

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

IN THE MATTER OF THE)	
PERSONAL RESTRAINT OF:)	No. 80151-1-I
)	
SIDNEY D. JENKINS,)	ORDER DISMISSING
)	PERSONAL RESTRAINT
_____)	PETITION
Petitioner.)	

Sidney Jenkins is confined pursuant to a conviction for first degree felony murder in King County Superior Court Cause No. 98-1-08643-9 SEA and is serving a sentence of life without parole as a persistent offender. He filed this petition challenging the sanctions imposed pursuant to a Department of Corrections (DOC) disciplinary hearing. In order to obtain relief by means of a personal restraint petition, Jenkins bears the burden of showing that he is under restraint and that the restraint is unlawful. RAP 16.4; see also In re Pers. Restraint of Cashaw, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994); In re Pers. Restraint of Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990). Because Jenkins fails to meet this burden, the petition must be dismissed.

On April 18, 2019, Jenkins was observed sliding what appeared to be sandwich meat into another cell, and receiving a piece of cheese in return. Officer C. Rodriguez ordered Jenkins to turn over what was given to him, and Jenkins refused. Officer Rodriguez ordered Jenkins to “cell in” and Jenkins again refused. Jenkins then insisted he was going to take his laundry out, and proceeded to the pod door.

Officer Rodriguez called for backup, stating that Jenkins was refusing directives. Jenkins told Officer Rodriguez that he was “a joke.” When other officers arrived and attempted to restrain Jenkins, Jenkins resisted.

Officer Rodriguez infringed Jenkins for violating WAC 137-25-030 (509) (refusing a direct order by any staff member to proceed to or disperse from a particular area) and WAC 137-25-030 (717) (causing a threat of injury to another person by resisting orders, assisted movement, or physical efforts to restrain).

Officer Rodriguez’s report states:

On 04-18-2019 at approximately 0800, as C unit were coming back from main line, I witnessed Offender Jenkins, Sidney DOC# 900051 standing in front of D5 cell, when I went into brown pod I asked Offender Jenkins what he was doing, he then slid what appeared to be some sandwich meat under D5 cell and in return D5 slid what appeared to be a slice of cheese. I told Offender Jenkins to give me what he slid under the cell and he refused, I told offender Jenkins to give me what he slid under the cell for not asking and to cell in. Offender Jenkins replied “I’m a lifer; I do what I want and I’m not going to no hole.” I directed him to cell in, when his cell door was popped open, he looked down and said, “Oh, I forgot my laundry.” I told Offender Jenkins there was no laundry being taken and to cell in. He grabbed his laundry and proceeded to the brown pod entry door. At that time, I made a radio call to Clallam Bay base of an offender in Brown pod refusing directives: Offender Jenkins commented that he would get out of going to the hole and I was a joke. Once staff responded to the refusal of directives call, Offender Jenkins was pulled out of brown pod by C/O Weed to be placed into restraints. Officers were met by resistance from I/M Jenkins making them have to take I/M Jenkins to the floor.

Sergeant F. Teachout and Officer S. Monger also wrote statements detailing how Jenkins resisted being placed in restraints.

A prison disciplinary hearing was held on April 25, 2019. Jenkins offered a written statement which he read aloud, arguing that the officers used unnecessary force and that he was not responsible for his actions because he was tapering off

a psychiatric medication at the time. A hearing officer found Jenkins guilty of the infraction and sanctioned him with 13 days of segregation and 10 days confinement to quarters.

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. 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.

Jenkins first contends that the medication taper was causing him to experience mood swings at the time of the infraction. He argues that this supported a diminished capacity defense because he lacked the requisite intent to cause a threat of harm to another person. He contends that DOC's failure to investigate the effects of his medication violated his right to present a defense. But Jenkins was not prohibited from presenting such a defense, and in fact did so. Though Jenkins offered only his own statement in support of this defense, he was also entitled to present evidence or procure witness statements. After hearing Jenkins's statement in his own defense, the hearing officer reviewed Jenkins's medical records, which stated that Jenkins's medication produced only "mild symptoms." Jenkins fails to establish he was not afforded due process.

Jenkins next argues that he requested the hearing officer review video evidence of the incident, but that the hearing officer refused to do so. Jenkins's claim is not supported by the record. A review of the transcript of the disciplinary hearing, provided by DOC, shows that Jenkins never requested the video be produced or reviewed. During his statement, Jenkins did deny the officers' version of events, stating: "Uh um, I can't even describe it, but uh um if there's any sort of a, a photographic evidence of the incident, you'll see that uh um, uh um, I didn't move." But this was not an affirmative request by Jenkins to introduce a video of the incident at the hearing.

Jenkins contends that the notice of hearing form informed him that he had the right to remain silent but that his silence could be used against him. He

contends that this violates his Fifth Amendment right against self-incrimination. But by its terms, the Fifth Amendment applies to criminal proceedings. See U.S. Const. amend. V (“[n]o person ... shall be compelled in any criminal case to be a witness against himself.”). Prison disciplinary hearings are not criminal prosecutions, and the full panoply of rights due a criminal defendant does not apply. In re Pers. Restraint of Goulsby, 120 Wn. App. 223, 229, 84 P.3d 922 (2004) (citing Wolff v. McDonnell, 418 U.S. 539, 556, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974)). Jenkins has not established a violation of his constitutional rights.

Finally, Jenkins challenges the sufficiency of the evidence supporting the WAC 137-25-030 (717) infraction. He argues that the statements of Sergeant Teachout and Officer Monger were hearsay because “they both admit to learning about the incident over the radio.” But both officers testified that they were present and observed Jenkins actively resisting their physical efforts to restrain him. This constituted “some evidence” sufficient to support the infraction.

In response, Jenkins challenges his sentence, arguing that he no longer meets the definition of a persistent offender following changes to the persistent offender statute in 2019. He also challenges the decision of the hearing officer to view Jenkins’s medical records, appearing to argue that it infringed on his right to control his defense. But this court will not address argument or authority raised for the first time in reply. See RAP 10.3(a)-(c); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (an issue raised and argued for the first time in a reply brief is too late to warrant consideration).

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Now, therefore, it is hereby

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

Mann, A.C.J.

Acting Chief Judge