

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

Filed
Washington State
Court of Appeals
Division Two

September 29, 2017

In re the
Personal Restraint Petition of

DWAYNE E. BARTHOLOMEW,

Petitioner.

No. 50371-9-II

ORDER DISMISSING PETITION

Dwayne E. Bartholomew seeks relief from personal restraint imposed following a prison disciplinary hearing in which he was found guilty of violating WAC 137-25-030(752) (“possessing, or receiving a positive test for use of, an unauthorized drug, alcohol, or intoxicating substance”), a serious infraction resulting in 20 days of segregation, with credit for time served, and 30 days of confinement to cell/room. Bartholomew contends he was denied due process at his prison disciplinary hearing, the hearing officer’s finding that he committed the infraction was not supported by any evidence, and Bartholomew’s equal protection rights were violated. We disagree and dismiss Bartholomew’s petition.

Our review of internal prison disciplinary hearings is limited to a determination of whether the action taken was so arbitrary and capricious as to deny the petitioner a fundamentally fair proceeding. *In re Personal Rest. of Gronquist*, 138 Wn.2d 388, 396, 978 P.2d 1083 (1999). A proceeding is not arbitrary and capricious so long as it meets minimum due process protections. *Gronquist*, 138 Wn.2d at 396. 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) after the hearing, receipt of a written statement of the evidence relied on and the reasons for the disciplinary action. *Gronquist*, 138 Wn.2d at 396-97.

In addition to these procedural requirements, the evidentiary requirements of due process are satisfied so long as some or *any* evidence supports the disciplinary decision. *Superintendent, Mass. Correctional Inst. v. Hill*, 472 U.S. 445, 455, 105 S. Ct. 276, 886 L. Ed. 2d 356 (1985). Thus, a prison disciplinary hearing is arbitrary and capricious *only* if no evidence supports the action taken. *Hill*, 472 U.S. at 455.

The petitioner must demonstrate actual prejudice to obtain relief based on a claimed constitutional error. *In re Pers. Restraint of Hews*, 99 Wn.2d 80, 85-87, 660 P.2d 263 (1983). To obtain relief for claimed *non*-constitutional error, the Petitioner must “establish that the claimed error constitutes a fundamental defect which inherently results in a complete miscarriage of justice.” *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 812, 792 P.2d 506 (1990).

DUE PROCESS

Bartholomew first argues he was denied his due process rights because his urine sample was not tested properly. As set forth above, an inmate is provided minimum due process rights regarding disciplinary proceedings. These include notice, the opportunity to present evidence, and receipt of a written statement of the evidence relied on and the reasons for the disciplinary action. The Department of Corrections (DOC) offered proof attached to its response that Bartholomew received notice, had the opportunity to present evidence, and received a written statement regarding the of the hearing officer’s decision.

Bartholomew argued at the hearing that the urine sample was not tested properly. The hearing officer disagreed. An unfavorable finding does not amount to a due process violation in this case. Accordingly, Bartholomew's due process argument fails.

Bartholomew also claims his due process rights were violated because sufficient evidence does not support a finding of guilt. The evidentiary requirements of due process are satisfied so long as some or *any* evidence supports the disciplinary decision. *Hill*, 472 U.S. at 455. Here, the hearing officer's decision was based on an incident report from two correction officers describing how they conducted a urinalysis on Bartholomew and that Bartholomew's urine tested positive for Amphetamine and Methamphetamine. DOC also provided a medication certification from the pharmacy indicating that Bartholomew was not prescribed Amphetamine or Methamphetamine at the time at the urinalysis. Because some evidence supports Bartholomew's infraction, the evidentiary requirements of due process are satisfied.

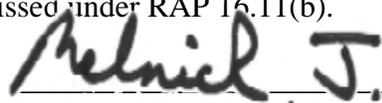
EQUAL PROTECTION

Next, Bartholomew claims that the prison's method for testing urine samples violates equal protection because some offenders have their positive test results confirmed by a laboratory and some do not. Under RAP 16.4, we may grant a petitioner relief where direct review is unavailable if the petitioner can show he or she is under unlawful restraint by showing a constitutional or state law violation. RAP 16.4(c)(2), (6). Here, Bartholomew claims that DOC violated his constitutional right to equal protection. As DOC points out, a vehicle to raise this claim would be a civil action. Nevertheless, a petitioner seeking collateral review of a claimed constitutional error must establish that the error resulted in actual and substantial prejudice. *In re Pers. Restraint of Isadore*, 151

Wn.2d 294, 298, 88 P.3d 390 (2004). Bartholomew fails to show actual and substantial prejudice because his urine sample was not tested by an outside laboratory. Accordingly, Bartholomew's equal protection rights argument fails.

Bartholomew fails to show he is entitled to relief from the disciplinary decision at issue. Accordingly, it is hereby

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



Acting Chief Judge, Pro Tem

cc: Dwayne E. Bartholomew
Pierce County Clerk
County Cause No. 81-1-00579-1
Mark E. Lindquist, Pierce County Prosecuting Attorney
Katherine J. Faber, Assistant Attorney General