

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

IN THE MATTER OF THE
PERSONAL RESTRAINT OF:

JAMALA OMAR-COUJAH MYRES II,

Petitioner.

No. 84276-5-I

ORDER OF DISMISSAL

Jamala Myres has filed a personal restraint petition (PRP) seeking relief from two infractions imposed by the Department of Corrections (DOC) while Myres was an inmate at Larch Corrections Center (LCC).¹ DOC has filed a response.² Because Myres's petition does not present an arguable basis for relief, it must be dismissed.

BACKGROUND

February 1, 2022 Incident

According to an initial serious infraction report completed by correctional officer (CO) Jordan Burks, Myres "reported for work" in the Department of Natural Resource (DNR) "boot-room" the morning of February 1, 2022, and, upon arriving, "indicated to [CO Burks] that he would not work DNR." CO Burks informed Myres that he "was required to work unless he had a scheduled callout or HSR indicating otherwise and asked him directly if he was refusing to work." According to CO Burks, Myres responded, "[Y]es, I'm done working DNR, I'm not going to do it."

¹ Myres has since been transferred to Coyote Ridge Corrections Center.

² Myres has not timely filed a reply.

Another CO, Raymond Figuracion, also reported that he “overheard offender Myres tell CO Burks that he ‘did not want to work DNR.’ ”

DOC charged Myres with a serious infraction under WAC 137-25-030 (557) (“Refusing to participate in an available work, training, education, or other mandatory programming assignment”) based on the February 1, 2022 incident (First Infraction). It provided a disciplinary hearing notice to Myres on February 1, 2022, and held a hearing on February 3, 2022. According to the disciplinary hearing minutes, Myres made the following statement:

Well the first two C/O’s those explanations were wrong. I walked over there and I want to say C/O Burks the short one was at the door. I asked him who I had to talk to, to not go to work. He asked why, I told him I’m in pain when I go out there. I explained that I already talked to people and they weren’t helping me. I told him I’m not going to keep going out there I chose to go that route because I felt like my vaccination status is being used against me because if I didn’t have it I wouldn’t be in this position. I didn’t feel like I was being helped I just felt like my health is more important than having an infraction or pay and that’s why I chose to do what I did.

(Internal quotation marks omitted.)

The hearing officer found Myres guilty of the First Infraction, explaining, “[s]taff testimon[y], written reports and statements indicate that [Myres] refused to work. [Myres] also admitted that he made the statement which was in [CO] Burks[’s] infraction report stating, ‘I’m done working DNR, I’m not going to do it.’ ” The hearing officer sanctioned Myres with loss of earned time for the month, “15 days loss of [good conduct time], 30 days loss of recreation, 2 months loss of packages and loss of housing assignment.” Myres appealed to the LCC superintendent’s office, which affirmed.

February 2, 2022 Incident

According to another incident report, on February 2, 2022, CO Jeffrey Parrish was assisting in the DNR boot room and “was talking to [Myres] on why he was not dress[ed] for DNR checkout.” CO Parrish reported that Myres “stated to [him] that he was[n’t] going to work for DNR anymore.” CO Parrish called CO James Langenbach, who later reported that he “spoke with inmate My[re]s and confirmed he is refusing to go to work for DNR, he said yes.” According to CO Parrish, CO Langenbach “asked [Myres] (3) times if he is refusing to report for work for DNR and again [Myres] stated yes I am.” CO Langenbach also reported that he “gave [Myres] a direct order to go to work for DNR,” and Myres “refused.”

DOC charged Myres with a second serious infraction under WAC 137-25-030 (557) based on the February 2, 2022 incident (Second Infraction). It provided a disciplinary hearing notice to Myres on February 4, 2022, and Myres waived his right to appear at the hearing, which was held in his absence that same day. The hearing officer found Myres guilty of the Second Infraction, explaining, “[s]taff testimon[y], written reports and statements indicate that [Myres] refused work when asked.” The hearing officer sanctioned Myres with loss of earned time for the month, “30 days loss of [good conduct time], 30 days loss of dayroom, 4 months loss of packages, 1 month loss of quarterly packages.” Myres appealed to the LCC superintendent’s office, which affirmed.

DISCUSSION

On July 1, 2022, Myres filed this personal restraint petition challenging the First and Second Infraction. He asserts that relief is warranted because his due

process rights were violated. This is so, he argues, because “other options were available for graduated discipline when concerning Covid-19 safety concerns,” and he “should have been able to speak to a higher level of Authority” because he “had been notifying them about [his] pain and Covid-19 Safety/Health concerns.” In support, Myres points out that in January 2022 (i.e., before he committed either at-issue infraction), he submitted a health services kite stating,

I was recently put on DNR and I'm not trying to do this job or any job with heavy lifting, anything of the sort because my body is still [a]ffected from being sick with COVID in the summer of 2020. I still have pain around my heart and my ribs on my left side, this is why I remained a grave yard custodian porter at Coyote Ridge CC. So, I would like to get help with this situation or told what needs to be done to make this happen. Please and thank you.

