IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

Filed
Washington State
Court of Appeals
Division Two

June 3, 2020

DIVISION II

In re the Personal Restraint of

THOMAS WILLIAM SINCLAIR RICHEY,

Petitioner.

No. 54233-1-II

ORDER DISMISSING PETITION

Thomas Richey seeks relief from the sanctions imposed[1] following the 2010 determination by the Department of Corrections (DOC) that he had violated WAC 137-25-030(752) (possessing or receiving a positive test for any 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 DOC'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

[1] Loss of privileges for 20 days and loss of 90 days of good time.

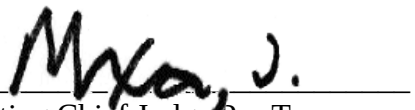
and correctional goals, and (3) a written statement of the evidence relied on and the reasons for the disciplinary action.

Richey received all of these protections. The regulation he relies upon, WAC 137-28-285(1)(g) was not adopted until 2016, after his infraction hearing. And the creation of a procedural right under DOC regulations does not, by itself, 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). Richey was advised of his right to call witnesses. He chose not to do so.

When there is "some evidence" in the record, we will affirm DOC'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 incident report and Richey's plea of guilty 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 M. Young