

Hoyt, Trina (ATG)

From: ATG MI COR Oly CE Reader
Sent: Friday, May 01, 2015 10:29 AM
To: Hoyt, Trina (ATG)
Subject: FW: D2 46624-4 PRP William Cato Jr. Sells
Attachments: Order Dismissing Petition - PRP Sells.pdf

Order Dismissing RAP 16.11(b)

From: Cleveland, Kim [<mailto:kim.cleveland@courts.wa.gov>]
Sent: Friday, May 01, 2015 9:05 AM
To: ATG MI COR Oly CE Reader
Subject: D2 46624-4 PRP William Cato Jr. Sells

To Counsel and Interested Parties:

Attached is an Order Dismissing Petition filed today, 4/30/2015. (a copy sent to Mr. Sells USPS!)

This will be the only notice you will receive from the court.

The court requests that motions and other correspondence be sent to coa2filings@courts.wa.gov, or, if counsel has a JIS USERID (can access SCOMIS/ACORDS), please use the newly established attorney portal at <http://www.courts.wa.gov/coa2efiling>. If you have difficulty accessing or using either method, please contact this office. When filing electronically, please do NOT follow up with a paper copy.

Please contact the court at (253) 593-2970 if you have any questions or comments.

Thank you.

Kim S. Cleveland
Case Manager

*Saved
4/30/15
2:00 PM
[Signature]*

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FILED
COURT OF APPEALS
DIVISION II
2015 MAY 01 AM 8:33
STATE OF WASHINGTON
BY DEPUTY

In re the Personal Restraint Petition of
WILLIAM CATO SELLS, JR.,
Petitioner.

No. 46624-4-II

ORDER DISMISSING PETITION

William Sells seeks relief from the sanctions imposed¹ following the Department of Corrections' determination that he had violated WAC 137-25-030(600) and (736) by tampering with a cell door key. 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 Pers. Restraint of 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, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (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. Sells received all of these protections.

First, Sells argues that there was no evidence that he tampered with the cell door key. When there is "some evidence" in the record, this court will affirm the Department's disciplinary decision. *Superintendent v. Hill*, 472 U.S. 445, 449, 105 S. Ct. 2768, 86 L.

¹ Sells was sanctioned 23 days of segregation and 45 days loss of good conduct time.

Ed. 2d 356 (1985); *In re Pers. Restraint of Johnston*, 109 Wn.2d 493, 497, 745 P.2d 864 (1987). The Department presented evidence from a locksmith that a cell door key that had been assigned to Sells had been tampered with by adding four cuts to make the key similar to a staff key. It also had statements from Sells that he was familiar with cutting keys and re-keying locks. Thus, there is "some evidence" of Sells's commission of the WAC 600 and 736 infractions.

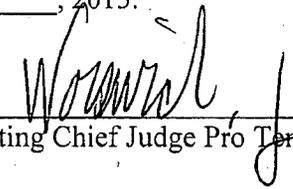
Second, Sells argues that he was denied due process because the hearing officer did not allow him to present all of his questions to the locksmith. But the hearing officer allowed two questions, which were answered, and ruled that the remainder were irrelevant. Sells fails to show an abuse of discretion by the hearing officer and so fails to show a denial of due process.

Finally, Sells argues that he was denied due process because he was denied an appeal to the superintendent. But the record shows that Sells appealed to the superintendent but filed his petition without waiting for the superintendent to decide his appeal.

Sells has not shown that he was denied the minimal due process protections afforded to inmates. Accordingly, it is hereby

ORDERED that Sells' petition is dismissed under RAP 16.11(b).

DATED this 1st day of May, 2015.



Acting Chief Judge Pro Tempore

cc: William C. Sells, Jr.
Jean Meyn
Department of Corrections