

**Hoyt, Trina (ATG)**

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**From:** ATG MI COR Oly CE Reader  
**Sent:** Friday, September 25, 2015 11:13 AM  
**To:** Hoyt, Trina (ATG)  
**Subject:** FW: COURT OF APPEALS 73576-4-I Personal Restraint Petition of Steven James Ferguson  
**Attachments:** 73576-4 Ferguson - 9.25.15 letter.pdf; 73576-4 Order Dismissing.pdf  
**Importance:** High

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**From:** Wise, Laurel [<mailto:Laurel.Wise@courts.wa.gov>]  
**Sent:** Friday, September 25, 2015 10:38 AM  
**To:** ATG MI COR Oly CE Reader; Dibble, Candie (ATG)  
**Subject:** COURT OF APPEALS 73576-4-I Personal Restraint Petition of Steven James Ferguson  
**Importance:** High

RICHARD D. JOHNSON,  
Court Administrator/Clerk

*The Court of Appeals  
of the  
State of Washington*

DIVISION I  
One Union Square  
600 University Street  
Seattle, WA  
98101-4170  
(206) 464-7750  
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**The attached order is being transmitted to counsel electronically. No hard copy will follow.**

*Presiding  
Judge ✓*

RICHARD D. JOHNSON,  
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September 25, 2015

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CASE #: 73576-4-I  
Personal Restraint Petition of Steven James Ferguson

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

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

IN THE MATTER OF THE	)	
PERSONAL RESTRAINT OF:	)	No. 73576-4-I
STEVEN JAMES FERGUSON,	)	
	)	ORDER OF DISMISSAL
_____ Petitioner.	)	

Steven Ferguson challenges a sanction of 10 days disciplinary segregation and loss of 10 days of good conduct time imposed following a prison disciplinary hearing. To obtain relief in this setting, Ferguson 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, 227 P.3d 285, 290 (2010) (quoting In re Pers. Restraint of Isadore, 151 Wn.2d 294, 298, 88 P.3d 390 (2004)).

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, 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.

During a random search of the cell Ferguson shared with Jabarie Phillips, prison officials found a "green leafy substance wrapped in paper that was burnt at one end." Testing indicated marijuana. Prison staff charged both Ferguson and Phillips with a violation of WAC 137-25-030(603) ("Possession, introduction, use or transfer of any narcotic, controlled substance, illegal drug, unauthorized drug, mind altering substance, or drug paraphernalia."). A hearing officer found Ferguson guilty and imposed a sanction. Ferguson challenged the sanction in a personal restraint petition before this court, which granted relief in In re Personal Restraint of Ferguson, No. 69386-7-I.

After providing notice to Ferguson, prison staff held a new hearing. The hearing officer considered the Phillips's statement admitting that he, and not Ferguson,

possessed the marijuana. The hearing officer found Phillips's statement "not credible" and found Ferguson guilty.

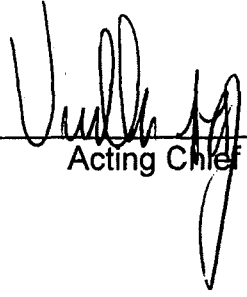
Ferguson contends that the hearing officer "tailored" his findings to satisfy this court's observation that it was "possible" that the hearing officer "determined that the rebuttal evidence," specifically Phillips's statement, "was not credible." In re Ferguson, No. 69386-7-I, Slip Op. at 4. He also contends that the record does not support the hearing officer's finding of guilt. But this court does not re-weigh evidence or independently assess the credibility of witnesses. Viewed in light of the deferential standard of review, the witness statements describing the discovery of the marijuana in Ferguson's cell, in addition to the hearing officer's determination that Phillips's claim of ownership lacked credibility, constitutes some evidence supporting the conclusion that Ferguson committed the infraction as determined by the hearing officer. See In re Pers. Restraint of Anderson, 112 Wn.2d 546, 550, 772 P.2d 510 (1989) (knife found in cell was some evidence that any one of four cellmates either possessed knife, placed knife in cell, or at least knew of knife's presence in cell).

Ferguson next contends that prison officials violated his right to due process by failing to conduct a new hearing until three months after this court reversed the original disciplinary proceedings. Ferguson fails to identify any authority requiring such a re-hearing within a particular time period. Moreover, WAC 137-28-400 provides, in pertinent part, "failure to adhere to any particular time limit shall not be grounds for reversal or dismissal of a disciplinary proceeding." Ferguson fails to demonstrate grounds for relief.

Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed under RAP 16.11(b).

Done this 25<sup>th</sup> day of September, 2015.

  
\_\_\_\_\_  
Acting Chief Judge

FILED  
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STATE OF WASHINGTON  
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