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Court of Appeals
Division I
State of Washington

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

IN THE MATTER OF THE PERSONAL RESTRAINT OF: MATTHEW FRANZINO BOLAR, Petitioner.	No. 82895-9-I ORDER OF DISMISSAL

Matthew Bolar has filed a personal restraint petition (PRP) seeking relief from two infractions imposed by the Department of Corrections (DOC) while Bolar was an inmate at Clallam Bay Corrections Center (CBCC).[1] DOC has filed a response, and Bolar has filed a reply.[2] Although Bolar challenges each infraction on various grounds, he fails to establish an arguable basis for relief. Bolar's petition is frivolous and must be dismissed.

BACKGROUND

896 Infraction

According to a serious infraction report, on January 8, 2021, correctional officer (C/O) Aaron Campbell reported that Bolar "was demonstrating inciting

[1] Bolar has since been transferred to Coyote Ridge Corrections Center.

[2] Bolar's overlength reply is accompanied by a "Motion For Permission To File An Over-Length Reply Brief To The Department Of Corrections Response." Inasmuch as Bolar's reply has been considered, the motion is granted.

behavior and was making offensive and derogatory remarks" about another C/O, Shannon Gentry, including calling her a " 'Tramp.' " C/O Campbell told Bolar he found the language offensive and terminated his conversation with him. Later, Bolar began talking about C/O Gentry again to another inmate, and again referred to her as a " 'Tramp' " loudly enough for C/O Campbell to hear. C/O Campbell directed Bolar to return to his cell "because at that point he began to incite the other offenders in the unit." C/O Campbell reported these incidents to Sergeant Jacob Martin, who advised Bolar that "he would be receiving a major infraction for harassing both C/O Campbell and C/O Gentry." When Sergeant Martin told C/O Gentry about Bolar's behavior, C/O Gentry told Sergeant Martin about previous incidents that occurred when Bolar was housed in another unit and also reported that she "has continually been harassed" since she confronted Bolar about his behavior toward her.

Upon further investigation, Sergeant Martin found four kiosk messages Bolar sent to a prison staff member where he wrote that "C/O Gentry is being a, 'whore' and having sex with multiple staff." The messages included claims that CBCC was condoning C/O Gentry's behavior and covering up her sexual misbehaviors, and that she will " 'Fuck her way to the top.' " Sergeant Martin also reviewed behavior log entries from May and July 2020 indicating that Bolar had been trying to get C/O Gentry alone and attempted to give her handwritten letters. Sergeant Martin then summoned Bolar for a conversation about his behavior and his apparent fixation on C/O Gentry. According to Sergeant Martin's later report,

> During the conversation [Bolar] began to state that it was [C/O Gentry's] fault that he was moved and she conspired with white offenders to have him assaulted and again began to state that she was

> having sex with staff members. At that point I interrupted and made a clear directive that he was not to show or demonstrate anymore inappropriate verbal or non-verbal behavior towards her as I was now beginning to fear for the safety of staff, specifically C/O Gentry, as his remarks were becoming aggressive in nature. Upon exiting [the meeting] Bolar began to talk about Gentry and how her sleeping with staff was a personal attack on himself and that DOC should not tolerate it, and someone should tell her husband. I again told him that these were inappropriate comments and he needed to stop, at which he stated it was his business as it was a form of corruption and a liberty interest.

Sergeant Martin concluded that Bolar's "fixation on [C/O] Gentry would not stop" and placed him in the intensive management unit (IMU) pending further investigation. This included a property inventory where C/Os recovered "additional hand written notes about C/O Gentry, [g]rievances against C/O Gentry and a copy of a handwritten letter to C/O Gentry." The serious infraction report states that while being escorted to the IMU, Bolar continued talking to the escorting officers about C/O Gentry and "asking how they would feel if their wives worked up . . . here and were sleeping with other officers."

DOC later charged Bolar with an infraction under WAC 137-26-030 (661) ("Committing sexual harassment against a staff member, visitor, or community member"), (896) ("Harassing, using abusive language, or engaging in other offensive behavior directed to or in the presence of another person(s) or group(s) based upon race, creed, color, age, sex, national origin, religion, sexual orientation, marital status or status as a state registered domestic partner, disability, veteran's status, or genetic information"), and (507) ("Committing an act that would constitute a felony and that is not otherwise included in these rules"). It provided a disciplinary notice to Bolar on January 25, 2021, setting a hearing date of January 27, 2021. Bolar pleaded not

guilty, and the hearing date was continued twice, first to obtain witness statements requested by Bolar, and again after Bolar submitted written questions.

