

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

In the Matter of the)	No. 81196-7-I
Personal Restraint of:)	
)	ORDER OF DISMISSAL
Joshua D. Lambert,)	
)	
_____Petitioner.)	

Joshua Lambert filed this personal restraint petition challenging the sanctions imposed following a 2019 prison disciplinary hearing. In order to obtain relief in this setting, Lambert 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, 299, 88 P.3d 390 (2004)). Lambert makes no showing that he was denied a fundamentally fair proceeding or that he was prejudiced by the process that he received. See Grantham, 227 P.3d at 293. Accordingly, the petition is dismissed.

In February 2019, while incarcerated at the Monroe Correctional Complex, Lambert was charged with fighting with another inmate, in violation of WAC 137-25-030(505). According to the Initial Serious Infraction report, another offender approached Lambert in the dayroom and threw several punches at him. Lambert responded in kind. Staff members witnessed the incident.

Lambert received written notice of the charge and of its factual basis on February 26, 2019. The hearing took place on March 1, 2019. At the hearing, Lambert asked about a “self defense plea” and hearing officer informed him that his only options were to enter a guilty or not guilty plea. Lambert said the other inmate was the aggressor and that his arms were “up” and “moving,” but he did not throw any punches. The hearing officer found Lambert guilty of the infraction, based on the staff member statements and video evidence. The hearing examiner noted that the video evidence “accurately depicts the events of the infraction report” and stated that “it’s clear to me from the video footage that there [was] mutual combat.” The hearing officer imposed sanctions, including the loss of fifteen days’ good time credit.

Lambert appealed the sanction and the Associate Superintendent denied the appeal, expressly noting that she reviewed the evidence and the audio recording of the hearing.

Lambert claims that the proceeding violated his right to due process and challenges the evidence supporting the finding of guilt. He alleges a violation of equal protection, claiming he was treated differently from other inmates who have acted in self-defense. He contends he was denied a fair hearing because the hearing officer was “deceptive” and biased, he was provided with no opportunity to pose questions of witnesses, and he was deprived of the right to defend himself.

Review of a prison disciplinary proceeding is limited to a determination of whether the action taken was “so arbitrary and capricious as to deny the

petitioner a fundamentally fair proceeding so as to work to the offender's prejudice." Grantham, 168 Wn.2d at 215 (citing 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 petitioner was afforded the applicable minimum due process protections and the decision was supported by at least some evidence. Grantham, 168 Wn.2d at 215-16; In re Pers. Restraint of Krier, 108 Wn. App. 31, 38, 29 P.3d 720 (2001). Due process requires that an inmate facing disciplinary sanctions 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. Grantham, 168 Wn.2d at 215-16; 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:

Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.

(Citations omitted.) In re Pers. Restraint of Johnston, 109 Wn.2d 493, 497, 745 P.2d 864 (1987), (quoting Superintendent, Mass. Corr. Inst. v. Hill, 472 U.S. 445, 455-56, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (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).

The record demonstrates that Lambert received all the due process to which he was entitled. There is no dispute that Lambert received advanced written notice of the charge, he attended the hearing, and had the opportunity to present a defense. Lambert also received written notice of the hearing officer’s decision, the evidence relied upon, and the reasons for the sanctions imposed. Although Lambert asserts that the hearing officer’s handwritten findings were not legible, he received a typed copy of the decision in addition to the handwritten version. He fails to establish a due process violation based on lack of notice of the decision and its basis.

Lambert also challenges the sufficiency of the evidence. But the staff reports and video evidence clearly constitute “some evidence” to support the finding of guilt. And although Lambert continues to assert self-defense, the hearing officer considered his argument and rejected it as inconsistent with the other evidence. Although the hearing officer did not find that Lambert instigated the fight, he concluded that he actively engaged in fighting and was not merely defending himself. It is not the role of this court to re-weigh the evidence considered by the hearing officer. Johnston, 109 Wn.2d at 497.

Lambert asserts that the hearing officer made false assertions about what the video evidence showed. Although not entirely clear, Lambert appears to claim that the hearing officer found that he punched the other offender using closed fists. But the hearing officer concluded only that the video showed

“mutual combat,” whether Lambert was throwing punches or “grappling,” and made no specific finding about closed fists. While Lambert disagrees with this conclusion, he fails to show that it was based on bias, “deceit,” or other misconduct on the part of the hearing officer.

Lambert complains that he had no “satisfactory opportunity” to obtain witness statements and no opportunity to pose questions to witnesses. But Lambert was notified of the right to request witness statements and chose not to request any. In light of this, his claim that he was denied the opportunity to ask questions of witnesses is moot. And in any event, Lambert’s due process rights in this context do not include the right to cross examine witnesses. See In Pers. Restraint of Burton, 80 Wn. App. 573, 585-86, 910 P.2d 1295 (1996), overruled on other grounds by Grantham, 168 Wn.2d 204.

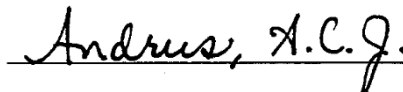
Lambert claims that he was deprived of equal protection because the hearing officer refused to consider his claim of self-defense, when other inmates were reportedly not charged or were found not guilty because they acted in self-defense.

Equal protection requires that similarly-situated individuals receive like treatment. In re Pers. Restraint of Fogle, 128 Wn. 2d 56, 62, 904 P.2d 722 (1995). Lambert’s claim fails because he does not establish that he was treated differently from others who were similarly-situated. Specifically, Lambert does not show that other individuals were found after a hearing to have engaged in “mutual combat” and then had their charges dismissed or were not otherwise punished.

Finally, although he couches this argument in several different ways, Lambert asserts that he had a right to use force to defend himself and could not be sanctioned for such actions. But self-defense was explicitly removed as a defense to a fighting infraction long ago. Compare WAC 137-25-260(505) (“Fighting with another offender”) with former WAC 137-28-030(505) (1989) (“Fighting with any person except in self-defense”). Contrary to his argument, the Department’s prohibition on fighting—whether or not in self-defense—is a permissible regulation because it furthers a legitimate penological purpose of maintaining stability and safety. See Turner v. Safley, 482 U.S. 78, 89, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987). Prison administrators are accorded “deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.” Bell v. Wolfish, 441 U.S. 520, 547, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979). No authority supports Lambert’s position that he has a right, under the Constitution or any statute, to use force in self-defense in the prison setting.

Because Lambert has not demonstrated a basis for relief, the petition must be dismissed.¹ Now, therefore, it is hereby

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



Acting Chief Judge

¹ Lambert’s pending motion to stay is also hereby denied.