Myres also relies on an April 28, 2021 investigative report by the Office of the Corrections Ombuds (OCO).³ In the investigative report, OCO found “that DOC issued several 557 infractions to incarcerated individuals who reported concerns about their health and safety regarding COVID-19 due to work conditions” and that “incarcerated persons who refused to work due to COVID concerns were not first given a minor infraction as part of graduated discipline, provided the opportunity to report the COVID issues for investigation, and . . . a higher level authority should have reviewed for potential accommodations.” The report made the following recommendations: (1) “that all 557 infractions issued for COVID-19 related

³ Myres did not provide a copy of the report with his petition. However, he identified it with sufficient specificity to locate it on OCO's website. See Angee Schrader, Investigative Report Re: 557 Infractions Due to COVID (April 28, 2021), <https://oco.wa.gov/sites/default/files/557%20COVID%20Infractions%20with%20DOC%20Response.pdf>. Notice of the report is hereby taken under RAP 16.11(a)-(b) (authorizing the acting chief judge to “enter . . . orders necessary to obtain a prompt determination of [a] petition on the merits”).

concerns be reviewed and possibly reduced or removed,” (2) “that DOC Policy 460.000 be revised to include direction that hearing officers will reduce major infractions to lesser infractions if applicable,” and (3) that “[g]iven the COVID-19 pandemic, special consideration and/or immediate higher level review should be given to persons receiving infractions related to their personal health and safety concerns based on COVID-19.”

DOC does not address Myres’s January 2022 health services kite or the OCO’s investigative report in its response. Nevertheless, as DOC does point out, inmates are afforded only minimum due process protections in the context of prison disciplinary proceedings. In re Pers. Restraint of Gronquist, 138 Wn.2d 388, 396, 978 P.2d 1083 (1999). And, review of a prison disciplinary proceeding is limited to determining 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.” In re Pers. Restraint of Grantham, 168 Wn.2d 204, 216, 227 P.3d 285 (2010). Minimum due process requires that an inmate facing disciplinary sanctions (1) receive notice of the alleged violation, (2) have an opportunity to present documentary evidence and call witnesses (when not unduly hazardous to institutional safety and correctional goals), and (3) receive a written statement of the evidence relied upon and the reasons for the disciplinary action. Gronquist, 138 Wn.2d at 396-97. A disciplinary proceeding is not arbitrary and capricious if the inmate was afforded these minimum due process protections and the decision was supported by at least some evidence. In re Pers. Restraint of Krier, 108 Wn. App. 31, 38, 29 P.3d 720 (2001).

Here, Myres does not allege that he did not receive notice of the First and Second Infractions, that he did not have an opportunity to present evidence, or that he did not receive a written statement of the evidence relied upon and the reasons for the challenged infractions. And both infractions are supported by some evidence—namely, COs’ reports that Myres refused to work DNR on February 1, 2022, and February 2, 2022. Myres argues, essentially, that he had a valid reason for that refusal, citing his January 2022 health services kite for the proposition that his refusal was related to COVID-19. But even assuming that the kite was before the hearing officer,⁴ the hearing officer’s decision about how to weigh the kite is not reviewable. See In re Pers. Restraint of Johnston, 109 Wn.2d 493, 497, 745 P.2d 864 (1987) (“ ‘Ascertaining whether [the some evidence 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.’ ” (quoting Superintendent, Mass. Corr. Inst. v. Hill, 472 U.S. 445, 455, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985))). Myres also relies on the OCO’s investigative report. But unlike Myres, the incarcerated individuals described in that report refused work out of fear of contracting COVID-19. And in any event, Myres does not establish that the investigative report


⁴ Myres does not allege that the kite was presented to the hearing officer, and if it was not, the hearing officer had no duty to consider it. See WAC 137-29-310(1) (“In reaching a decision, the hearing officer will consider only the evidence presented at the hearing.”).

alters the “some evidence” standard or the minimal due process standards applicable to a prison disciplinary proceeding.

Myres’s petition fails to present an arguable basis for relief in law or fact given the constraints of a personal restraint petition. His petition is therefore frivolous and must be dismissed. RAP 16.11(b) (frivolous petition will be dismissed); In re Pers. Restraint of Khan, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015) (“[A] personal restraint petition is frivolous where it fails to present an arguable basis for collateral relief either in law or fact, given the constraints of the personal restraint petition vehicle.”).

Now, therefore, it is hereby

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


Acting Chief Judge

LEA ENNIS
Court Administrator/Clerk

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March 16, 2023

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Case #: 842765
Personal Restraint Petition of Jamala Omar-coujah Myres, II
King County Superior Court No. 15-1-02828-2

Counsel:

Enclosed please find a copy of the Order Dismissing Personal Restraint Petition entered by this court in the above case today.

Pursuant to RAP 16.14(c), "the decision is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in Rule 13.5A."

This court's file in the above matter has been closed.

Sincerely,



Lea Ennis
Court Administrator/Clerk

law