

RICHARD D. JOHNSON,  
Court Administrator/Clerk

*The Court of Appeals  
of the  
State of Washington*

DIVISION I  
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July 31, 2015

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CASE #: 72075-9-1  
Personal Restraint Petition of Jamal James Ellis

Counsel:

Enclosed please find a copy of the Order Dismissing Personal Restraint Petition entered by this court in the above case today.

Pursuant to RAP 16.14(c), "the decision is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in Rule 13.5A."

This court's file in the above matter has been closed.

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

law

enclosure

7-31-15  
State Strike  
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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

In the Matter of the Personal	)	
Restraint of:	)	No. 72075-9-I
	)	
JAMAL JAMES ELLIS,	)	ORDER OF DISMISSAL
Petitioner.	)	
_____	)	

In May 2014, Jamal Ellis filed this petition seeking restoration of 355 days good conduct time lost as a sanction in disciplinary proceedings at the Washington Corrections Center in November 2012. Ellis contends he was deprived of due process in that he was charged with the “wrong infractions” and he was not allowed to review the evidence. He also challenges the sufficiency of the evidence and argues the sanction was excessive. He claims he is the victim of discrimination.<sup>1</sup> To obtain relief by means of a personal restraint petition, Ellis must demonstrate that he is under restraint and that the restraint is unlawful. RAP 16.4; see also In re Pers. Restraint of Cashaw, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994); In re Pers. Restraint of Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990).

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,

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<sup>1</sup> To the extent Ellis intended to raise new issues in his reply, such contentions are too late and are not addressed in this order. See In re Pers. Restraint of Peterson, 99 Wn. App. 673, 681, 995 P.2d 83 (2000).

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 Department of Corrections (DOC) has provided documents showing that Ellis lost 355 days good conduct time after a disciplinary hearing held on November 10, 2010, when the hearing officer found Ellis guilty of violating WAC 137-25-030(633) ("Assault on another offender"), (704) ("Assault on a staff member"), and

(717) ("Causing a threat of injury to another person by resisting orders, resisting assisted movement or physical efforts to restrain"). An initial serious infraction report indicates that Corrections Officer Michael Bologna saw Ellis "throw a closed fist punch into" a cell, then enter the cell, then exit the cell while "pulling" another inmate "out with him," and then place the inmate "into a headlock" and begin "throwing numerous closed fist punches to [the inmate's] face and body." When Corrections Officer Bologna and Corrections Officer Robert Clouatre intervened, Ellis "became combative towards staff by throwing closed fist punches" at them. The officers used force, specifically "three open palm heel strikes" and "an arm bar," to restrain Ellis.

The hearing officer considered statements provided by Corrections Officer Bologna and Corrections Officer Clouatre and noted that there was no available video of the incident. Ellis did not request witness statements and did not provide a statement at the hearing. The hearing officer imposed a sanction of 30 days segregation and 355 days loss of good conduct time, based on the "severity of the offense" and "complete lack of remorse for [his] actions displayed during the hearing." The hearing officer also stated, "Sanction upgrade authorized by Supt. Russell."

Ellis fails to cogently explain or identify any authority to support his view that Corrections Officer Bologna charged him with the "wrong" infractions. And contrary to Ellis's unsupported claim, the absence of medical reports or other evidence indicating that an officer suffered some injury does not suggest that the hearing officer failed to allow Ellis to review all the evidence or decided the matter on less than sufficient evidence. The consistent statements from the two officers constitute

some evidence to support the finding. This court does not independently assess the officers' credibility or re-weigh the evidence. Johnston, 109 Wn.2d at 497.

DOC policies in effect at the time of the hearing directs the hearing officer to be "guided by the sanction range for the most serious category of offense," "if more than one violation arises out of a single incident." DOC Policy 320.150 (Revised 3/17/09). The policy also authorizes "Loss of 181 – 360 days good conduct time credits" with "Superintendent approval" for a 633 or 704 violation and "Loss of 46 – 90 days good conduct time credits" with "Superintendent approval" for a 717 violation. DOC Policy 320.150 (Revised 3/17/09) Attachment 1. Here, the hearing officer obtained the approval of the Superintendent before imposing the sanction. Thus, Ellis fails to demonstrate a due process violation.

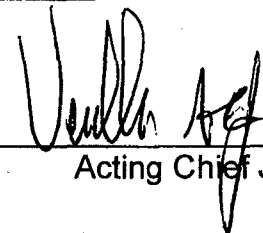
To the extent Ellis alleges that his disciplinary sanctions resulted from improper discrimination, his self-serving assertions and speculation are not sufficient. In re Pers. Restraint of Rice, 118 Wn.2d 876, 885-86, 828 P.2d 1086 (1992). A personal restraint petition must set out the facts underlying the challenge and the evidence available to support the factual assertions. Id.

Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed under RAP ✓

16.11(b).

Done this 31<sup>st</sup> day of July, 2015.

  
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Acting Chief Judge

FILED  
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STATE OF WASHINGTON  
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