

**FILED**  
**JANUARY 25, 2017**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

**COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON**

**In the Matter of the Personal Restraint** )  
**of:** )  
 )  
 )  
**WILLIAM L. HICKS,** )  
 )  
**Petitioner.** )  
 )

**No. 34432-1-III**

**ORDER DISMISSING PERSONAL  
RESTRAINT PETITION**

William L. Hicks is serving a sentence with the Washington Department of Corrections (DOC) after he pleaded guilty in 2014 in Franklin County to one count of failure to register as a sex offender. He now seeks relief from personal restraint imposed in a DOC infraction hearing that found him guilty of a WAC 137-25-030(810) serious infraction (“Failing to seek/maintain employment or training or maintain oneself financially, or being terminated from a work, training, education, or other programming assignment for negative or substandard performance”) and a WAC 137-28-220(212) general infraction (“Unauthorized use of equipment”). The hearing officer imposed disciplinary sanctions of 30 days of loss of recreation, 15 days loss of good conduct time, and one month of earned time not earned.

No. 34432-1-III

*In Re Pers. Restraint of Hicks*

Because Mr. Hicks has had no alternate opportunity for judicial review of the DOC infraction hearing, he need only show that he is unlawfully restrained. RAP 16.4; *In re Pers. Restraint of Grantham*, 168 Wn.2d 204, 214, 227 P.3d 285 (2010). He is restrained because he is incarcerated and has been deprived of at least one protected liberty interest: earned good time credits. *In re Pers. Restraint of Malik*, 152 Wn. App. 213, 218, 215 P.3d 209 (2009).

To prove that the restraint is unlawful, Mr. Hicks must show that the action taken at the disciplinary hearing was so arbitrary and capricious that it resulted in a fundamentally unfair proceeding. *In re Pers. Restraint of Gronquist*, 138 Wn.2d 388, 396, 978 P.2d 1083 (1999). Disciplinary proceedings are not arbitrary and capricious if they provide minimal due process protections. *Id.* Additionally, as long as “some evidence” supports the hearing officer’s decision, the evidentiary requirements of due process are satisfied and the decision is not arbitrary and capricious. *Superintendent, Mass. Correctional Inst. v. Hill*, 472 U.S. 445, 455-56, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985); *In re Pers. Restraint of Anderson*, 112 Wn.2d 546, 549, 772 P.2d 510 (1989); *In re Pers. Restraint of Reismiller*, 101 Wn.2d 291, 295-96, 678 P.2d 323 (1984). This court will not independently examine or weigh the evidence. *Hill*, 472 U.S. at 455.

Prison disciplinary hearings are not criminal prosecutions but are civil in nature. *In re Pers. Restraint of Higgins*, 152 Wn.2d 155, 163-64, 95 P.3d 330 (2004).

No. 34432-1-III  
*In Re Pers. Restraint of Hicks*

Consequently, an inmate facing a disciplinary hearing is not entitled to the same due process rights as defendants in criminal trials. *Id.* The minimal due process for serious infractions generally requires that the inmate “(1) receive notice of the alleged violation at least 24 hours before the hearing; (2) be provided an opportunity to present documentary evidence and call witnesses when not unduly hazardous to institutional safety and correctional goals; and (3) receive a written statement of the evidence relied upon and the reasons for the disciplinary action.” *In re Gronquist*, 138 Wn.2d at 396-97. Restraint may also be unlawful if the DOC failed to comply with its own rules or policies. *In re Pers. Restraint of Cashaw*, 123 Wn.2d 138, 149, 866 P.2d 8 (1994).

The incident that gave rise to the infractions occurred on December 3, 2015. Mr. Hicks was cleaning equipment and rinsing containers of leftover contaminated food down a floor drain in the course of his employment in the Correctional Industries (CI) food factory. The corrections staff later discovered a broken brush in the floor drain and noticed the drain was not functioning properly. The corrections staff reviewed surveillance footage and saw Mr. Hicks dumping a bucket of dry ingredients down the floor drain in violation of CI policy. The surveillance footage showed Mr. Hicks and another inmate try to force the dry ingredients down the floor drain with a pole brush, and the brush was missing when the pole was pulled out of the drain. Mr. Hicks admitted to corrections staff that he broke the pole brush trying to clean the drain, but he did not

No. 34432-1-III

*In Re Pers. Restraint of Hicks*

admit to dumping a full bucket of dry ingredients. (He contended the bucket was only one-quarter full.) It took maintenance staff two days to fix the drain at the cost of \$235.65. Corrections staff issued Mr. Hicks a WAC 137-25-030(554) serious infraction (“Damaging, altering, or destroying any item that is not the offender’s personal property, the value of which is ten dollars or more”) and the WAC 137-25-030(810) serious infraction.

