

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

Filed
Washington State
Court of Appeals
Division Two

In re the Personal Restraint Petition of

DAVID ALLEN TROUPE, JR.,

Petitioner.

No. 52524-1-II

January 16, 2019

ORDER DISMISSING PETITION

David Troupe seeks relief from 15 infractions issued by the Department of Corrections. For seven of the infractions (IGNs 343, 344, 345, 346, 357, 358, and 359), his petition is moot because he did not lose any good conduct time and there is no relief that this court can grant. *In re Personal Restraint of Mines*, 146 Wn.2d 279, 285, 45 P.3d 535 (2002).

As to the remaining eight infractions (IGNs 348, 349, 351, 352, 353, 354, 355, and 356), 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, 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. Troupe received all of these protections.

When there is “some evidence” in the record, we will affirm the Department’s disciplinary decision. *Superintendent v. Hill*, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985); *In re Johnston*, 109 Wn.2d 493, 497, 745 P.2d 864 (1987). The record contains “some evidence” in the form of witness statements. We therefore affirm the Department’s disciplinary decisions. Contrary to his arguments, he was not entitled to an attorney at the infraction hearings. *Wolff*, 418 U.S. at 569-70.

He presents no evidence of bias by the hearings officers other than their findings that he committed the infractions. There is no due process right to have an infraction issued within a specific period. He does not identify any relevant evidence he was not allowed to present. An inmate can be removed from an infraction hearing for being disruptive so long as he was first warned about being disruptive. *Battle v. Burton*, 970 F.2d 779 (11th Cir. 1992).

Accordingly, it is hereby

ORDERED that Troupe’s petition is dismissed under RAP 16.11(b).



Acting Chief Judge Pro Tempore

cc: David A. Troupe, Jr.
Timothy J. Feulner