

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the
Personal Restraint Petition of

DAVID A. TROUPE,

Petitioner.

No. 31151-8-II

ORDER DISMISSING PETITION

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY [Signature] DEPUTY

David A. Troupe seeks relief from personal restraint imposed following his 1999 convictions of first-degree robbery, second-degree robbery (two counts), unlawful possession of a firearm, and unlawful possession of a machine gun. He claims that his restraint is unlawful because the Department of Corrections (the Department) violated his due process rights in prison disciplinary proceedings in which he was found to have violated WAC 137-28-260 (659).¹ Specifically, he claims that (1) he was not allowed to attend the disciplinary hearing; (2) the Department did not honor his request for witness statements; and (3) he was not allowed to appeal.

This court reviews prison disciplinary proceedings to determine whether the Department 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, it looks 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.

¹ This provision makes sexual harassment a serious disciplinary infraction: "Sexual Harassment; any word, action, gesture or other behavior that would be offensive to a reasonable person."

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Ct. 2963 (1974). These protections include: (1) advance written notice of the charged violations; (2) the opportunity to present documentary evidence and to 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.

As to the first protection, Troupe had written notice of the charges and of the date and time the hearing was to be held. The hearing notice indicates that he received the form at 7:15 p.m. on October 29, 2002, but that he refused to sign it.

As to the second protection, the hearing notice informed Troupe of his right to present witnesses, and he indicated two witnesses whose names were placed on the hearing notice. The record does not show if these witnesses provided statements for his hearing or whether the witnesses were informed that Troupe requested statements from them. In any case, he does not show with any competent evidence what evidence these witnesses would have presented. Petitioner refused to attend the hearing and, thus, he did not present a defense to the charges.

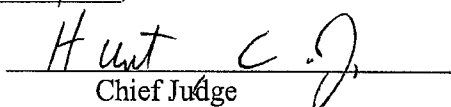
As to the third protection, the Department gave petitioner a written statement of the evidence it relied on and reasons to support its action. Further, this court affirms a department's decision as long as there is any evidence in the record to support it.

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). Here, that evidence consisted of two reports, one from C/O DeLeon and another from C/O Bonner. Both reports detail Troupe's inappropriate sexual comments to Bonner. This is some evidence to support the infraction.

Petitioner also argues that the Department denied him his right to appeal the disciplinary infraction. But the scant record before this court does not show that petitioner filed a timely appeal. When he filed a second appeal, the 15-day appeal period had lapsed. In any case, this court has reviewed petitioner's due process claims and found them unsubstantiated. Accordingly, it is hereby

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

DATED this 23rd day of January, 2004.



Chief Judge

cc: David A. Troupe
Department Of Corrections
Lewis County Cause No. 99-1-00045-0
Pierce County Cause No. 99-1-02498-4
Brian G. Maxey

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of:

DAVID ALLEN TROUPE,

Petitioner.

No. 31151-8-II

CERTIFICATE OF FINALITY

Pierce County

Superior Court No. 99-1-02498-4

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for Pierce County.

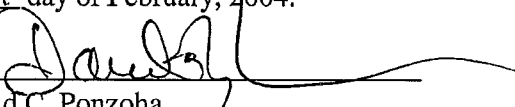
This is to certify that the decision of the Court of Appeals of the State of Washington, Division II, filed on January 23, 2004, became final on February 24, 2004. Costs have been awarded in the following amount:

Judgment Creditor Respondent State: \$125.00

Judgment Debtor Petitioner Troupe: \$125.00



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Tacoma, this 27 day of February, 2004.


David C. Ponzoha
Clerk of the Court of Appeals,
State of Washington, Division II

CERTIFICATE OF FINALITY

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