

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

IN THE MATTER OF THE)	No. 72875-0-I
PERSONAL RESTRAINT OF:)	
)	ORDER OF DISMISSAL
ALBERT KARKUNOV,)	
)	
_____Petitioner.)	

Albert Karkunov filed this personal restraint petition challenging the sanctions imposed following a prison disciplinary hearing. In order to obtain relief in this setting, Karkunov 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 Karkunov makes no showing that he can satisfy this burden, the petition is dismissed.

On September 24, 2012, Karkunov was infraacted for violating WAC 137-25-030 (603) (possession of controlled substance or paraphernalia). The record provided by Karkunov contains two infraction reports. The first, by officer Aaron Flack, states as follows:

On 9/23/2012 at 13:30 I/M Karkunov, Albert #300122 was placed in SMU. On 9/23/2012 at 13:35 C/O Christner and I C/O Flack removed all of I/M Karkunov's personal property from cell TA41L. We then put I/M Karkunov's personal property into labeled boxes and secured them in the Tom unit property room T-106. On 9/24/2012 myself and C/O Christner conducted a search of Inmate Karkunov's packed up personal property in the Tom unit officer station. While searching through numerous papers belonging and addressed to I/M Karkunov, Albert #300122, I discovered a piece of yellow 4" x 6" lined paper. This paper appeared to be previously contaminated by some form of liquid. The lines on the paper

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seemed to be dull and when held up to the light, the paper appeared darker in certain spots.

This piece of paper was taken to the D1 evidence room. I then cut a small piece of the yellow paper and placed it in a narcotic identification kit (K) for heroin, Morphine and codeine. I then followed the directions and broke the ampule. The test kit immediately had a strong chemical reaction to the piece of paper. The kit then turned a dark blue grey color. This color change indicates the positive presence of morphine. I then cut a small piece of the yellow paper and placed it in a Narcotic Identification Kit (U) for Methamphetamines and ecstasy. I then followed the directions breaking each ampule. Seconds after breaking the third ampule, the N.i.k Test changed from a clear liquid to a dark blue/purple color. This color change indicates a positive presence for methamphetamines.

By the evidence presented, I/M Karkunov is in violation of WAC 603 for being in possession of a narcotic, controlled substance and or drug paraphernalia.

The second, by officer Jon Christner, is largely identical:

On 9/23/2012 at 13:30 I/M Karkunov, Albert #300122 was placed in SMU. On 9/23/2012 at 13:35 C/O Flack and I removed all of I/M Karkunov's personal property from cell TA41L. We then put I/M Karkunov's personal property into labeled boxes and secured the boxes in the Tom unit property room T-106. On 9/24/12 a search of Inmate Karkunov's property was conducted, during the search Officer Flack discovered a piece of yellow 4" x 6" lined paper that appeared to have been contaminated by some form of liquid. The lines on the paper are dull, with light behind the paper it exposes darker areas on the paper that is some form of dried liquid. Officer Flack took the suspicious piece of paper to the D1 evidence room to conduct a Narcotic Identification kit (NIK) test [sic] a small section of the piece of paper. Once tested it had a positive reaction for test kit (K) Heroin, Morhpine [sic] Codein [sic], showing a strong dark blue, grey color which indicates the positive presence of Morphine. A secondary test was conducted on another small section of the piece of paper in N.I.K. test kit (U) for Methamphetamines and Ecstasy (MDA), this displayed a strong dark blue/purple color indicating a positive presence of Methamphetamines.

A disciplinary hearing was held on October 18, 2012. The hearing officer found Karkunov guilty of the 603 infraction based on written staff testimony, physical evidence and supporting documentation, and sanctioned him with 15 days cell confinement and 20 days lost recreation privileges. Karkunov was not penalized with the loss of good time credits.

