

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

June 12, 2017

DIVISION II

In re the Personal Restraint Petition of
KYLE LEE PAYMENT,
Petitioner.

No. 49858-8-II

ORDER DISMISSING PETITION

Kyle Payment seeks relief from the sanctions imposed¹ following the Department of Corrections' determinations that he had violated WAC 137-25-030(502) (committing an aggravated assault on another offender) and WAC 137-25-030(717) (causing a threat of injury by resisting orders) after he violently assaulted a restrained offender and refused orders to stop.

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 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

¹ Seventy-five days loss of good conduct time, 30 days loss of radio privileges and two years loss of weightlifting privileges.

hazardous to institutional safety and correctional goals; and (3) a written statement of the evidence relied on and the reasons for the disciplinary action.

Payment received all of these protections. He argues he was denied due process for a number of reasons. First, he argues that copy of the Department's rules and regulations on the prison's computer system was not current. But he does not show any prejudice, given that his defense was not technical but was rather that the assault was a pre-planned fight. Second, he argues that a Department office assistant did not have the authority to deny his request for a continuance while he submitted a public disclosure request for documents. But he does not show that delegating that decision from the hearing officer to an assistant deprives him of a fundamentally fair hearing. Further, he does not show that the documents were necessary to his defense. Third, he argues that the Department failed to provide him access to and copies of a nurse's incident report and photographs of the victim twenty-four hours before the hearing. But he was provided access at the hearing and he does not demonstrate any prejudice from the delay in access. In summary, Payment was not denied due process.

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). Payment argues that he did not commit an aggravated assault because his victim did not require medical care. But the nurse's incident report describes the victim's lacerations, hematoma and abrasions, for which he received medical care. Further, he pleaded guilty to second degree assault for having assaulted his victim and cannot re-litigate that issue in a prison disciplinary proceeding. See *In re Akridge*, 90 Wn.2d 350, 581 P.2d 1050 (1978).

Sufficient evidence supports the findings of infraction. We therefore affirm the Department's disciplinary decision.²

Accordingly, it is hereby

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



Acting Chief Judge ~~Pro~~ Tempore

cc: Kyle L. Payment
Douglas W. Carr
Department of Corrections

² Payment also argues that there was insufficient evidence that he spit at anyone. But while the hearing officer did find a violation of WAC 137-25-030(508) for spitting, the superintendent's designee dismissed that violation on appeal. Thus, his argument is moot.