

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

February 21, 2023

**DIVISION II**

In re the Matter of the  
Personal Restraint of

JOHN M. SANCHEZ,

Petitioner.

No. 57184-6-II

ORDER DISMISSING PETITION

John M. Sanchez seeks relief from the sanctions imposed following the Department of Corrections' determination that he committed a WAC 137-25-030(1) (Category C-Level 1, 663) serious infraction by using force, intimidation, or coercion against a person. Sanchez argues that he was denied due process, that insufficient evidence supported a finding of guilty on the infraction, and the infraction was issued in retaliation for his exercise of his constitutional right to pursue legal action. This petition is dismissed as frivolous under RAP 16.11(b).

Sanchez filed a grievance and civil lawsuit against his mental health care provider, T. Nee, for allegedly missing an appointment and altering his medication without his agreement. Pers. Restraint Pet.(PRP), Attach. A. The following day, during an appointment with Nee, Sanchez told Nee,

I still haven't got an apology from you for what you did. I appreciate you making our appointment today, which is 9-10. If our appointment time is 1-1:30, you need to call me out and see me during that time. You can't commandeer my medicine, I have a civil lawsuit on you about that. I've asked for a different provider, what are you going to do about it? I have family that works in the Attorney General's office, and they're going to help me with this paperwork against you.

DOC Resp. Br., Attach. A.

Nee ended the appointment and asked Sanchez to leave her office. Nee reported that she felt verbally threatened and intimidated by Sanchez's statements.

DOC cited Sanchez for a 663 serious infraction for using force, intimidation, or coercion against a person. A hearing was held during which testimony from Sanchez and written statements from Nee and a psychology associate, who was present during the incident, were considered. Sanchez did not dispute the events of the incident but denied that his actions were threatening. The statements from Nee and the psychology associate recalled Sanchez being intimidating and perceived his words as a threat to pursue Nee's medical license. The hearing officer found Sanchez guilty and imposed 10 days of loss of dayroom privileges as a sanction. The officer explained, "I find inmate Sanchez did attempt to intimidate a staff into an apology he thought he should receive and stated he was going to get supervisors and Attorney General's Employees involved in pursuit of her medical license." DOC Resp. Br., Ex. 2, at 8.

This court reviews 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 Pers. Restraint of Reismiller*, 101 Wn.2d 291, 294, 678 P.2d 323 (1984). In doing so, this court looks to whether the 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.

Sanchez does not dispute that he received all of these protections; his claim that he did not receive the requisite due process at his infraction hearing therefore fails.

Sanchez also argues that there was insufficient evidence to support a guilty finding for the infraction. When there is “some evidence” in the record, this court will affirm the Department's disciplinary decision. *Superintendent v. Hill*, 472 U.S. 445, 454, 86 L. Ed. 2d 356, 105 S. Ct. 2768 (1985); *In re Pers. Restraint of Johnston*, 109 Wn.2d 493, 497, 745 P.2d 864 (1987). This court does not reweigh the evidence or make credibility determinations. *Hill*, 472 U.S. at 455. Here, the guilty finding was supported by statements from Nee, another staff member who was present at the incident, and Sanchez himself. This plainly constitutes “some evidence” of the infraction. There is sufficient evidence in the record to support the infraction.

Sanchez also argues that the infraction was issued in retaliation to him filing a grievance against Nee and it thereby violated his constitutional right to pursue legal actions. “[I]nmates have a well-established constitutional right to access the courts based in part on the First Amendment.” *In re Pers. Restraint of Adleman*, 139 Wn.2d 751, 754, 991 P.2d 1123 (2000). The State may not retaliate against an inmate to punish an exercise of constitutional rights. *Id.* To support his claim, Sanchez must present evidence that is more than speculation, conjecture, or inadmissible hearsay. *In re Pers. Restraint of Gronquist*, 138 Wn.2d 388, 396, 978 P.2d 1083 (1999). He fails to do so. The infraction was based on Sanchez’s threatening and intimidating behavior towards Nee. He does not meaningfully dispute the details of that incident. Sanchez offers no evidence beyond speculation to support his claim of retaliation.

Sanchez also argues that the hearing officer and superintendent committed official misconduct in violation of RCW 9A.80.010, which defines the criminal act of official misconduct by a public servant. Sanchez does not identify any evidence of official misconduct by the hearing officer or superintendent, nor is enforcement of the criminal code a form of relief this court can provide. This argument fails.

In sum, Sanchez fails to present an arguable basis for relief in law or in fact given the constraints of the personal restraint vehicle. Accordingly, it is hereby

ORDERED that this petition is dismissed as frivolous under RAP 16.11(b). His request for appointment of counsel is denied.

Glasgow, CJ  
Chief Judge

cc: John M. Sanchez  
Thurston County Clerk  
County Cause No(s). 17-1016763-4  
Timothy N. Lang, Department Of Corrections  
Katherine Joy Faber