Mr. Hicks received a disciplinary hearing notice on December 9, 2015 advising him of the infractions and that the hearing would be held on December 17, 2015. The notice contained a list of the allegations against him and his offender rights, including his right to review related reports and a summary of confidential information, and to request witness statements or witness attendance. The notice also advised him that he did not have a right to cross-examine witnesses or to have the infracting staff present at the hearing. Mr. Hicks signed the notice, which indicated that he had read the initial serious infraction report.

The hearing was actually held on December 16, 2015. Mr. Hicks was permitted to present witnesses, and the hearing officer considered the statements of five witnesses as well as Mr. Hicks. The hearing officer found that Mr. Hicks “was terminated from employment with Correctional Industries for negative performance” and that he “[b]roke the brush off in the drain from incorrect use.” The hearing officer noted that the

No. 34432-1-III  
*In Re Pers. Restraint of Hicks*

“[o]ffender statement and video evidence supports” the infractions. Mr. Hicks was found guilty of the 810 serious infraction; the 554 serious infraction was reduced to a 212 general infraction and Mr. Hicks was found guilty of the 212 general infraction. Mr. Hicks’s internal DOC appeals were denied. He then filed this petition seeking relief from the sanctions imposed by DOC.

Mr. Hicks argues he did not receive due process because the DOC failed to comply with the requirements of WAC 137-28-290(2)(f)(2015) and WAC 137-28-300(8).<sup>1</sup> He does not assert he was denied the minimal due process protections outlined in *In re Gronquist*, 138 Wn.2d at 396-97.

*DOC’s compliance with former WAC 137-28-290(2)(f)(2015).*

During the hearing, Mr. Hicks presented five witness statements, as well as his own statement. The hearing officer considered all of these statements as well as the surveillance footage of the incident. The surveillance footage was designated as confidential information. Mr. Hicks argues that he was not provided with a summary of the contents of the surveillance footage as required by former WAC 137-28-290(2)(f)(2015). Former WAC 137-28-290(2)(f) is no longer part of the code, but it was in force at the time of Mr. Hicks’s hearing. In relevant part, the section stated, “A summary of

---

<sup>1</sup> Mr. Hicks’s petition incorrectly cites to WAC 137-28-300(vi). From the context of his argument, he appears to be referring to former WAC 137-28-300(7)(b) (2015), which is now codified at WAC 137-28-300(8).

No. 34432-1-III

*In Re Pers. Restraint of Hicks*

the confidential information shall be provided to the inmate. This summary may be included in the infraction report.” The record here indicates that a description of what the video shows is contained in the initial infraction report provided to Mr. Hicks. This description satisfies the former WAC 137-28-190(2)(f) requirement that a summary of the confidential information be provided to the inmate.

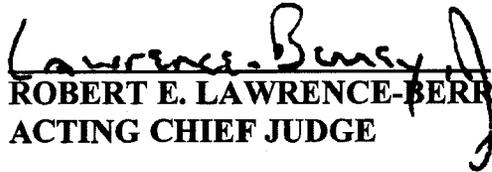
*DOC’s compliance with WAC 137-28-300(8).*

Mr. Hicks also argues that the DOC did not comply with the requirement in WAC 137-28-300(8) that any determinations by the hearing officer regarding the need to maintain confidentiality of an informant must be made on the record. It is apparent from the text of WAC 137-28-300(8) that this section applies only to information from people (confidential informants) and not simply all information that is designated confidential. *See, e.g.,* WAC 137-28-300(8)(a) (“The hearing officer shall . . . review the confidential information and make an independent determination regarding the reliability of the source, the credibility of the information, and the necessity of not revealing the source”); WAC 137-28-300-300(a)(i), (ii), (iv) (in making this determination, the hearing officer may consider “Evidence from other staff members that the confidential source has previously given reliable information. . . that the confidential source had no apparent motive to fabricate information. . . Whether the confidential source is giving first-hand

No. 34432-1-III  
*In Re Pers. Restraint of Hicks*

information"). WAC 137-28-300(8) does not apply to the surveillance footage because the video is not a confidential informant.

Mr. Hicks has not shown that he received a fundamentally unfair hearing. The petition is therefore dismissed as frivolous. RAP 16.11(b). The court also denies Mr. Hicks's request for appointment of counsel. *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 390, 972 P.2d 1250 (1999); RCW 10.73.150.

  
**ROBERT E. LAWRENCE-BERREY**  
**ACTING CHIEF JUDGE**