

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

December 31, 2018

DIVISION II

In re the Personal Restraint Petition of:

JOSHUA DALE WESTCOTT,

Petitioner.

No. 51772-8-II

ORDER DISMISSING PETITION

Joshua Westcott seeks relief from the sanctions imposed¹ following the Department of Corrections' determination that he had violated WAC 137-25-030(603) (introducing or transferring any unauthorized drug or paraphernalia). 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. Westcott received all of these protections.

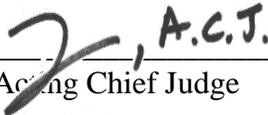
Westcott argues that the evidence of the infraction is insufficient because he was in a common area and did not know the syringe was on the floor. When there is "some

¹ Four days of segregation, 30 days' loss of dayroom privileges and 60 days' loss of visitation privileges.

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 an incident report from a correctional officer who saw Westcott move his foot over the syringe in what appeared to be an effort to hide it. We, therefore, affirm the Department’s disciplinary decision.

Accordingly, it is hereby

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



Acting Chief Judge

cc: Joshua D. Westcott
Candie M. Dibble