

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

IN THE MATTER OF THE
PERSONAL RESTRAINT OF:

JAMIE WALLIN,

Petitioner.

No. 84041-0-I

ORDER OF DISMISSAL

Jamie Wallin filed a personal restraint petition challenging the sanctions imposed as a result of a prison disciplinary proceeding. In order to obtain relief in this setting, Wallin must demonstrate that he is being “restrained under RAP 16.4(b) and that the restraint is unlawful under RAP 16.4(c).” In re Pers. Restraint of Grantham, 168 Wn.2d 204, 213, 227 P.3d 285, 290 (2010) (quoting In re Pers. Restraint of Isadore, 151 Wn.2d 294, 298-99, 88 P.3d 390 (2004)).

In January 2020, correctional officers at Washington State Penitentiary searched Wallin’s solely-occupied cell. They found (1) 23 sexually explicit photographs and pictures hidden behind other pictures in Wallin’s personal photograph album and (2) a sealed box containing approximately 280 pages of documents related to the criminal proceeding of Wallin’s former cellmate. The documents included police reports, records of the other inmate’s trial and sentencing and contained witness contact information and contact information in the community of multiple sex offenders. The box was prepared for shipment and addressed to the Everett residence of Wallin’s family member. Wallin told the

officers that the documents belonged to his former cellmate and he intended to ship them to his grandmother for safekeeping as a favor. He urged the officers to dispose of the unauthorized mail and pictures instead of writing infractions, because he feared that the infractions would prevent his transfer to a different facility.

Wallin was charged with violating WAC 137-25-030 (728) (possession of sexually explicit materials), WAC 137-25-030 (718) (use of mail, telephone, or electronic communications in violation of law, court order, or previous written warning, direction, and/or documented disciplinary action), and WAC 137-25-030 (739) (possession, transfer, or solicitation of personal identification information, when not voluntarily given, including social security numbers, addresses, telephone numbers, driver's license numbers, medical, personnel, financial, or real estate information). Wallin was notified of the charges and the scheduled hearing date. After a brief continuance, the hearing took place on February 11, 2020. Wallin pleaded not guilty. The hearing officer considered documentary evidence, including Wallin's written statement and attachments, and his former cellmate's statement. Wallin claimed he was not guilty of the mail violation charge (718), because the documents were not legal mail, but were obtained through public disclosure requests. He argued that he was not guilty of unauthorized possession of personal identification information (739), because the documents were voluntarily given to him. And finally, as to the possession of sexually explicit material (728), he argued that the images did not serve the purpose of sexual gratification. His former cellmate's statement corroborated Wallin's claim that the documents were

voluntarily with him. The hearing officer found Wallin guilty of possession sexually explicit material (728) and unauthorized use of mail (718), but reduced the third charge to a lesser infraction, violation of WAC 137-25-030 (714) (giving, selling, purchasing, borrowing, lending, trading, or accepting money or anything of value except through approved channels, the value of which is ten dollars or more). The hearing officer found that Wallin did possess multiple sexually explicit pictures, and conspired with another inmate to store and send the other inmate's property (which had a value of over \$10) to Wallin's family. The hearing officer imposed sanctions, which did not include the loss of good conduct time. Wallin appealed the sanctions and guilty findings, and the associate superintendent denied his appeal.

Wallin subsequently wrote to the Office of Corrections Ombuds regarding his infractions. As a result of those communications, the Department further reduced Wallin's 714 violation to a lesser infraction, a general violation of WAC 137-28-220 (053) (possession of anything not authorized for retention or receipt and/or not issued through approved channels).

Wallin filed a personal restraint petition challenging the guilty findings, arguing that (1) the hearing officer failed to apply the correct evidentiary standard; (2) the evidence is insufficient to support the findings of guilt; (3) the hearing officer improperly considered evidence not presented at the hearing; and (4) the 739 charged was improperly reduced to a different charge that was not a lesser included offense.

Review of a prison disciplinary proceeding is limited to a determination of whether the action taken was "so arbitrary and capricious as to deny the petitioner

a fundamentally fair proceeding so as to work to the offender's prejudice.”

