

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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STATE OF WASHINGTON

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COURT OF APPEALS
DIVISION II

In re the Personal Restraint Petition of
BRANDON JAMES MUSTO
aka BRANDON JAMES MERRILL,

Petitioner.

No. 47276-7-II

ORDER DISMISSING PETITION

Brandon Musto seeks relief from the sanctions imposed¹ following the Department of Corrections' determination that he had violated WAC 137-25-030(556) by refusing to submit or cooperate in a search when ordered to do so by a staff member. A corrections officer directed Musto to exit his cell. The officer saw Musto reach into his property bag, retrieve a plastic bag containing a green leafy substance and put it in the toilet. The officer directed Musto not to flush the toilet, but Musto did anyway. The Department charged Musto with a 556 infraction. He requested a hearing, at which he denied that the officer announced his intention to search. Based on the infraction report, the hearing officer found Musto guilty of the 556 infraction. Musto appealed to the superintendent's designee, who affirmed the finding and the sanctions recommended by the hearing officer.

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 Reismiller*, 101 Wn.2d 291, 294, 678 P.2d 323 (1984). In doing so, we

¹ Seven days in segregation, 45 days loss of good conduct time, and 30 days of cell confinement.

*Sealed
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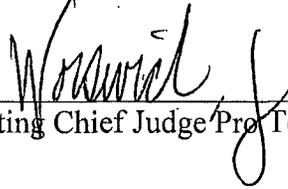
look to whether petitioner received the due process protections afforded him under *Wolff v. McDonnell*, 418 U.S. 539, 563-65, 41 L. Ed. 2d 935, 94 S. Ct. 2963 (1974). These protections include (1) advance written notice of the charged violations, (2) the opportunity to present documentary evidence and call witnesses when 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. Musto received all of these protections.

Musto argues that the Department erred in finding him guilty of the infraction because it was based solely on the infraction report and because there was no corroborating evidence. But when there is "some evidence" in the record, we will affirm the Department's disciplinary decision. *Superintendent v. Hill*, 472 U.S. 445, 86 L. Ed. 2d 356, 105 S. Ct. 2768 (1985); *In re Johnston*, 109 Wn.2d 493, 497, 745 P.2d 864 (1987). The infraction report, along with Musto's admission that he flushed the plastic bag, constitutes "some evidence." There is no corroboration requirement. The Department's disciplinary decision is affirmed.

Accordingly, it is hereby

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

DATED this 10th day of August, 2015.



Acting Chief Judge Pro Tempore

cc: Brandon J. Musto
Jean E. Meyn
Department of Corrections