

January 3, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Personal Restraint of:

RICHARD DONNELL SMITH,

Petitioner.

No. 56101-8-II

ORDER DISMISSING PETITION

Richard Smith seeks relief from the sanctions imposed¹ following the Department of Corrections' determination that he had violated WAC 137-25-030(603) (introducing an unauthorized drug). 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, 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. *Id.* Smith received all of these protections.

¹ One hundred eighty days' loss of recreation, 20 days' loss of good conduct time, 30 days' segregation, and other sanctions.

Smith argues that the evidence of the 603 infraction was insufficient. We will affirm the Department's disciplinary decision when there is "some evidence" in the record. *Superintendent v. Hill*, 472 U.S. 445, 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). The recording of Smith instructing his son as to how to soak methamphetamine into greeting cards and who to send the cards to, the discovery of the card in the mailroom, and the field test of the card positive for methamphetamine constitute "some evidence" of the 603 infraction. Response Br. of Dep't, Ex. 2. The Department is not required to have the crime lab confirm the field test. Contrary to Smith's argument, *In re Personal Restraint of Schley* did not change the evidentiary standard for infractions from "some evidence" to "preponderance of the evidence." 191 Wn.2d 278, 421 P.3d 951 (2018). *Schley* applies to DOSA revocations, not disciplinary infractions. *Id.* at 288.

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

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


PRICE, ACTING CHIEF JUDGE PRO TEMPORE

cc: Richard D. Smith
John C. Dittman