

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

IN THE MATTER OF THE  
PERSONAL RESTRAINT OF:

CHRISTOPHER BINGHAM,  
  
Petitioner.

No. 82594-1-I

ORDER OF DISMISSAL

Christopher Bingham is in the custody of the Department of Corrections (DOC) and files this personal restraint petition challenging his prison disciplinary guilty findings for conspiring to introduce Suboxone<sup>1</sup> into the Washington State Penitentiary. In order to obtain relief in this setting, Bingham 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 Isadore, 151 Wn.2d 294, 229, 88 P.3d 390 (2004). But Bingham makes no showing that he was denied fundamentally fair proceedings or that he was prejudiced by the processes he received. Accordingly, the petition must be dismissed. In re Pers. Restraint of Grantham, 168 Wn.2d 204, 218, 227 P.3d 285 (2010).

Review of a prison disciplinary proceeding 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 Pers. Restraint of Reismiller, 101 Wn.2d 291, 293-94, 678 P.2d 323 (1984). A disciplinary proceeding is not arbitrary and capricious if the petitioner was

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<sup>1</sup> Suboxone is a narcotic and analgesic combination used in the treatment of opiate dependence.

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). Minimum due process requires that an inmate facing a disciplinary hearing receive (1) adequate notice of the alleged violation, (2) an 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 upon and the reasons for the disciplinary action. In re Pers. Restraint of Croquets, 138 Wn.2d 388, 396-97, 978 P.2d 1083 (1999).

“Factual determinations of prison officials must stand if there is ‘some evidence’ in the record to support the prison disciplinary decision.” Id. at 397 n.7 (quoting Superintendent, Mass. Corr. Inst. v. Hill, 472 U.S. 445, 455-56, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (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). Appellate courts do not reweigh the evidence considered by the hearing officer. In re Pers. Restraint of Johnston, 109 Wn.2d 493, 497, 745 P.2d 864 (1987).

In this petition, Bingham argues that his right to a fair hearing was violated when the hearing officer based its disciplinary decision on the “some evidence” standard that he contends the Washington Supreme Court abrogated in In re Pers. Restraint of Schley, 191 Wn.2d 278, 421 P.3d 951 (2018). He says that Schley requires hearing officers to base their decisions on the preponderance of the evidence standard. But Bingham misreads Schley.

The Schley plurality concluded that the preponderance of the evidence standard applies only to the use of infractions at drug offender sentencing alternative (DOSA) revocation hearings but did “not disturb the ‘some evidence’ standard applied to prison disciplinary hearings.” Id. at 289. Because Bingham’s disciplinary hearing did not involve a DOSA revocation, the record shows that the hearing officer made its decision under the proper standard. Bingham’s argument fails.

Next, Bingham says that there are “other grounds” under RAP 16.4(c)(7) that entitle him to challenge an unlawful restraint for “extraordinary circumstances” not covered by any other section of RAP 16.4(c). But he does not identify any other grounds or extraordinary circumstances that warrant this court’s review of his disciplinary proceeding. To the extent that his reference to “other grounds” is a challenge to the sufficiency of the evidence of his guilt, it has no merit.

According to an April 2020 serious infraction report, a correctional mailroom employee discovered a greeting card addressed to Bingham that contained four orange strips of Suboxone concealed between layers of the card. Later, in multiple communications, Bingham and Kevin Wissman (a former inmate) referred to a prior conversation about how Wissman was going to send narcotics to Bingham. The infraction report also described recorded telephone conversations between Bingham and Nicole Huston (a civilian) about narcotics, and how Huston could get in touch with Wissman.

The DOC charged Bingham with violating WAC 137-25-030 (603) (introducing or transferring an unauthorized drug or drug paraphernalia) and WAC 137-25-030 (889) (using facility phones, information technology resources/systems, or related equipment

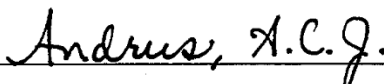
without authorization). The DOC gave Bingham a disciplinary hearing notice on July 17, 2020.

Bingham was present at the July 21, 2020 hearing and argued that he (1) “didn’t know this stuff was coming in,” (2) had not talked to Wissman in five years, and (3) called Huston to “help her get drugs for a person on the street.” The hearing officer considered Bingham’s statements, reviewed the written statements of correctional officers, and determined that Bingham was guilty of the infractions and imposed sanctions in a written decision. Bingham appealed and the superintendent’s designee denied the appeal.

Accordingly, the record establishes that Bingham received notice of the hearing, had an opportunity to present evidence, received a copy of DOC’s written decision, and appealed the decision. Because there was some evidence to support the hearing officer’s decision, Bingham has failed to establish a due process violation in his disciplinary proceeding.

Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed under RAP 16.11(b).

  
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Acting Chief Judge