

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

Filed
Washington State
Court of Appeals
Division Two

In the Matter of the Personal Restraint of
ROBERT A. LARSON,
Petitioner.

No. 54117-3-II

March 9, 2020

ORDER DISMISSING PETITION

Robert Larson seeks relief from the sanctions imposed¹ following the Department of Corrections' determinations that he had violated WAC 137-25-030 ((752) receiving a positive test for an unauthorized drug), ((884) urinating in an unauthorized container), and ((704) assaulting a staff member). He contends that he was denied his right to due process when he was not advised that he could "propose questions for the hearing officer to ask witnesses," as provided in WAC 137-28-285(1)(g). 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 the Pers. Restraint 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, 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

¹ In total, 75 days' loss of good time, including applying 15 days' loss that had been suspended in a prior proceeding.

and correctional goals, and (3) a written statement of the evidence relied on and the reasons for the disciplinary action. *Wolff*, 418 U.S. at 563-66. Larson received all of these protections. The creation of a procedural right under the Department's regulations does not make it a constitutionally required due process right. *In re Pers. Restraint of Plunkett*, 57 Wn. App. 230, 236-37, 788 P.2d 1090 (1990).

When there is "some evidence" in the record, we will affirm the Department's disciplinary decision. *Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 455, 86 L. Ed. 2d 356, 105 S. Ct. 2768 (1985); *In re Pers. Restraint of Johnston*, 109 Wn.2d 493, 497, 745 P.2d 864 (1987). The urinalysis result, staff reports, incident reports, and confidential information constitute "some evidence" of the infractions.

Larson does not demonstrate grounds for relief from restraint. Accordingly, it is hereby

ORDERED that Larson's petition is dismissed under RAP 16.11(b).



Acting Chief Judge Pro Tempore

cc: Robert A. Larson
Candie M. Dibble