A disciplinary hearing ultimately took place on or about February 23, 2021. The hearing officer found Bolar guilty of the 896 infraction but not the others and sanctioned him to 25 days of disciplinary segregation. Bolar appealed to the CBCC superintendent's office, which affirmed.

740 Infraction

According to a serious infraction report, on January 11, 2021, CBCC law librarian Ian Erickson went to Bolar's cell to make copies as requested by Bolar. Bolar completed DOC Form 19-084 (Legal Copy/Indigent Postage/Scanning Request) and returned it to Erickson along with the documents Bolar wanted copied. Erickson noticed right away that the header on one of the documents was addressed to CBCC superintendent Jeri Boe. After observing that Bolar was requesting three copies, Erickson asked Bolar why he needed three copies. Bolar responded that he needed one copy to send to Superintendent Boe, one to send to DOC headquarters, and one to send to the Ombuds office. Erickson then informed Bolar that Superintendent Boe and DOC headquarters were not legal entities eligible for legal copies. See DOC Policy 590.500 ("Individuals may obtain a photocopy for the following if they have sufficient funds to pay the required fee at the time of the request: . . . Working legal documents for active cases or letters to legal entities . . . , and . . . [l]egal documents/papers or legal materials which are not legal pleadings."). Bolar then told Erickson that he needed copies to send to the Ombuds office and a prosecutor. Erickson noted the changes on the DOC Form 19-084. Erickson later

made the copies Bolar requested and provided them to him.

About a week later, Bolar made another request for copies, indicating that he wanted one copy to send to the Ombuds and one to the King County Prosecutor. According to Erickson's later report, Erickson again noted that the documents in question appeared to be a letter to Superintendent Boe. Nevertheless, Erickson made the copies requested and provided them to Bolar. According to the serious infraction report, Superintendent Boe's office later received mail through the U.S. Postal Service that contained what appeared to be the copies Erickson made for Bolar.

DOC later charged Bolar with infractions under WAC 137-25-030 (718) ("Using the mail, telephone, or electronic communications in violation of any law, court order, or previous written warning, direction, and/or documented disciplinary action") and (740) ("Committing fraud or embezzlement, or obtaining goods, services, money, or anything of value under false pretense"). DOC provided a disciplinary notice to Bolar on or about February 2, 2021, setting a hearing for February 3, 2021. Bolar pleaded not guilty, and after a hearing that was continued at least once to give Bolar time to prepare a written statement and submit questions, the hearing officer found Bolar guilty of the 740 infraction but not of the 718 infraction. The hearing officer sanctioned Bolar to a 10-day loss of library privileges, including the law library unless there was "a documented court deadline imposed." Bolar appealed to the superintendent's office, which affirmed.

DISCUSSION

Review of a prison disciplinary proceeding is limited to determining whether

the action taken was "so arbitrary and capricious as to deny the petitioner a fundamentally fair proceeding so as to work to the offender's prejudice." In re Pers. Restraint of Grantham, 168 Wn.2d 204, 216, 227 P.3d 285 (2010). Due process requires that an inmate facing disciplinary sanctions (1) receive notice of the alleged violation, (2) have 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 Pers. Restraint of Gronquist, 138 Wn.2d 388, 396-97, 978 P.2d 1083 (1999). A disciplinary proceeding is not arbitrary and capricious if the inmate was afforded these 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); see also Gronquist, 138 Wn.2d at 397 ("A prisoner enjoys more limited due process rights than a criminal defendant."). As further discussed below, Bolar fails to demonstrate that the disciplinary proceedings he challenges were arbitrary or capricious.

896 Infraction

It is undisputed Bolar received notice of the alleged 896 infraction. Additionally, Bolar had an opportunity to present documentary evidence and call witnesses—indeed, as discussed, the disciplinary hearing was continued twice to obtain witness statements requested by Bolar and after Bolar submitted written questions. And, the record includes the hearing officer's written statement of the evidence relied upon, including witness statements from C/Os, behavior log entries, and kiosk message in which Bolar refers to C/O Gentry as, among other things, an

"institutional whore[ ]" and accuses her of adultery. These materials constitute "some evidence" to support the hearing officer's determination that "Bolar did harass, use abusive language and engage in offensive behavior directed towards a staff member based on their sexual orientation and marital status." For the foregoing reasons, Bolar does not establish that the proceedings resulting in the 896 infraction were so arbitrary and capricious as to deny him a fundamentally fair proceeding.

