

FILED

APR 16 2020

**COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____**

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Personal Restraint)	No. 37167-1-III
of:)	
)	
)	ORDER DISMISSING PERSONAL
SHANNON BRUCE MORLEY,)	RESTRAINT PETITION
)	
Petitioner.)	

Shannon B. Morley seeks relief from claimed unlawful personal restraint in the form of 60 days lost good time credit and other sanctions imposed after a Department of Corrections (DOC) hearing officer found him guilty of a serious prison infraction under WAC 137-25-030 (550) (Escape).

While serving a sentence for attempting to elude, Mr. Morley left confinement while receiving medical treatment at a hospital. Mr. Morley left confinement on August 18, 2019, and was not apprehended until August 21st. Based on this event, the State charged Mr. Morley with the crime of escape, and DOC concurrently initiated infraction proceedings. This petition only concerns the infraction proceedings.

Mr. Morley contested the infraction. DOC found the infraction committed. During the infraction hearing, Mr. Morley sought to negate the *mens rea* element of escape with testimony that he was involuntarily intoxicated when he left the hospital and that the intoxication was exacerbated by his inability to access his thyroid medication. To corroborate his testimony, Mr. Morley also provided a kite from DOC medical staff documenting Mr. Morley's allergy to opiates, an affidavit from a friend, Mr. Walls, and a chart note from the hospital stating that Mr. Morley had been administered two 0.5 mg doses of Dilaudid, an opiate.

Based on this information, Mr. Morley asks this Court to reweigh the evidence and find the infraction not committed. This Court does not review anew the weight and credibility of the evidence assigned by the trier of fact. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Instead, prisoners seeking relief from personal restraint arising from a prison disciplinary hearing must show that the hearing "was so arbitrary and capricious as to deny them a fundamentally fair proceeding so as to work to the petitioner's prejudice." *In re Pers. Restraint of Grantham*, 168 Wn.2d 204, 215, 227 P.3d 285 (2010); *In re Pers. Restraint of Reismiller*, 101 Wn.2d 291, 293-94, 678 P.2d 323 (1984). The proceeding is not arbitrary and capricious if the petitioner was afforded the minimum due process applicable to prison disciplinary proceedings. *Reismiller*, 101 Wn.2d at 294. A petition will be dismissed as frivolous if it "fails to present an arguable basis for relief in law or in

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fact, given the constraints of the personal restraint petition vehicle.” *In re Pers. Restraint of Khan*, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015).

When a petitioner challenges the sufficiency of the evidence to support a prison infraction finding, this Court reviews the record to determine whether “there is ‘some evidence’ in the record to support the prison disciplinary decision.” *In re Pers. Restraint of Gronquist*, 138 Wn.2d 388, 397 n. 7, 978 P.2d 1083 (1999). If so, the factual determination “must stand.” *Id.*

The uncontested fact that Mr. Morley left confinement for several days without permission, and made no attempts to contact DOC, is by itself sufficient for this Court to find “some evidence” to sustain the infraction. Furthermore, the facts detailed in the incident reports appended to DOC’s response to the petition also amply satisfy the “some evidence” standard.

Mr. Morley makes no showing that he is under unlawful restraint. RAP 16.4(a)-(c). His petition presents no arguable basis for relief in law or in fact as required by *Khan*. Accordingly, the petition is dismissed as frivolous pursuant to RAP 16.11(b). The court also denies Mr. Morley’s request for appointed counsel. *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 390, 972 P.2d 1250 (1999); RCW 10.73.150(4).


REBECCA L. PENNELL
CHIEF JUDGE