Karkunov claims he was denied his right to due process at the disciplinary hearing because (1) the evidence was insufficient to support the guilty finding; (2) DOC failed to properly account for the chain of custody of the yellow paper; (3) he was not given notice of the evidence DOC intended to provide at the hearing; (4) he was denied the opportunity to present witness testimony; and (5) the hearings office and the staff advisor were biased against him.

Nevertheless, whatever injustice Karkunov perceives may have occurred, the sanctions imposed do not warrant review in a personal restraint proceeding. An inmate's constitutional rights are implicated only when he or she faces restraint that "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. 472, 484, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995). Imposition of punishment such as cell confinement or lost recreation privileges while in prison does not extend the duration of confinement and generally falls within the expected perimeters of the criminal sentence imposed by a court of law. Sandin, 515 U.S. at 485-86. Where sanctions imposed result at most in loss of privileges and not loss of good time credits, prisoners are not entitled to minimum due process and the process

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afforded by regulation is all the inmate is due.¹ In re Pers. Restraint of Gronquist, 138 Wn.2d 388, 397, 978 P.2d 1083 (1999).

Because Karkunov's claims do not rise to the level of unlawful restraint or disability within the meaning of RAP 16.4, he is not entitled to relief by way of a personal restraint petition.

Karkunov additionally claims his equal protection rights were violated when the hearings officer dismissed three other infractions stemming from the same incident. Because Karkunov does not allege that he was treated differently from others similarly situated, the exact nature of his equal protection challenge is unclear. Without proper citations to the record or any relevant authority, this argument amounts to no more than "naked castings into the constitutional sea [that] are not sufficient to command judicial consideration and discussion." In re Pers. Restraint of Williams, 111 Wn.2d 353, 365, 759 P.2d 436 (1988).

Karkunov has also requested production of documents related to his placement in segregation on September 23, 2012, which is unrelated to the infraction he challenges, as well as "[c]opies of all WAC 603 infractions issued by C/O Flack and/or C/O Christner since 2010 to show their conspiracy to violate inmates' rights via false infractions." Karkunov's request is denied because there is generally no right to discovery in personal restraint petitions. In re Pers. Restraint of Gentry, 137 Wn.2d 378, 391, 972 P.2d 1250 (1999).

¹ Karkunov makes one claim related to violation of DOC regulations; namely, that DOC violated Policy 420.320 by failing to provide him a copy of the report generated immediately following the cell search. But Karkunov cites no authority for the proposition that if corrections officers failed to do so he is entitled to dismissal of the disciplinary sanction. Furthermore, because Karkunov attached a copy of the search report to his petition, it is clear that he received the report at some time.

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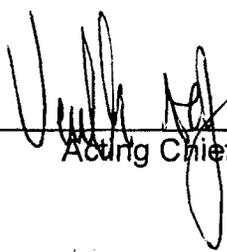
Finally, Karkunov requests this court (1) order DOC to "reimburse me for charges to ship my property upon my 'demotion' from AHCC to WSP [and] provide me free shipping of my entire property to another DOC facility upon my 'promotion' from WSP to another DOC facility;" (2) issue "[p]enalties, fines and other sanctions" against DOC for the alleged violations; and (3) issue a temporary restraining order preventing DOC from allegedly "destroying" art supplies and musical instruments that DOC has apparently determined are in excess of Karkunov's property allowance. But the only relief this court can grant in a personal restraint petition is removal of an allegedly unlawful restraint. See In re Pers. Restraint of Sappenfield, 138 Wn.2d 588, 595, 980 P.2d 1271 (1999).

To the extent he seeks affirmative relief other than the removal of an allegedly unlawful restraint, Karkunov must resort to a civil action. See Sappenfield, 138 Wn.2d at 598.

Karkunov has not established that he is entitled to relief by way of a personal restraint petition. Now, therefore, it is hereby

ORDERED that this personal restraint petition is dismissed under RAP 16.4 (d).

Done this 29th day of June, 2015.



Acting Chief Judge

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