Grantham, 168 Wn.2d at 215 (citing In re Pers. Restraint of Reismiller, 101 Wn.2d 291, 294, 678 P.2d 323 (1984)). A disciplinary proceeding is not arbitrary and capricious if the petitioner was afforded the applicable minimum due process protections and the decision was supported by at least some evidence. Id. at 215-16; In re Pers. Restraint of Krier, 108 Wn. App. 31, 38, 29 P.3d 720 (2001). Due process requires that an inmate facing disciplinary sanctions receive adequate notice of the alleged violation, an opportunity to present documentary evidence and call witnesses when not unduly hazardous to institutional safety and correctional goals, and a written statement of the evidence relied on and the reasons for the disciplinary action. Grantham, 168 Wn.2d at 215-16; In re Pers. Restraint of Gronquist, 138 Wn.2d 388, 396-97, 978 P.2d 1083 (1999).

The evidentiary requirements of due process are satisfied if there is "some evidence" in the record to support a prison disciplinary decision:

Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.

In re Pers. Restraint of Johnston, 109 Wn.2d 493, 497, 745 P.2d 864 (1987) (citations omitted) (quoting Superintendent, Mass. Corr. Inst. v. Hill, 472 U.S. 445, 455-56, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985)). The standard requires “some reasonable connection between the evidence and the inmate in order to support actions taken by the prison disciplinary board.” In re Pers. Restraint of Anderson,

112 Wn.2d 546, 549, 772 P.2d 510 (1989). It is not the role of this court to re-weigh the evidence considered by the hearing officer. Johnston, 109 Wn.2d at 497.

As a threshold matter, the Department argues that Wallin's petition is barred by the applicable two-year statute of limitations. See Matter of Heck, 196 Wn. App.2d 335, 341, 470 P.3d 539 (2020) (general two-year statute of limitations under RCW 4.16.130 applies to personal restraint petitions challenging prison disciplinary proceedings). The Department contends that the statutory limitation period began to run on February 24, 2020, when it denied Wallin's internal appeal, and that Wallin's appeal filed more than two years later, on May 12, 2022, is untimely. The Department maintains that Wallin's communication with the Ombuds after his appeal was resolved does not extend the time for filing his petition. But, in this case, those communications led the Department to issue a second "Disciplinary Hearing Appeal Decision" on January 11, 2021. In that decision, the Department conducted a "re-review" of Wallin's entire appeal, further reduced his originally-charged 739 infraction because "no dollar value was listed in the original infraction," and again affirmed the other two infractions. Thus, the Department issued its final decision in Wallin's internal appeal in January 2021 and Wallin filed this petition within two years of that date. Wallin's petition is timely under RCW 4.16.130.

Wallin argues that his right to a fair hearing was violated because the hearing officer did not apply the correct evidentiary standard. Relying on In re Personal Restraint of Schley, 191 Wn.2d 278, 421 P.3d 951 (2018), Wallin claims that the preponderance of the evidence standard applies in prison disciplinary proceedings. Wallin is mistaken. In Schley, the Department revoked the

petitioner's Drug Offender Sentencing Alternative (DOSA) sentence based on a fighting infraction that had been proved by the "some evidence" standard. The petitioner alleged that the hearing violated due process because the Department failed to prove the fighting infraction by a preponderance of the evidence, the higher standard required at DOSA revocation hearings. Schley, 191 Wn.2d at 281.

Noting the increased liberty interest at stake, the Schley court held that, "at DOSA revocation hearings, if revocation is based on the clinical staff administratively terminating a person from treatment, the [DOC] has the burden to prove the facts that served as a basis for that decision by a preponderance of the evidence." Id. at 292. The court expressly stated that its holding "does not disturb the 'some evidence' standard applied to prison disciplinary hearings." Id. at 289. Wallin's disciplinary proceeding was governed by the "some evidence" evidentiary standard.

Wallin challenges the sufficiency of the evidence supporting the findings of guilt. He contends that the hearing officer failed to make specific findings as to each element of the charged violations. However, there is no requirement that the hearing officer make factual findings as to the particular elements of the charges. To comport with due process, the hearing officer must state the reasons for the disciplinary action. Grantham, 168 Wn.2d at 215-16.

