

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint of
THOMAS WILLIAM SINCLAIR
RICHEY,

Petitioner.

No. 53706-1-II

ORDER DISMISSING PETITION

FILED
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STATE OF WASHINGTON
BY *ORR*
REPLITY

Thomas Richey seeks relief from the sanctions imposed¹ following the Department of Corrections' determination that he had violated WAC 137-25-030(752) (receiving a positive test for an unauthorized drug). He contends that he was denied his right to due process when he was not advised that he could "propose questions for the hearing officer to ask witnesses," as provided in WAC 137-28-285(1)(g). 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 hazardous to institutional safety and correctional goals; and (3) a written statement of the evidence relied on and the reasons for the disciplinary action.

¹ Thirty days loss of good time.

Richey received all of these protections. He did not appeal from his infraction to the Department superintendent, and so did not exhaust his administrative remedies.² As such, he had another adequate remedy, such that relief from restraint is inappropriate under RAP 16.4(d). And the creation of a procedural right under the Department's regulations does not make it a constitutionally-required due process right. *In re Pers. Restraint of Plunkett*, 57 Wn. App. 230, 236-37, 788 P.2d 1090 (1990).

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 positive urinalysis result and Richey's admission to using methamphetamines constitute "some evidence" of the infraction.

Richey does not demonstrate grounds for relief from restraint. Accordingly, it is hereby

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



Acting Chief Judge Pro Tempore

cc: Thomas W.S. Richey
Michelle I. Young

² Richey attached to his reply a declaration that he had appealed the infraction to the Superintendent by mail but received no response. But he provides no documentation of having submitted such an appeal.