Bolar nonetheless asserts that relief is warranted because DOC provided him with only 10 of the 32 witness statements he requested and the hearing officer did not ask all 165 of his proposed witness questions. Bolar claims that these statements and questions would have established that his remarks about C/O Gentry's adulterous behavior were true. But Bolar does not establish that the truth or falsity of his remarks has any relevance in the context of an 896 infraction. That is, the alleged truthfulness of his statements about C/O Gentry does not make them any less a policy violation. So, Bolar cannot establish he was prejudiced by the exclusion of the evidence he claims additional witness statements and questions would have elicited. For the same reason, Bolar's various other claims related to his alleged inability to present his "truthfulness" defense do not entitle Bolar to relief.

Bolar disagrees and, relying on Parmelee v. O'Neel, 145 Wn. App. 223, 186 P.3d 1094 (2008), contends that it is unconstitutional to punish him for his truthful criticism of C/O Gentry's behavior. But Parmelee involved an inmate who was "issued a serious infraction under former WAC 137-28-260(1)(517) for '[c]omitting any act that is a misdemeanor under local, state, or federal law that is not otherwise included in these rules.' " Id. at 246. The DOC chose the criminal libel statute. Id.

The Parmelee court held that statute facially unconstitutional because it "permits punishment of true statements not made with good motives or for justifiable ends." Id. at 237 (emphasis omitted). Thus, the statute was not a valid basis for a 517 infraction. In so holding, the court expressly distinguished that type of infraction from "a general infraction . . . for '[a]busive language, harassment . . . or other offensive behavior directed to or in the presence of staff, visitors, inmates, or other persons or groups." Bolar was not infracted for committing libel; his reliance on Parmelee is misplaced.

Bolar next asserts that the hearing officer was biased because he presided over a prior disciplinary hearing involving Bolar and was later reversed on appeal. Bolar claims the appeal revealed that the hearing officer "had been 'lying' " about Bolar assaulting another inmate when in fact the other inmate assaulted Bolar first. Bolar mischaracterizes the record. The superintendent did find on appeal, after reviewing video of the incident, that the other inmate threw the first punch and Bolar initially tried to avoid an altercation. But the superintendent also found that the hearing officer was impartial and that Bolar's "claims about the Hearing Officer being biased and making false statements are not correct based on the evidence reviewed." That the superintendent ultimately interpreted the video footage differently than the hearing officer did does not establish the hearing officer was biased.

Bolar next contends the 896 infraction violates the Religious Land Use and Institutional Persons Act, 42 U.S.C. §§ 2000cc et seq. But a personal restraint petition is the available remedy to challenge "conditions . . . that are in violation of the

Constitution of the United States or the Constitution or laws of the State of Washington." RAP 16.4(c) (emphasis added). Bolar offers no authority for the proposition that a personal restraint petition—as opposed to a federal habeas petition—is a proper avenue to raise an alleged violation of a federal statute. See 28 U.S.C. § 2254 ("[t]he Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.").

As a final matter with regard to the 896 infraction, Bolar asserts that relief is warranted because Superintendent Boe did not personally sign the appeal decision for that infraction. But Bolar offers no authority supporting the proposition that the superintendent was required to personally sign the appeal decision or that her not doing so entitles him to have the infraction vacated.

Bolar fails to present an arguable basis for relief with regard to the 896 infraction.

740 Infraction

Bolar also fails to present an arguable basis for relief with regard to the 740 infraction. It is undisputed that Bolar received notice of the alleged 740 infraction. Bolar also had an opportunity to present documentary evidence and call witnesses with regard to that infraction—indeed, as discussed, the disciplinary hearing was continued to give Bolar more time to prepare his written statement. And, the record includes the hearing officer's written statement of the evidence relied upon. Specifically, the hearing officer relied on Erickson's report, Bolar's written defense,

and the envelopes containing documents Bolar mailed to the superintendent's office. The hearing officer also relied on Bolar's testimony at the hearing—in response to a question posed by the hearing officer—that Bolar cannot get copies except through the law library. This evidence satisfies the "some evidence" standard to support the hearing officer's finding that Bolar "did obtain services from the law librarian to get copies made under false pretense." Therefore, Bolar does not establish that the proceedings resulting in the 740 infraction were so arbitrary and capricious as to deny him a fundamentally fair proceeding.

