRY COUNTY SUPERIOR COURT No. 081000401

Dear Counsel and Mr. Monaghan:

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