The hearing officer relied on the staff reports and the photos themselves to conclude that Wallin possessed multiple sexually explicit images, including those involving suspected minors.¹ Wallin admitted that he possessed images depicting

¹ The Department did not file the images in this court but provided a declaration describing them.

nudity, the images were found within personal property that indisputably belonged to him, and despite his claims to the contrary, the manner in which the images were hidden reflected an awareness of the illicit content. As to the mail violation, a written directive, DOC Policy 450.100 (Attachment 1, No. 27), prohibits mail to or from incarcerated individuals that contains information or documents relating to other incarcerated individuals, without prior Department approval. A violation of this policy does not hinge on whether or not the material met the definition of “legal mail” or was obtained by means of public disclosure requests. Undisputed evidence established that Wallin possessed another offender’s case file and intended to mail it. Finally, although initially charged with a violation of WAC 137-28-030 (739), Wallin was ultimately found guilty of WAC 137-28-220 (053) (prohibiting possession of anything unauthorized for retention or receipt). DOC Policy, 440.000 (IV) (D)(1) prohibits offenders from handling or processing the personal property of others. Again, the undisputed evidence established that Wallin retained his former cellmate’s property. There was “some evidence” to support the guilty findings.

Wallin contends the hearing officer considered evidence outside of the record to establish that the value he intended to lend—for postage and storage—was over \$10. See WAC 137-29-310(1) (hearing officers must consider only evidence presented at the disciplinary hearing). However, the evidence included a postage transfer form with a notation estimating postage cost of \$13.90. And in any

event, Wallin's argument is moot since it pertains only to the 714 infraction that was subsequently superseded and further reduced to a 053 violation.²

Finally, Wallin claims the 739 charge was not properly reduced to a 053 violation because it not a lesser included offense of the original charge. The hearing officer had authority to find Wallin guilty of a lesser included offense, without issuing a new infraction report or conducting a new hearing. WAC 137-28-310(2). A lesser included offense for this purpose is one that is a "less serious violation than the one charged, but one which the offender necessarily committed in carrying out the charged violation." WAC 137-28-160(8). Here, Wallin necessarily possessed something unauthorized, for purposes of the 053 violation, when he committed the 739 violation, by possessing personal identification information in his cellmate's case file, when that information was not voluntarily provided to him by the individuals involved.³

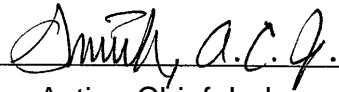
Wallin does not demonstrate that he was deprived of a fundamentally fair proceeding. The petition must be dismissed. See RAP 16.11(b) (frivolous petition will be dismissed); In re Pers. Restraint of Khan, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015) ("[A] personal restraint petition is frivolous where it fails to present an arguable basis for collateral relief either in law or fact, given the constraints of the personal restraint petition vehicle.").

² And, contrary to Wallin's argument, the superintendent further reduced the 714 charge based on inadequate notice in the infraction report of the dollar value element, not based on insufficiency of the evidence.

³ These are the only relevant charges for purposes of this analysis because, again, the hearing officer's finding that Wallin was guilty of a 714 violation was superseded by the Department's decision upon its second review.

Now, therefore, it is hereby

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


Acting Chief Judge

LEA ENNIS
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750

March 20, 2023

Department of Corrections A.G. Office
Attorney at Law
PO Box 40116
Olympia, WA 98504-0116
correader@atg.wa.gov

Alicia Louise Mac
Washington State Office of the Attorney
1116 W Riverside Ave Ste 100
Spokane, WA 99201-1113
Alicia.Mac@atg.wa.gov

Jamie Lloyd Wallin
#729164
Washington State Penitentiary
1313 North 13th Ave
Walla Walla, WA 99362

Case #: 840410
Personal Restraint Petition of: Jamie Lloyd Wallin
Snohomish County Superior Court No. 06-1-02094-9

Counsel:

Enclosed please find a copy of the Order Dismissing Personal Restraint Petition entered by this court in the above case today.

Pursuant to RAP 16.14(c), "the decision is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in Rule 13.5A."

This court's file in the above matter has been closed

Sincerely,



Lea Ennis
Court Administrator/Clerk

jh