

January 10, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of
BYRON FAMOUS JACKSON,
Petitioner.

No. 50836-2-II

ORDER DISMISSING PETITION

Byron Jackson seeks relief from the sanctions imposed¹ following the Department of Corrections' determination that he had violated WAC 137-25-030(710) (tattooing another or possessing tattoo paraphernalia).

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. 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. Jackson received all of these protections.

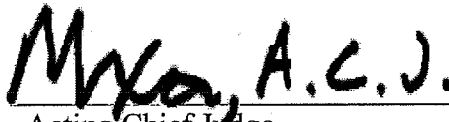
¹.Ten days' loss of good conduct time and 14 days' loss of personal property privileges.

Jackson argues that the evidence of the infraction is insufficient because he did not tattoo the other offender and the tattoo paraphernalia belonged to the other offender. 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). The record contains “some evidence” in the form of incident reports of Jackson being found sitting in a chair, next to a bunk, removing blue gloves from his hands. In that bunk was another offender, who was not a resident of Jackson’s housing area, attempting to cover a fresh tattoo on his arm. The record also contains evidence that Jackson was in possession of tattoo equipment.²

Jackson submitted a statement from the other offender, who denied that Jackson had tattooed him or had possessed tattoo equipment. But this court does 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). We therefore affirm the Department’s disciplinary decision.

Accordingly, it is hereby

ORDERED that Jackson’s petition is dismissed under RAP 16.11(b).



Acting Chief Judge

cc: Byron F. Jackson
Haley C. Beach
Department of Corrections

² Under the “tag rule,” WAC 137-325-030, if contraband is found in a cell or living area, possession of the contraband is constructively attributed to all offenders responsible for that area.