

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

Filed
Washington State
Court of Appeals
Division Two

April 22, 2021

In the Matter of the Personal Restraint of

GEORGE WILLIAM SCANLAN,

Petitioner.

No. 55210-8-II

ORDER DISMISSING PETITION

George Scanlan seeks relief from the sanctions imposed¹ following the Department of Corrections' determination that he had violated WAC 137-25-030(633) (assaulting another offender), and WAC 137-25-030(717) (resisting orders). 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. Scanlan received all of these protections.

¹ Twenty days of segregation, 20 days' loss of good conduct time, 90 days' loss of food packages, and two years loss of weightlifting privileges.

Scanlan argues that he was denied due process because his disciplinary hearing was not conducted within the three days specified in Department regulations. But his hearing was commenced on February 10, 2020, within three business days of the notice of infraction being given to him. The hearing officer continued the hearing to February 25, 2020, to allow time for witness and inmate statements, which Scanlan had requested, to be obtained. Scanlan does not show that he was denied due process. *Olim v. Wakinekona*, 461 U.S. 238, 250, 103 S. Ct. 1741, 75 L. Ed. 2d 813 (1983).

Scanlan also argues that the evidence of the (633) violation was insufficient and that, at most, he should have been found guilty of WAC 137-25-030(505) (fighting with another offender).² 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). Video of the incident, photographs of the involved parties, witness statements, staff reports, and inmate statements constitute “some evidence” of the (633) infraction.

Scanlan does not demonstrate that he is under unlawful restraint. Accordingly, it is hereby

ORDERED that Scanlan’s petition is dismissed under RAP 16.11(b). His request for appointment of counsel is denied.


Acting Chief Judge Pro Tempore

² Scanlan also asserts that the evidence of the (717) violation was insufficient. But he pleaded guilty to that violation.

55210-8-II/3

cc: George W. Scanlan
Christopher A. Anderson