

**Hoyt, Trina (ATG)**

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**From:** ATG MI COR Oly CE Reader  
**Sent:** Monday, April 27, 2015 11:53 AM  
**To:** Hoyt, Trina (ATG); Ronning, Kate (ATG)  
**Subject:** PRP of Kyle Payment 46677-5-II  
**Attachments:** Ord Dismissing Pet PRP of Payment 46677-5.pdf

State court strike: Pursuant to RAP 16.11(b)

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**From:** Field, Syl [<mailto:Syl.Field@courts.wa.gov>]  
**Sent:** Monday, April 27, 2015 11:47 AM  
**To:** ATG MI COR Oly CE Reader  
**Cc:** Brown, Cheryl (DOHi)  
**Subject:** PRP of Kyle Payment 46677-5-II

*emailed Kate  
Does she enter those  
in Entry Notebook?  
I did a search  
& found that they  
have been added  
in past.*

*Sand  
Syl  
only*

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FILED  
COURT OF APPEALS  
DIVISION II

2015 APR 27 AM 11:34

BY   
DEPUTY  
STATE OF WASHINGTON

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

No. 46677-5-II

ORDER DISMISSING PETITION

Kyle L. Payment has filed a personal restraint petition complaining of disciplinary sanctions imposed after the Department of Corrections (DOC) found him guilty of assaulting a staff member in violation of WAC 137-25-030(704). Payment was sanctioned with the loss of 180 days of earned time and 10 days of isolation after he spit on a hearing officer's face, arms, and clothing on October 19, 2013. He contends that his disciplinary proceedings violated his right to due process.

To obtain relief, Payment must show that he is under unlawful restraint. RAP 16.4(a); *In re Pers. Restraint of Grantham*, 168 Wn.2d 204, 212-13 (2010). In the context of prison disciplinary proceedings, this standard requires us to determine whether DOC's 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 (1984). In doing so, we look at whether the petitioner received the due process protections afforded him under *Wolff v. McDonnell*, 418 U.S. 539, 563-65 (1974). These protections include: (1) notice of the charged violations; (2) the opportunity to present documentary evidence

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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. *Dawson v. Hearing Committee*, 92 Wn.2d 391, 397 (1979) (citing *Wolff*, 418 U.S. at 563-66). In addition, there must be at least some evidence to affirm the discipline. *Grantham*, 168 Wn.2d at 216; *see also In re Pers. Restraint of Gronquist*, 138 Wn.2d 388, 397 n.7 (factual determination of prison officials must stand if there is some evidence in the record to support their disciplinary sanctions), *cert. denied*, 528 U.S. 1009 (1999).

Payment was charged with an infraction after he spit on a hearing officer during a disciplinary hearing. This incident was witnessed by other staff members. A correctional officer photographed the hearing officer's face and uniform before the officer washed his face and had his uniform cleaned.

Payment requested testimony from another inmate, who responded with a statement that he knew nothing about the incident. Payment received a copy of the disciplinary hearing notice on October 21, 2013, and the disciplinary hearing was held on November 7, 2013. He was notified that he could review the statements from staff supporting the infraction. These statements included one from the assault victim.

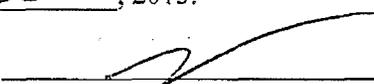
The record does not support Payment's claim that the disciplinary proceedings violated his due process rights. He received adequate notice of the charged violation, and the hearing officer considered a statement from the witness he requested. Payment was not entitled to confront this inmate. *Wolff*, 418 U.S. at 567-69. The hearing officer also considered statements from eyewitnesses and the victim. Payment complains that he had no access to the hearing officer's uniform, but we see no resulting due process violation.

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The photographs of the uniform taken directly following the incident adequately preserved the physical evidence of Payment's infraction. *See* WAC 137-28-430 (physical evidence of infractions shall be secured when possible). There was some evidence to support the infraction, and the resulting sanctions did not constitute unlawful restraint. Accordingly, it is hereby

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

DATED this 27<sup>th</sup> day of April, 2015.

  
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Acting Chief Judge, Pro Tem

cc: Kyle L. Payment  
Dept. of Corrections  
Grays Harbor County Cause No. 10-1-00346-3; Clallam County Cause No. 07-1-00178-5; Lewis County Cause Nos. 04-100128-0, 04-1-00468-8  
Timothy N. Lang, Department Of Corrections  
Candie M. Dibble, Assistant Attorney General, Corrections Division