

RICHARD D. JOHNSON,  
Court Administrator/Clerk

*The Court of Appeals*  
of the  
*State of Washington*

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January 12, 2016

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CASE #: 73789-9-1  
Personal Restraint Petition of Christopher Brady Howard

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

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1-12-16  
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

IN THE MATTER OF THE )  
PERSONAL RESTRAINT OF: )  
CHRISTOPHER BRADY HOWARD, )  
\_\_\_\_\_  
Petitioner. )

No. 73789-9-I

ORDER OF DISMISSAL

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COURT OF APPEALS  
STATE OF WASHINGTON

Christopher Howard filed this personal restraint petition challenging the sanctions imposed by the Department of Corrections (DOC) following a prison disciplinary action. In order to obtain relief in this setting, Howard 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)). Because Howard fails to meet this burden, his petition is dismissed.

On February 11, 2015, Howard allegedly made remarks to another offender in the dayroom that included "Looks like you have a big penis," "I'd let [him] fuck me" and "I'd love to be [his] bitch." Howard was placed in administrative segregation pending investigation of the incident. On March 23, 2015, Howard was infracted for violating WAC 137-25-030 (659) (sexual harassment). A hearing officer found Howard guilty of the infraction and sanctioned him with 30 days of administrative segregation, with credit for time served.

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

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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. 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).

Howard claims he was denied due process at the hearing because DOC staff did not allow him to present evidence in his own defense. He contends that he had evidence that the allegations could not be true because the other offender was living in a different unit at the time Howard allegedly made the harassing statements. However, Howard admits that he was allowed to submit a written statement and read the statement into the record. The statement contains Howard's assertion that the other offender could not have been in the dayroom on February 11, 2015. The

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hearing officer was able to evaluate the credibility of Howard's evidence. It is not the role of this court to re-weigh the evidence considered by the hearing officer.

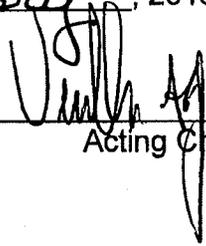
Johnston, 109 Wn.2d at 497.

Howard also claims that the allegations in the infraction were determined to be unsubstantiated during the investigation, and that the investigator determined that the allegations were falsely made by the other offender in retaliation against Howard. But Howard presents no evidence to support this assertion. To obtain relief by way of a personal restraint petition, a petitioner "must demonstrate that he has competent, admissible evidence to establish the facts that entitle him to relief." In re Pers. Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992). The hearing minutes state that the hearing officer considered the investigation report which indicated that the allegations were substantiated. This report constitutes "some evidence" sufficient to support the infraction.

Because Howard makes no showing that he was denied a fundamentally fair proceeding or that the finding of guilt was based on less than constitutionally sufficient evidence, the petition is dismissed. Now, therefore, it is hereby

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

Done this 12<sup>th</sup> day of January, 2016

  
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Acting Chief Judge