

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
TDD: (206) 587-5505

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Department of Corrections A.G. Office Katherine Joy Faber
Attorney at Law Attorney at Law
PO Box 40116 PO Box 40116
Olympia, WA 98504-0116 Olympia, WA 98504-0116
correader@atg.wa.gov KatieF@atg.wa.gov

Christopher Brady Howard
#998472
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326
chrishwrd0@gmail.com

CASE #: 73986-7-1
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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enclosure

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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. 73986-7-1
)	
CHRISTOPHER BRADY HOWARD,)	
)	ORDER OF DISMISSAL
_____ Petitioner.)	

Christopher Howard is currently incarcerated at Clallam Bay Corrections Center pursuant to a conviction for failure to register as a sex offender. He filed this personal restraint petition challenging the sanctions imposed by the Department of Corrections (DOC) following two prison disciplinary actions. 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.

1. 663 Infraction

On May 13, 2015, Howard was meeting with a corrections officer in his office when Howard was informed that he would be demoted to maximum custody. After staring at the corrections officer "for an extended amount of time," Howard said "if I am going to IMS, I will do something that warrants IMS." Howard then stated "I have a release date and Clallam Bay is not that far from Seattle." Howard was infraacted for violating WAC 137-25-030 (506) (threatening another with bodily harm or with any offense against any person or property). Howard requested witness statements from three offenders and four staff members, including the hearing officer. Three offenders and two of the staff members

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returned completed statements. The hearing officer denied witness statements from the other two staff members, as neither he himself nor the other staff member were present at the time of the incident. Howard submitted a statement in his own defense. The hearing officer found Howard guilty of a reduced infraction, WAC 137-25-030 (663) (using physical force, intimidation, or coercion against any person) and sanctioned him with 30 days lost library privileges.

2. 549 Infraction

On May 14, 2015, Howard was infraacted for violating WAC 137-25-030 (549) (providing false or misleading information during any stage of an investigation of sexual misconduct). The infraction stemmed from two separate Prison Rape Elimination Act (PREA) claims Howard made on March 27, 2015: one against a corrections officer, who Howard alleged refused to accept Howard's previous PREA complaints, and one against another inmate, who allegedly told Howard "to go to the dayroom and show your pussy." Following an investigation, the prison superintendent determined that Howard's allegations were unfounded. Howard requested witness statements from four staff members. The hearing officer permitted Howard to obtain the statements, but did not allow him to ask certain questions of the witnesses involving whether the witnesses believed Howard. Howard submitted a statement in his own defense. The hearing officer found Howard guilty of the infraction and sanctioned him with 30 days segregation and 20 days lost good conduct time.

Howard first alleges that his due process rights were violated in both hearings because he was denied witness statements and the opportunity to

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present evidence. 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). However, inmates are not granted an "unrestricted right to call witnesses" and hearing officers are given broad discretion to exclude witnesses from a disciplinary hearing if, for example, the testimony would be irrelevant or unnecessary. Wolff v. McDonnell, 418 U.S. 539, 566-67, 94 S. Ct. 2963, 2979, 41 L. Ed. 2d 935 (1974).

Here, Howard's due process rights were not violated. In both hearings Howard was afforded the opportunity to present a statement in his own defense, and did so. In addition, Howard was able to present witness statements supporting his version of the events in both hearings. While the hearing officer denied Howard the opportunity to present statements from certain witnesses and to ask certain questions of other witnesses, these decisions were based on the

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fact that the testimony would have been unnecessary. The witnesses excluded in the first hearing were not present for the incident, and the testimony excluded in the second hearing was irrelevant to the hearing officer's determination of guilt.

Howard next contends the evidence was insufficient to support the infraction because there were no allegations of "bodily harm." 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)). But only a violation of WAC 137-25-030 (506) requires evidence of threats to bodily harm. Howard was found guilty of a reduced infraction, a violation of WAC 137-25-030 (663), which requires evidence of physical force, intimidation, or coercion.

Howard next contends the hearing officer was biased because "there is an active complaint against [him]" and that he was infraacted in retaliation for filing complaints against staff members. But Howard presents no evidence to support these assertions. 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). Bare assertions and conclusory allegations are not sufficient to command judicial consideration and discussion in a personal restraint proceeding. Rice, 118 Wn.2d at 886 (competent, admissible evidence, such as affidavits, required to establish facts entitling petitioner to relief).

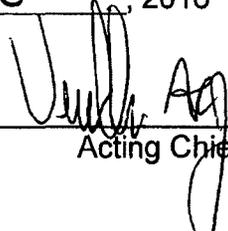
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Even if this court were to accept Howard's allegations as true, Howard has not "met his burden as to this first prong under Rice of stating with particularity facts that, if proved, would entitle him to relief." In re Pers. Restraint of Khan, 184 Wn.2d 679, 690, 363 P.3d 577 (2015); see also In re Pers. Restraint Ruiz-Sanabria, 184 Wn.2d 632, 641, 362 P.3d 758 (2015).

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 11th day of March, 2016



Acting Chief Judge

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DEPARTMENT OF APPELLATE
COURTS OF THE STATE OF WASHINGTON