

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON  
DEPUTY

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COURT OF APPEALS  
DIVISION II

In re the  
Personal Restraint Petition of  
  
BRIAN D. MATTHEWS,  
  
Petitioner.

No. 48485-4-II

ORDER DISMISSING PETITION

Brian D. Matthews seeks relief from personal restraint imposed following his 2010 conviction of first degree assault of a child. He does not challenge his conviction here; rather, he asserts that the Department of Corrections violated his due process rights in a prison disciplinary hearing wherein he was found guilty of receiving a positive test for use of an unauthorized drug.

This court reviews prison disciplinary proceedings to determine whether the Department action was so arbitrary and capricious as to deny the petitioner a fundamentally fair proceeding. *In re Pers. Restraint of Reismiller*, 101 Wn.2d 291, 294, 678 P.2d 323 (1984). In doing so, it looks to whether petitioner received the due process protections afforded him under *Wolff v. McDonnell*, 418 U.S. 539, 563-65, 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

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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.<sup>1</sup>

Petitioner challenges only the third protection, claiming the evidence did not support finding an infraction. The hearing officer found petitioner guilty of violating WAC 137-25-030 (752), which makes it a serious infraction for “[p]ossessing, or receiving a positive test for use of, an unauthorized drug, alcohol, or intoxicating substance.”

This court affirms a department's decision as long as there is any evidence in the record to support it. *Superintendent v. Hill*, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985); *In re Pers. Restraint of Johnston*, 109 Wn.2d 493, 497, 745 P.2d 864 (1987).

The hearing officer stated on the record that the evidence he was relying on was the initial serious infraction report, an incident report, a medical certification request, Forrest's witness statement, I/M Davenport, Watson statements, and a four-page declaration from petitioner with 98 pages of attachments.

Together this evidence supports the infraction. These documents explain that the corrections officer took a urinalysis specimen from petitioner. And they reported that “The sample specimen results were read by UA Officers and it indicated a POSITIVE test for THC (see attached documentation).” Ex. 1, 2, 3, 7. Exhibit 1 indicated that the correction officers in testing petitioner used a Biotech Screening Corrections cup.

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<sup>1</sup> Petitioner has filed a motion to strike two declarations attached to the Department's response as post-proceeding ad hoc declarations that cannot be considered in reviewing the evidence. See *In re Pers. Restraint of Krier*, 108 Wn. App. 31, 38, 29 P.3d 720 (2001) (court may only review evidence before the hearing officer). The Department claims that it was presenting the supplemental declarations in response to petitioner's claim that a positive test result was a factual impossibility. As the evidence presented to the hearing officer was sufficient to support the infraction, consideration of these supplemental declarations is unnecessary. Therefore, this court denies petitioner's motion to strike the declarations of Forrest and Wilbur.

During his hearing, petitioner argued that a Biotech Screening Corrections cup does not test for THC and therefore the results were a factual impossibility. He explained that the corrections officers needed to use a test strip to test for THC and there is no mention of test strips in any of the reports or witness statements. The hearing officer asked petitioner, "how would they know it was a TH--a positive for THC if they did not use a test strip?" Ex. 12 at 18.

It is a reasonable inference from the evidence that the corrections officers used a test strip. The officers indicated that they followed all DOC policies, and averred that the test returned positive for THC. Absent credible evidence that these officers knowingly falsified the test results or improperly retaliated against petitioner, the hearing officer's finding that petitioner committed the charged infraction has evidentiary support.

Petitioner's claim fails. Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b).

DATED this 7<sup>th</sup> day of June, 2016.

  
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Acting Chief Judge, Pro Tem

cc: Brian D. Matthews  
Dept. of Corrections  
Pierce County Cause No(s). 98-1-05430-3  
Marko L. Pavela