

January 20, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Personal Restraint
Petition of:

DUSTIN KELLEY,

Petitioner.

No. 55893-9-II

ORDER DISMISSING PETITION

Dustin Kelley seeks relief from the sanctions imposed¹ following the Department of Corrections' determination that he had violated WAC 137-25-030(603) (introducing an unauthorized drug) and WAC 137-25-030(605) (impersonating another offender). 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 Pers. Restraint Petition of 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, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (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. Kelley received all of these

¹ One-hundred eighty days' loss of electronic communication, 180 days' loss recreation, 75 days' loss of good conduct time, 30 days' cell confinement, 180 days' suspension of visitation, and other sanctions.

protections. He does not have a due process right to review the evidence card. *Wolff*, 418 U.S. at 563-66. Contrary to his claim otherwise, the hearing officer read Kelley's requested witness statement from Arnestad into the record. And the hearing officer made a sufficient determination that safety concerns justified the nondisclosure of the sources of confidential information.

Kelley argues that the evidence of the infractions was insufficient. When there is "some evidence" in the record, we will affirm the Department's disciplinary decision. *Superintendent, Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 454, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985); *In re Pers. Restraint Petition of Johnston*, 109 Wn.2d 493, 497, 745 P.2d 864 (1987). The monitored telephone communications and the confidential information constitute "some evidence" of the infractions. The fact that drugs were not found in Kelley's possession does not negate this evidence; evidence of conspiracy to introduce drugs into a correctional facility is sufficient. And while Kelley argues that the hearing officer misinterpreted the monitored telephone conversations, this court does not re-weigh the evidence or make credibility determinations. *Hill*, 472 U.S. at 455.

Finally, Kelley argues that the banning his father from visiting him for the duration of his life without possibility of parole sentence is an excessive sanction. But the visitation ban is not a sanction against Kelley; it is an action against Kelley's father. Visits by a relative is not a liberty interest protected by the due process clause. *Block v. Rutherford*, 468 U.S. 576, 584-88, 104 S. Ct. 3227, 82 L. Ed. 2d 438 (1984). And Kelley's father has a mechanism for appealing the visitation ban.

Kelley does not demonstrate that he is under unlawful restraint. Accordingly, it is hereby

ORDERED that Kelley's petition is dismissed under RAP 16.11(b). His request for appointment of counsel is denied.


Acting Chief Judge Pro Tempore

cc: Dustin Kelley
Elena Yi