

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of
CLARK L. STUHR,
Petitioner.

No. 46046-7-II

ORDER DISMISSING PETITION

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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
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Clark Stuhr seeks relief from the loss of 30 days of good conduct time imposed following the Department of Corrections' determination that he had twice violated WAC 137-25-030(607) by not providing a urine sample. On July 29, 2013, a correctional officer made a for cause request of Stuhr for a urine sample. He said he would not be able to provide a sample because he suffers from shy bladder (paruresis). The officer informed him that failing to provide the sample would result in an infraction. Stuhr did not provide a sample and was infractioned. On August 17, 2013, a different correctional officer made a for cause request of Stuhr for a urine sample. He agreed and was allowed an eight-ounce glass of water and one hour to provide the sample. He did not and was again infractioned. After hearings, the Department found him guilty of the infractions and imposed sanctions of 15 days loss of good conduct time for each violation.

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

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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. Stuhr received all of these protections. He does not demonstrate that minimal due process includes the right to be provided a "dry cell" or to have an alternate sample method employed to accommodate his paruresis.

Stuhr further argues that the Department erred in finding him guilty of the infraction because he did not refuse to provide the urine samples, but rather was unable to provide the urine samples because of his paruresis. 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). The infraction reports constitute "some evidence." Stuhr did not present any documentary evidence that he suffered from paruresis at the time the urine samples were requested. Nor did the Department find any such documentation when it reviewed Stuhr's medical records. We therefore affirm the Department's disciplinary decision.

Accordingly, it is hereby

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

DATED this 10th day of November, 2015.



Acting Chief Judge Pro Tempore

cc: Clark L. Stuhr
Jean E. Meyn
Department of Corrections