Bolar nevertheless asserts that relief is warranted because he paid for the copies he received and thus could not have committed embezzlement or fraud. He relies on cases involving criminal fraud and other crimes of deception but fails to establish that any of those cases are relevant in the context of the DOC rule at issue here. As discussed, there was "some evidence" to support the hearing officer's finding that Bolar obtained services from the law librarian under false pretenses.

Bolar next asserts that relief is warranted because the hearing officer questioned Bolar about whether he could have gotten copies other than from the law library, then used Bolar's response against him. Bolar claims that the hearing officer's questioning demonstrated his bias. But "[t]he hearing officer has the authority to question all witnesses." WAC 137-28-300(7). The hearing officer's doing so here to determine whether the documents Bolar mailed to Superintendent Boe were the same documents Erickson copied for Bolar is not evidence of bias.

Bolar also contends with regard to the 740 infraction that it must be vacated because it "effectively 'chilled' and/or 'violated' [his] right to petition the government

for the redress of his grievances under the First and/or Fourteenth Amendment(s) to the United States Constitution." But Bolar fails to establish that not being able to make a copy of a petition prevents him from filing one. In any case, restrictions on inmates' constitutional rights are permissible so long as they are reasonably related to legitimate penological interests. Turner v. Safley, 482 U.S. 78, 89, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987). Bolar offers only conclusory assertions that no legitimate penological interest is served by DOC's policy limiting its provisions of copying services to certain specified purposes. He appears to claim, relying on Entler v. Gregoire, 872 F.3d 1031 (9th Cir. 2017), that he has satisfied the "no legitimate penological interest" standard by showing that DOC imposed the 740 infraction in retaliation for his filing a petition with Superintendent Boe. But unlike the inmate in Entler, who was infracted for filing a grievance that threatened legal action, see id. at 1037, Bolar was infracted for obtaining law library services under false pretenses. Bolar provides no admissible evidence that DOC had an ulterior, retaliatory motive. See In re Pers. Restraint Petition of Addleman, 139 Wn.2d 751, 991 P.2d 1123 (2000) (petitioner alleging retaliation must show "at least a partial causal relation between the protected conduct and the action"); In re Pers. Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992) (petitioner "must present evidence showing that his factual allegations are based on more than speculation, conjecture, or inadmissible hearsay").

Finally, Bolar asserts that he is entitled to relief with regard to the 740 infraction because the hearing officer did not ask all of the written questions Bolar proposed to ask Erickson. But "the hearing officer may exclude questions that are irrelevant,

duplicative, or unnecessary to the adequate presentation of the offender's case." WAC 137-28-300(7). Here, the hearing officer determined that the unasked questions were either "irrelevant and will be denied as they are more of a statement not a question" or "not necessary." While Bolar claims the unasked questions were necessary to present his defense, the list of questions attached to his petition appear intended to establish that the infraction was "absurd" because Bolar did not violate any law, that there exists a right for prisoners to petition government officials for redress, and that petitioners might like to retain a copy of any such petition. Bolar does not explain why Erickson needed to answer these questions for Bolar to argue these points to the hearing officer. Bolar fails to show that the hearing officer's not asking these questions rendered the proceeding so arbitrary and capricious as to deny him a fundamentally fair proceeding.

Conclusion

Bolar fails to present an arguable basis for relief in law or fact given the constraints of a personal restraint petition. His petition is frivolous and must be dismissed.[3] RAP 16.11(b) (frivolous petition will be dismissed); In re Pers. Restraint of Khan, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015) ("[A] personal restraint petition is frivolous where it fails to present an arguable basis for collateral relief either in law

[3] In light of this determination, it is unnecessary to address DOC's argument that Bolar's petition should be dismissed because the sanctions imposed do not implicate a protected liberty interest and are not subject to minimum constitutional due process requirements. Sandin v. Conner, 515 U.S. 472, 484, 115 S. Ct. 2283, 132 L. Ed. 2d 418 (1995). But in Kozol v. Department of Corrections, 185 Wn.2d 405, 410-11, 379 P.3d 72 (2016), our Supreme Court noted, addressing a slightly different issue, that even when discipline does not result in the loss of good time credit, DOC's regulatory procedures and safeguards apply, and a serious infraction "casts a shadow over an inmate's institutional history."

or fact, given the constraints of the personal restraint petition vehicle.").

Now, therefore, it is hereby

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

Andrus, A.C.J.

Acting Chief Judge