

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FILED
COURT OF APPEALS
DIVISION II
DEC - 1 AM 11:19
STATE OF WASHINGTON
BY DEPUTY

In re the
Personal Restraint Petition of

JASON J. SALLEE,

Petitioner.

No. 47862-5-II

ORDER DISMISSING PETITION

Jason J. Sallee has filed a personal restraint petition complaining of disciplinary sanctions imposed after the Department of Corrections (DOC) found him guilty of being terminated from a job for negative or substandard performance in violation of WAC 137-25-030(810). The sanctions imposed included the loss of 15 days of good conduct time, 30 days of recreation privileges, and one month of earned time. Sallee contends that the disciplinary proceedings violated his right to due process because he was not allowed to view the video footage of his alleged misconduct.

To obtain relief, Sallee 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 a reviewing court 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, this court looks at whether the petitioner received the due process protections afforded him under *Wolff v. McDonnell*, 418 U.S. 539 (1974). These

Said 16.11
12-2-15
aka

protections include: (1) 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. *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 (1999) (factual determinations of prison officials must stand if there is some evidence in the record to support their disciplinary decisions).

Sallee was charged with an infraction during his work on the kitchen steam line. The cook saw him overserve another inmate with an additional hotdog while he was placing food onto trays and serving those trays to inmates. The cook confronted Sallee and told him that he would be reassigned away from the kitchen due to his actions. Sallee's response to the resulting infraction was that his eyesight was poor and he could not see the extra hotdog that he had served.¹

During the disciplinary hearing, Sallee requested any video surveillance footage that might have recorded his actions. The hearing officer refused his request after concluding that the video footage was not material because its scale was too small to identify individual items on a food tray.

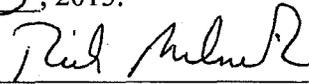
Sallee was not entitled to the video footage, and the reason for refusing him access to that footage was not arbitrary and capricious. Sallee was given a written

¹ Sallee denies making this response, but DOC submits a copy of his handwritten appeal in which he blames his eyesight for the infraction.

explanation of the reasons for his infraction. His current challenge to the supporting evidence does not demonstrate that the disciplinary proceedings violated his due process rights. Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b), and the petitioner's requests for the audio recording of his disciplinary hearing and the appointment of counsel are denied.

DATED this 15th day of December, 2015.



Acting Chief Judge, Pro Tem

cc: Jason J. Sallee
Dept. of Corrections
Thurston County Cause No. 13-1-01822-9
Timothy N. Lang, Department Of Corrections
Candie M. Dibble, Assistant Attorney General, Corrections Division
Jerry P. Scharosch, Assistant Attorney General, Corrections Division