

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

In the Matter of the Personal	)	
Restraint of:	)	No. 81857-1-I
	)	
	)	
MYRON GAYLORD BRANDON,	)	ORDER OF DISMISSAL
	)	
Petitioner.	)	
_____	)	

Myron Brandon filed this personal restraint petition challenging the sanctions imposed by the Department of Corrections following a prison disciplinary action.<sup>1</sup> In order to obtain relief in this setting, Brandon 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 (2010) (quoting In re Pers. Restraint of Isadore, 151 Wn.2d 294, 298, 88 P.3d 390 (2004)). Because Brandon fails to meet this burden, his petition is dismissed.

On June 25, 2020, Brandon was charged with violating WAC 137-25-030 (506) (threatening another with bodily harm), WAC 137-25-030 (509) (refusing a direct order by any staff member to proceed or to disperse from a particular area), and WAC 137-

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<sup>1</sup> On September 14, 2020, Brandon filed a motion to supplement the record with copies of two documents: a health services kite date dated September 4, 2020, and DOC Policy 630.500. The motion is granted; this court considered Brandon’s supplemental documents in rendering this decision.

25-030 (896) (using abusive language based on race of another person). The Initial Serious Infraction Report describes the incident as follows:

On 06/25/20 at 2015 hours I officer Monroe, Julius was working Special offender Unit on Echo unit alongside officer Graham, Lionel. I looked up and saw Offender Brandon, Myron #962172 aggressively pointing at and going towards offender Wilson, Joel # 261489 and saying to him that he was going to kick his ass. He said "you keep talking about my momma I'm going to kick your ass you hear me you sorry ass nigga I'm going to fuck you up get all up in your ass you got shit all up in you but I'm going to get in your ass you shit nigga." After several loud and clear attempts calling him by his name to get his attention he finally looked up at me and I told him several times to go to his cell. He slowly backed away going to his cell still yelling at Wilson you sorry ass nigga. Wilson never once moved or replied he just sat there.

A disciplinary hearing, which Brandon attended, was held on July 8, 2020. The hearing officer denied Brandon's request for a staff advisor, but read seven witness statements requested by Brandon into the record. Brandon, who spoke in his own defense, told the hearing officer that Wilson had harassed him by repeatedly asking him when he was going home.

Based upon the documentary evidence, including staff member incident reports and witness statements, the hearing officer found Brandon guilty as charged and imposed sanctions, including 13 days in segregation and 20 days without dayroom privileges. Brandon appealed, and on August 25, 2020, the decision and sanctions were upheld.

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 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:

Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.

(Citations omitted.) 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). It is not the role of this court to re-weigh the evidence considered by the hearing officer. Johnston, 109 Wn.2d at 497.

The record shows, and Brandon does not dispute, that he received advanced written notice of the charges against him, including a summary of the underlying

alleged facts. Brandon testified in his own defense at the disciplinary hearing, and his witness statements were read into the record. After the hearing, Brandon received written notice of the hearing officer's decision, the evidence relied on, and the reasons for the disciplinary sanctions imposed. The record demonstrates that Brandon was afforded the due process protections to which he was entitled at the disciplinary hearing.

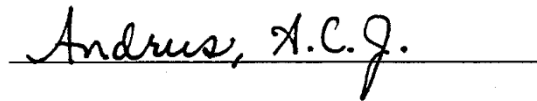
Brandon appears to allege a due process violation based on the Department's failure to address his appeal within ten days as required by WAC 137-28-380(3). But the Washington Administrative Code provision outlining the general purposes of the prison discipline procedural guidelines states that those rules "do not create any procedural or substantive rights in any person, including any liberty interests in time credits, levels of custody, classification status, or other privileges." WAC 137-28-140. Brandon fails to allege, much less establish, that the disciplinary proceeding was fundamentally unfair because of the delay in processing his appeal.

Brandon contends that there was overwhelming evidence Wilson harassed him. However, the incident reports and witness statements either indicate that Wilson sat quietly while Brandon yelled at him, or are silent as to Wilson's actions. No evidence corroborates Brandon's assertion that Wilson harassed him. Moreover, Brandon does not deny engaging in the behavior for which he was infracted. The evidence supported the hearing officer's decision.

Because Brandon 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).

A handwritten signature in cursive script, reading "Andrew, A.C.J.", is written over a horizontal line.

Acting Chief Judge