IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of

ANDREW J. BROWN,

Petitioner.

No. 47458-1-II

ORDER DISMISSING PETITION

Andrew Brown seeks relief from the loss of 10 days of good conduct time imposed following the Department of Corrections' determination that he had violated WAC 137-25-030(633) by having ordered an assault on an inmate. On September 2, 2014, inmates Holmes and Rowe got into a fistfight in the recreation yard. During an ensuing investigation, a confidential informant provided information that Brown, the chief for the Native Americans at Clallam Bay, had ordered Holmes to assault Rowe, both of whom are also Native American. Brown was given notice of his disciplinary hearing. He did not request any witnesses. After the hearing officer reviewed the information from the confidential informant, he held the hearing. Brown stated he was not responsible for the assault because he was in medium security custody while Holmes and Rowe were in close custody. Based on the infraction report and the confidential informant information, the hearing officer found Brown guilty having conspired with Holmes to assault Rowe and imposed sanctions of 10 days loss of good conduct time and 30 days of segregation. The superintendent affirmed the hearing officer's finding and sanctions.

We review prison disciplinary proceedings to determine whether the Department's action was so arbitrary and capricious as to deny the petitioner a fundamentally fair

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proceeding. *In re Reismiller*, 101 Wn.2d 291, 294, 678 P.2d 323 (1984). In doing so, we look to whether petitioner received the due process protections afforded him under *Wolff v. McDonnell*, 418 U.S. 539, 563-65, 41 L. Ed. 2d 935, 94 S. Ct. 2963 (1974). 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) a written statement of the evidence relied on and the reasons for the disciplinary action. Brown received all of these protections. He does not demonstrate that he received inadequate notice that he was being charged under a conspiracy theory.

Brown further argues that the Department erred in finding him guilty of the infraction because there was no evidence, other than that from the confidential informant, that he had any involvement in Holmes's assault of Rowe. When there is "some evidence" in the record, we will affirm the Department's disciplinary decision. *Superintendent v. Hill*, 472 U.S. 445, 86 L. Ed. 2d 356, 105 S. Ct. 2768 (1985); *In re Johnston,* 109 Wn.2d 493, 497, 745 P.2d 864 (1987). The confidential informant information constitutes "some evidence." The hearing officer complied with the procedures for considering that information. We therefore affirm the Department's disciplinary decision.

Accordingly, it is hereby

ORDERED that Brown's petition is dismissed under RAP 16.11(b).

DATED this 24th day of November 2015.

Acting Chief Judge Pro Tempore

cc: Andrew J. Brown
Brian D. Considine
Department of Corrections