COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Personal Restraint of: **AMEL W. DALLUGE,** **Petitioner.**	**No. 37527-7-III** **ORDER DISMISSING PERSONAL RESTRAINT PETITION**

Amel W. Dalluge asks this court to expunge a Department of Corrections (DOC) disciplinary infraction he received for refusing to undergo a chemical dependency assessment ordered in his Judgment and Sentence entered in Grant County Superior Court Cause No. 17-1-00072-1. He also contends DOC's COVID-19 actions and protocols implemented in response to and consistent with the Washington State Department of Health guidelines amount to cruel and unusual punishment.

Because Mr. Dalluge received minimum due process regarding his disciplinary proceedings and offers no evidence that DOC has acted with deliberate indifference, his petition is dismissed as frivolous. RAP 16.11(b). We also deny Mr. Dalluge's motions, which were filed June 22, 2020, and June 30, 2020, and supported by only conclusory

allegations and inadmissible hearsay. *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992); *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 813-14, 792 P.2d 506 (1990).

Disciplinary Hearing – Minimum Due Process Requirements Satisfied

Mr. Dalluge contends he received no notice, no hearing, and no ability to appear at the March 23, 2020, disciplinary hearing that resulted in a guilty finding and loss of 15 days of good conduct time, 2 months of monthly package privileges, 30 days of recreation privileges, and 1 month of earned time. He also initially contended his Judgment and Sentence did not order him to undergo a chemical dependency assessment, suggesting DOC's disciplinary decision is not supported by evidence. In his reply, he appears to concede that the Judgment and Sentence entered in Cause No. 17-1-00072-1 ordered a chemical dependency assessment, but he asserts for the first time that the Judgment and Sentence does not required him to undergo an assessment until his period of community custody begins. He argues his period of community custody has not begun because he remains confined on other sentences. This court declines to consider arguments raised for the first time in a petitioner's reply brief. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

Prisoners seeking relief from personal restraint arising from a prison disciplinary hearing must show that the hearing "was so arbitrary and capricious as to deny them a fundamentally fair proceeding so as to work to the petitioner's prejudice." *In re Pers.*

Restraint of Grantham, 168 Wn.2d 204, 215, 227 P.3d 285 (2010); *In re Pers. Restraint of Reismiller*, 101 Wn.2d 291, 293-94, 678 P.2d 323 (1984). The proceeding is not arbitrary and capricious if the petitioner was afforded the minimum due process applicable to prison disciplinary proceedings. *Reismiller*, 101 Wn.2d at 294. Minimum due process means the prisoner must (1) receive notice of the alleged violation, (2) be given an opportunity to present evidence, and (3) receive a written statement of the evidence relied upon and the reasons supporting the discipline. *Id*.; *Wolff v. McDonnell*, 418 U.S. 539, 563-66, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974). The evidentiary requirements of due process are met if "some evidence" supports the disciplinary decision. *Superintendent v. Hill*, 472 U.S. 445, 455-56, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985); *Reismiller*, 101 Wn.2d at 295.

Mr. Dalluge was afforded minimum due process. He received timely notice of his alleged violation and the disciplinary hearing, which was held on March 19, 2020; he was given the opportunity to and did appear and present evidence at the hearing; and he received the hearing officer's written decision. DOC Response, Exhibit 2 (Attachments C, D). Mr. Dalluge's Judgment and Sentence, which orders him to undergo a substance abuse assessment, is some evidence that he is court-ordered to submit to such an assessment, and he does not dispute that he refused to undergo an assessment. This evidence is some evidence of Mr. Dalluge's infraction.

Prison Conditions Are Not Cruel and Unusual

Mr. Dalluge argument that his confinement is cruel and unusual lacks factual proof that DOC has acted with deliberate indifference to some known risk to his health and safety. "While reasonable minds may disagree as to the appropriate steps that should be taken to protect the prison population while preserving public safety, no evidence here shows that [DOC has] acted with deliberate indifference." *Colvin v. Inslee*, ____ Wn.2d ____, 467 P.3d 953, 965 (2020). Because Mr. Dalluge's contention is based on only conclusory allegations and not evidence, the court declines to address its merits. *In re Personal Restraint of Cook*, 114 Wn.2d 802, 813-14, 792 P.2d 506 (1990). DOC's reasonable response to the risk of inmates contracting COVID-19 is well-documented and has been held not to violate the Eighth Amendment to the United States Constitution or article I, section 14 of the Washington Constitution. *Colvin*, 467 P.3d at 964-65; *In re Pers. Restraint of Pauly*, 13 Wn. App. 2d. 292, 313-320, 466 P.3d 245 (2020).

Mr. Dalluge's petition presents no arguable basis in fact or law for collateral relief. Accordingly, the petition is dismissed as frivolous under RAP 16.11(b).

KEVIN KORSMO
ACTING CHIEF JUDGE