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

IN THE MATTER OF THE PERSONAL RESTRAINT OF: JERMAINE LITTON ROUTE, Petitioner.	No. 82932-7-I ORDER OF DISMISSAL

Jermaine Route is in the custody of the Department of Corrections (DOC). He filed this personal restraint petition challenging his prison disciplinary guilty finding for conspiring to introduce methamphetamine into the Washington State Penitentiary (WSP). In order to obtain relief in this setting, Route must demonstrate that he is being "restrained under RAP 16.4(b) and that the restraint is unlawful under RAP 16.4(c)." In re Pers. Restraint of Grantham, 168 Wn.2d 204, 227 P.3d 285 (2010) (quoting In re Pers. Restraint of Isadore, 151 Wn.2d 294, 229, 88 P.3d 390 (2004)). Because Route fails to meet this burden, his petition must be dismissed.

On April 20, 2021, DOC charged Route with violating WAC 137-25-030(603) (introducing or transferring any unauthorized drug or drug paraphernalia). According to the serious infraction report, the investigator's review of call records showed that Route conspired with inmate Richard Smith and Smith's son, civilian Rodney Smith, to introduce narcotics obtained by civilian Tone Brooks into the WSP via the U.S.

Postal Service. The report described recorded telephone conversations in which Route, using a different inmate's telephone identification number, instructed Brooks to get "some stuff" so that "my partner's son can put it together and get it in." Route provided Brooks with Smith's son's contact information. The report also described recorded telephone conversations in which Smith instructed his son to soak greeting cards in "the stuff" and mail them to inmate Michael Burchette using the name Jason Burchette and a false return address. A few days later, the investigator seized an envelope from the WSP mailroom addressed to inmate Michael Burchette with a return address of Jason Burchette. Inside was a greeting card, which tested positive for methamphetamine on a field drug test kit.

A disciplinary hearing took place on May 14, 2021. Route had the opportunity to call witnesses but declined. However, he attended the hearing, pleaded not guilty, and asserted that he "never mentioned anything about drugs" and never said "anything about introducing anything" into the WSP. Based upon the documentary evidence, including written staff testimony regarding the phone calls, the hearing officer found Route guilty as charged and imposed multiple sanctions. Route appealed, and the decision and sanctions were affirmed.

Review of prison disciplinary proceedings is limited to a determination of whether the action taken was so arbitrary and capricious as to deny the inmate a fundamentally fair proceeding. In re Pers. Restraint of Reismiller, 101 Wn.2d 291, 294, 678 P.2d 323 (1984). A disciplinary proceeding is not arbitrary and capricious if the inmate was afforded the applicable 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).

Due process requires that an inmate facing a disciplinary hearing receive adequate notice of the alleged violation, an opportunity to present documentary evidence and call witnesses when not unduly hazardous to institutional safety and correctional goals, and a written statement of the evidence relied upon and the reasons for the disciplinary action. In re Pers. Restraint of Gronquist, 138 Wn.2d 388, 396-97, 978 P.2d 1083 (1999). Determination of whether the "some evidence" standard has been met "does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence." Superintendent, Mass. Correctional Inst. v. Hill, 472 U.S. 445, 455, 86 L. Ed. 2d 356, 105 S. Ct. 2768 (1985)). Instead, "the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." Id. at 455-56. The evidence relied upon must link the inmate to the infraction. Reismiller, 101 Wn.2d at 296-97.

Route argues that his right to a fair hearing was violated because the hearing officer based his disciplinary decision on the "some evidence" standard, which he contends the Washington Supreme Court repudiated in In re Pers. Restraint of Schley, 191 Wn.2d 278, 421 P.3d 951 (2018). Route is mistaken. In Schley, DOC revoked the petitioner's Drug Offender Sentencing Alternative (DOSA) sentence based on a fighting infraction that had been proved by the "some evidence" standard. The petitioner alleged that the hearing violated due process because DOC failed to prove the fighting infraction by a preponderance of the evidence, which is the higher standard required at DOSA revocation hearings. 191 Wn.2d at 281. Noting the

increased liberty interest at stake, the Schley court held that, "at DOSA revocation hearings, if revocation is based on the clinical staff administratively terminating a person from treatment, the [DOC] has the burden to prove the facts that served as a basis for that decision by a preponderance of the evidence." 191 Wn.2d at 292. The Schley court expressly stated that its holding "does not disturb the 'some evidence' standard applied to prison disciplinary hearings." Id. at 289. DOC properly applied the "some evidence" standard at Route's prison disciplinary hearing.

Route, relying on State v. Colquitt, 133 Wn. App. 789, 137 P.3d 892, 895 (2006) and State v. Roche, 114 Wn. App. 424, 59 P.3d 682 (2002), further asserts that he was denied due process because the investigator failed to perform a laboratory test to confirm the field test. Both cases are readily distinguishable. Colquitt held that a police report stating that the seized substance field tested positive for cocaine was insufficient to uphold a criminal defendant's conviction for possession of a controlled substance. 133 Wn. App. at 800-02. But there, unlike here, due process required the State to bear the burden of proving every element of the crime beyond a reasonable doubt. And Roche, which involved a criminal defendant's request for a new trial based on witness credibility and chain of custody issues, provides no support for the proposition that DOC must perform a laboratory test on narcotics before using them as evidence in prison disciplinary hearings. Additionally, WAC 137-28-285, which lists an offender's rights in disciplinary hearings, does not provide a right to a laboratory test. To the contrary, WAC 137-28-285(2)(c) specifically states that offenders do not have the right to receive "supplemental tests."

The hearing officer based his decision on the investigator's infraction report

and evidence, including the results of the field drug test. Although the parties did not expressly use the words "drugs" or "methamphetamine" in the recorded conversations, it is reasonable to conclude based on the totality of the evidence that they worked together to arrange for methamphetamine-soaked greeting cards to be introduced to WSP. The hearing officer's decision was not arbitrary and capricious.

Because Route makes no showing that he was denied a fundamentally fair proceeding or that the finding of guilt was based on less than constitutionally sufficient evidence, the petition is dismissed.

Now, therefore, it is hereby

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

Andrus, A.C.J.
Acting Chief Judge