

March 17, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Personal Restraint of:

JUSTAN D. COLA,

Petitioner.

No. 57349-1-II

ORDER DISMISSING PETITION

In this personal restraint petition (PRP), Justan D. Cola seeks relief from personal restraint imposed following a guilty finding on a prison infraction and the imposed restrictions. Cola claims that there was not “some evidence” supporting the guilty finding. PRP at 4-5 (No. 1). Cola also claims that his right to due process was violated when the Department of Corrections (DOC) did not allow him to review the documents used as evidence against him and did not notify him of the right to appeal to the “D.O.C. appeals panel at D.O.C. headquarters.” PRP at 6. (Nos. 3-4) Finally, Cola argues DOC violated its own policy by imposing telephone restrictions following the infraction. Cola’s petition is dismissed.¹

FACTS

Cola is currently in the custody of DOC serving sentences on multiple offenses. On January 26, 2022, DOC Investigator Matt Butler issued a serious infraction report alleging that Cola was guilty of violating WAC 137-25-030 (501)—conspiring to commit homicide, WAC 137-25-030 (502)—conspiring to commit aggravated assault against an incarcerated

¹ Cola’s motion to appoint counsel is denied.

individual, WAC 137-25-030 (633)—conspiracy to assault another incarcerated individual, and WAC 137-25-030 (734)—participating or engaging in the activities of any unauthorized club, organization, gang or security threat group (STG).

In the infraction report, Butler stated that during the course of an investigation into the Aryan Family STG, he learned several members of the Aryan Family conspired to carry out a gang related hit against another Aryan Family member who had fallen out of favor with the Aryan Family leadership. Two inmates were ordered to assault the intended victim. The two inmates sought approval of the hit from Cola, the Aryan Family's recognized leader. Cola approved the hit authorizing the intended victim to be assaulted and potentially murdered.

Butler's infraction report stated that the report was a summary of confidential information. The report identified the description of evidence as numerous confidential informant reports, JPay² printouts, OMNI information, and phone records.

Cola was given notice of a disciplinary hearing on February 4, 2022. At the disciplinary hearing, Cola denied being the leader of the Aryan Family and stated that he did not do anything wrong. The hearing examiner reviewed the confidential information and found that it supported the allegations as written in the infraction report. The hearing examiner found Cola guilty of all four alleged infractions. The hearing examiner imposed sanctions including loss of 75 good conduct time and loss of phone and JPay privileges. The hearing examiner noted that restriction of phone and JPay privileges was discouraged

² JPay is the DOC controlled email system inmates use to communicate with people outside of the prison.

under DOC COVID-19 guidelines, but the sanction was appropriate due to the nature of the infractions and the seriousness of the offenses.

Cola appealed the infractions to the DOC superintendent. The superintendent affirmed the infractions and the imposed sanctions.

Cola filed this PRP challenging the guilty finding on the infractions and the loss of phone and JPay privileges.

ANALYSIS

To prevail in a personal restraint petition, the petitioner must show that he is subject to unlawful restraint. RAP 16.4. When a petitioner is seeking review of a decision that has not been subject to prior judicial review, he or she is not required to make a heightened showing of prejudice to obtain relief. *In re Pers. Restraint of Grantham*, 168 Wn.2d 204, 214, 227 P.3d 285 (2010).

This court “will reverse a prison discipline decision only upon a showing that it was so arbitrary and capricious as to deny the petitioner a fundamentally fair proceeding so as to work to the offender’s prejudice.” *Id.* at 215. Offenders subject to prison discipline “are not entitled to the full panoply of constitutional procedures given criminal defendants at trial.” *Id.* at 215. “A prisoner is entitled to only minimum due process protections, which include notice, and an opportunity to provide evidence and call witnesses ‘when not unduly hazardous to institutional safety and correctional goals,’ and to receive a written statement of the evidence relied upon and the reasons for the discipline.” *Id.* at 215-16 (quoting *In re Pers. Restraint of Gronquist*, 138 Wn.2d 388, 398 n.8, 978 P.2d 1083 (1999)). Prison discipline will be affirmed if there is some evidence supporting the discipline. *Id.* at 216.

I. SOME EVIDENCE

Cola claims that the infraction report findings are not supported by some evidence because nothing in the report establishes anything other than accusations of him of being a member of the Aryan Family. Cola is incorrect.

The infraction report, which was a summary of confidential information, stated that Cola explicitly authorized the two inmates to carry out the hit on the intended victim. Further, the infraction report stated that it was Cola who determined the severity of the hit, including potentially murder. Further, the hearing examiner reviewed the confidential information and determined that it supported the statements made in the infraction report.

The infraction report establishes that there was some evidence in the record supporting the hearing examiner's findings that Cola was guilty of conspiracy to commit murder, conspiracy to commit aggravate assault against another incarcerated individual, conspiracy to commit assault against another incarcerated individual, and participating or engaging in the activities of an unauthorized club, organization, gang or STG. Therefore, the hearing examiner's findings were not arbitrary or capricious and are affirmed.

II. DUE PROCESS

A. Review of Evidence

Cola also argues that his right to due process was violated because he was not permitted to review the documentary evidence supporting his infractions. However, due process does not require that Cola review the documentary evidence.

Due process in a prison disciplinary proceeding requires notice, an opportunity to provide evidence and call witnesses, and to receive a written statement of the evidence relied upon and the reasons for the discipline. *Id.* at 215-16. Here, Cola received notice of

the infractions and had the opportunity to provide evidence and call witnesses at the hearing. Cola also received a written summary of the evidence relied on in the infraction report. Cola did not have a due process right to review all the documentary evidence reviewed by the hearing examiner. Further, the prison discipline proceeding complied with the minimum requirements of due process. Therefore, the proceeding was not so arbitrary and capricious as to deny Cola a fundamentally fair proceeding. *See id.* at 215.

B. Notice of Appeal

Cola further argues that his right to due process was violated because he was not notified that he could appeal the infraction to the DOC appeals panel at DOC headquarters.

Cola acknowledges that he was notified he could appeal to the superintendent and took advantage of that appeal process. And prison discipline actions are further subject to judicial review through a PRP. The due process requirements for prison discipline proceedings do not require additional administrative appeals.

The failure to notify Cola of additional avenues for review of the infraction, if those avenues exist, did not result in an arbitrary and capricious proceeding that was fundamentally unfair.³

III. PHONE/JPAY SANCTION

Finally, Cola argues that DOC violated its own policies by sanctioning him to loss of phone and JPay privileges. Even assuming that a violation of guidelines in a memo could entitle a petitioner to relief, the sanction in this case was consistent with the stated DOC COVID-19 guidelines.

³ DOC asserts that there is no right to appeal to DOC headquarters. DOC Policy 460.000 recognizes only one appeal—to the superintendent.

In March 2021, DOC issued a memo to all DOC superintendents and hearing officers stating:

During this period, do not sanction the loss of [JPay, Phone, Commissary and food package program, TV, or Visitation], unless their behavior was directly related to sanction (i.e. used phone/JPay to send and receive communications to someone they have a no contact order with)[.]

DOC Response, Attach. 6 at 1.

Here, the infraction report indicated that the phone and JPay system were used to send messages related to the hit on the intended victim. Therefore, the sanctioned loss of phone and JPay privileges was directly related to the infringed behavior. The sanction was consistent with the DOC memo.

Cola has failed to show that he is subject to unlawful restraint due to the prison disciplinary proceeding.

Accordingly, it is hereby

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


PRICE, ACTING CHIEF JUDGE, PRO TEM

cc: Justan D. Cola
Michelle Irene Young