filed 6/12/17

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of CHARLES VERDEL FARNSWORTH, Petitioner.	No. 49965-7-II ORDER DISMISSING PETITION

Charles Farnsworth seeks relief from the sanctions imposed[1] following the Department of Corrections' determinations that he had violated WAC 137-25-030(602) (possessing any weapon, sharpened instrument, knife or any component thereof), WAC 137-25-030(702) (possessing an unauthorized tool) and WAC 137-28-220(053) (possessing anything not authorized for retention) after a sharpened instrument, a homemade screwdriver and a container of vinegar were found in his desk in his work area.

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 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.

[1] Thirty days of segregation, 30 days loss of phone privileges and 30 days loss of visitation. Because Farnsworth is serving a sentence of life imprisonment without possibility of parole, he has no earned good conduct that could be lost as a sanction.

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. Farnsworth received all of these protections. Farnsworth argues he was denied due process for a number of reasons. First, he argues that the hearing officer should have recused himself because Farnsworth had previously brought a civil action against him in superior court. But he does not demonstrate that the hearing officer was biased against him such that he would have been required to recuse himself.

Second, he argues that the hearing officer failed to obtain a written statement from a witness who was the lead in his work area. But the hearing officer was unable to obtain such a statement because Farnsworth only identified the lead as LT and the hearing officer was unable to determine who LT was.

Third, he argues that the hearing officer failed to obtain video evidence he requested. But he does not demonstrate that he had a due process right to the production of such evidence.

Fourth, he argues that one of his witnesses should have been shown the items seized from the desk so the witness could explain what the items were for. But he does not demonstrate that he has a due process right to such a procedure.

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). Farnsworth argues that because anyone in the work area could have had access to his desk, there was

insufficient evidence that he possessed the items seized from the desk. But the hearing officer found otherwise. We do not re-weigh the evidence or make credibility determinations. *Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 455, 105 S. Ct. 2768, 2774, 86 L. Ed. 2d 356 (1985). Sufficient evidence supports the findings of infraction. We therefore affirm the Department's disciplinary decision.

Accordingly, it is hereby

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

Mya, A.C.J.

ACTING CHIEF JUDGE

cc: Charles V. Farnsworth
Candie Dibble
Department of Corrections