

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

IN THE MATTER OF THE)
PERSONAL RESTRAINT OF:) No. 78130-8-I
REIKO SMITH,)
)
) ORDER OF DISMISSAL
 Petitioner.)

Reiko Smith filed this personal restraint petition challenging the sanctions imposed by the Department of Corrections following a prison disciplinary proceeding. In order to obtain relief in this setting, Smith 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)).

On November 1, 2017, when Smith was confined at Monroe Correctional Complex, corrections officers responded to his unit based on a report of a fight. According to the Initial Serious Infraction Report, correctional officers found Smith in his cell with visible injuries including “bruising and open cuts and abrasions” on his face. He refused to with cooperate correctional staff and outside police officers and refused to explain his injuries, saying, “Just take me to the hole!” A nurse eventually examined Smith and noted multiple abrasions, swelling around his eye, deviation of his nose, and multiple lacerations inside his mouth.

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Confidential reports indicated that Smith and his cellmate had words several times on the afternoon of the fight. Finally, Smith followed his cellmate to the cell, while continually yelling “punk ass bitch.” Smith put his hands on his cellmate’s face and pushed him. When the cellmate tried to leave the cell, Smith grabbed him from behind. The cellmate turned around and punched Smith in the face. Both inmates threw several punches and then the cellmate left.

Several correctional staff members who interacted with Smith following the incident wrote reports describing Smith’s appearance and conduct.

Smith was charged with violating WAC 137-25-030(505) (fighting with any person). A disciplinary hearing took place on November 29, 2017. Smith waived his attendance at the hearing. The hearing officer considered photographs of Smith’s injuries and photographs of his cellmate, numerous staff reports, and confidential information. The hearing officer found Smith guilty and imposed sanctions, including the loss of 15 days of good time.

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

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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).

Smith contends he was deprived of due process at the disciplinary hearing primarily alleging that correctional staff did not provide him with a “Disciplinary Hearing notice/Appearance Waiver” form prior to the hearing. However, according to the evidence supplied by the Department, a correctional officer provided the form to Smith on November 29. At that time, Smith waived his right to 24-hours’ notice of the hearing, waived his right to be present at the hearing, and signed the form. After the hearing, the Department also provided Smith with Disciplinary Hearing Minutes and Findings setting forth the basis for the decision.

Smith also claims that the evidence does not support the guilty finding, because it was based solely on confidential information. However, in addition to confidential information, there was photographic evidence of Smith’s injuries and

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numerous staff reports. And the hearing officer only considered the confidential information after finding it to be reliable. The evidence satisfied the “some evidence” standard. It is not the role of this court to re-weigh the evidence considered by the hearing officer. Johnston, 109 Wn.2d at 497.

Because Smith 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.

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