

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

IN THE MATTER OF THE
PERSONAL RESTRAINT OF:

GABRIEL ALLEN ECKARD,

Petitioner.

No. 82951-3-I
(consolidated with No. 82952-1-I)

ORDER OF DISMISSAL

Gabriel Eckard filed these personal restraint petitions challenging a disciplinary infraction where he was found guilty of sexually harassing a female corrections officer.¹ Eckard claims that he did not sexually harass the officer and that he was deprived of due process when the disciplinary hearing occurred without him. To prevail in this setting, Eckard 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, 212-13, 227 P.3d 285 (2010). Bare assertions and conclusory allegations are not sufficient to command judicial consideration and discussion in a personal restraint proceeding. In re Pers. Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992). Because Eckard's petitions are frivolous, they must be dismissed.

¹ Eckard filed two identical personal restraint petitions, one in Division III and one in Division I. The two matters were consolidated after Division III transferred Eckard's petition to this court.

BACKGROUND

Eckard is in the custody of the Department of Corrections (DOC) and is housed in the Intensive Management Unit (IMU)² because of his purported “unyielding aggressive, abusive, and assaultive behavior, which rendered him unmanageable in [the] general population.” Due to security risks, DOC officers strip search inmates housed in the IMU prior to being escorted in or out of the unit.

On May 12, 2021, Eckard received a notice of infraction, along with a disciplinary hearing notice, for “committing sexual harassment against a staff member,” a violation of WAC 137-25-030(661). According to a report from Officer Janice Rust, Officer Rust and Officer Robert Smith transported Eckard to an interview room for his electronic law library time. Officer Rust “warned inmate Eckard that he needed to keep his clothes on because he has a habit of taking them off and being inappropriate with myself and other staff members.”³ About half an hour later, Officer Rust observed Eckard taking his clothes off and posing in front of the computer monitor. She told him to put his clothes back on several times.

Officer Smith reported that he heard Officer Rust give Eckard a directive to put his clothes on. Then, about an hour after being placed in the interview room, Officer Smith again directed Eckard to put his clothes on.

In another incident report, Officer Brandon Archer said that he decided to escort Eckard back to his cell for being inappropriate with Officer Rust, who appeared

² According to the DOC, inmates are housed in the IMU because they require a heightened degree of security and supervision.

³ Eckard has a history of removing his clothing and harassing female staff, including 23 separate infractions for sexual harassment between January 2013 and April 2020.

to be uncomfortable with the situation. When Officer Archer approached the interview room, Eckard was still standing in the cell door half naked and asked the officer “what the fuck are you doing here?” When directed to put his clothes back on, Eckard told Officer Archer: “I don’t care, fuck you.”

On May 17, the DOC provided Eckard with a notice of continuance for his disciplinary hearing for purposes of obtaining a video recording.

On May 21, DOC officers arrived at Eckard’s cell to escort him to the disciplinary hearing. Officer Richard Morgan asked Eckard if he wanted to attend his disciplinary hearing and he responded with an affirmative. But when Officer Morgan ordered him to step up to the front and prepare for a strip search, “Eckard walked back to his bunk and manipulated his bedding.” Officer Morgan issued the same instructions again, and “Eckard responded by glaring at [him], and then turning his back” to the officer. Officer Morgan gave the instructions a third time but Eckard again turned his back on the officer. The officers then “terminated the escort.”

The hearing officer determined that Eckard “failed to comply with strip procedures” and conducted the “hearing in absentia.” The hearing officer found Eckard guilty, based on review of five written reports and a video recording that showed: (1) Eckard taking off the top half of his orange jumpsuit and his t-shirt in the interview room; (2) correctional officers observing Eckard and directing him to get dressed; (3) Eckard complying, then, after the officers step away, taking off his t-shirt again and posing in the computer monitor; and (4) correctional officers again telling Eckard to put his clothes on, Eckard doing so, but then removing his t-shirt again.

Eckard was sanctioned with a loss of 20 days of earned time. He appealed, claiming that removing his shirt did not qualify as sexual harassment. The superintendent designee affirmed the finding of guilty and sanction imposed.

DISCUSSION

Eckard contends that (1) there is no evidence that he committed sexual harassment, (2) his due process rights were violated when his disciplinary hearing was held without him, and (3) DOC officers falsified documents to say that he had refused to comply with a strip search. The DOC has filed a response arguing that Eckard's claims are baseless.

Review of prison disciplinary proceedings in a personal restraint petition "is limited to determining whether the action taken was so arbitrary and capricious as to deny the petitioner a fundamentally fair hearing." In re Pers. Restraint of Burton, 80 Wn. App. 573, 582, 910 P.2d 1295 (1996). If there is "some evidence" in the record to support a prison disciplinary decision, the evidentiary requirements of due process are satisfied. In re Pers. Restraint of Johnston, 109 Wn.2d 493, 497, 745 P.2d 846 (1987).

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.

Id. (quoting Superintendent, Mass. Corr. Inst. v. Hill, 472 U.S. 445, 455-56, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1956)).

The minimum due process protections applicable in prison disciplinary

hearings also require adequate notice of the alleged violation before a hearing, an opportunity to present evidence and call witnesses, when not unduly hazardous to institutional safety and correctional goals, and a written statement of the evidence relied on and reasons for the disciplinary action. Wolff v. McDonnell, 418 U.S. 539, 563-66, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974); Burton, 80 Wn. App. at 585.

The term “sexual harassment against a staff member” means “[a]ny word, action, gesture, or other behavior taken against a staff member . . . that is sexual in nature and that would be offensive to a reasonable person.” WAC 137-25-020(13). In these petitions, Eckard admits that he took his clothing off and was not wearing anything above his waist. Officer Archer’s written statement reports that Officer Rust appeared uncomfortable regarding this situation. This statement, as well as others in the record, was sufficient to meet the “some evidence” standard.

Eckard claims that he was denied his right to be present at his disciplinary hearing. The available documentary record contradicts this claim. Eckard is housed in the IMU unit that requires a strip search, prior to escorts, due to security concerns. At the time he was due to be escorted to the hearing, Officer Morgan gave him three opportunities to comply with the strip search procedure. Eckard elected not to do so. There was no due process violation here.

Finally, Eckard does not identify any support in the record or otherwise provide any evidence for his claim that DOC officers falsified statements for the hearing officer to consider. See Rice, 118 Wn.2d at 886. Moreover, this court does not independently assess the credibility of witnesses, re-weigh the evidence considered

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by the hearing officer in this setting, or make new factual determinations. Johnston, 109 Wn.2d at 497.

Because Eckard fails to establish that he was deprived of a fundamentally fair disciplinary proceeding and he fails to “present an arguable basis for collateral relief either in law or in fact, given the constraints of the personal restraint petition vehicle,” his petitions are frivolous and must be dismissed. In re Pers. Restraint of Khan, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015).

Now, therefore, it is hereby

ORDERED that these personal restraint petitions are dismissed under RAP 16.11(b).

Andrus, A.C.J.
Acting Chief Judge