

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Personal Restraint of:

COURTNEY R. BANUT,

Petitioner.

No. 58104-3-II

ORDER DISMISSING PETITION

In this personal restraint petition (PRP), Courtney R. Banut seeks relief from personal restraint imposed following a guilty finding on a prison infraction. Banut claims that there was insufficient evidence to support a guilty finding on the infraction. The petition is dismissed.

FACTS

On March 15, 2023, Banut received a serious infraction for a WAC 752 violation—possessing, or receiving a positive test for use of, an unauthorized drug, alcohol, or intoxicating substance. The serious infraction report stated that Banut was taken to the clinic after calling a medical emergency. Banut was given a urinalysis test and tested positive for spice. Banut was admitted to the clinic for spice intoxication. The test strips showing a positive for spice were thrown away.

During the clinic intake, a correctional officer searched Banut and found a plastic bag in Banut's pocket. The plastic bag contained another bag which had an unknown clear

substance with black flakes in it. Two separate tests were done on the unknown substance, both of which were positive for amphetamines.

At the infraction hearing, the hearing officer reviewed the serious infraction report, incident report, multiple photographs documenting the different drug tests, and results performed on the substance. Banut was advised of all of her due process rights at the hearing, and Banut offered the following statement:

I don't use drugs. I am in treatment. I have not used drugs in a long time. This was probably floor wax because I did my nails earlier. This is a mistake I would like to get this test sent out. I took a clean test the following day. There is no way in hell I would have tested positive for spice. They should have shown me the test result and they did not do any of that. Can they test that candy wrapper for floor wax. I have worked too hard for this and I cannot lose everything I have worked hard for.

Resp. of Dep't of Corrections, Ex. 1, Attach. M at 1.

Banut also raised some questions about inconsistencies in the infraction reports:

BANUT: K. but on right here on um first page it has evidence case and it has it crossed out. They never initialed it.

[HEARING OFFICER]: Mm-hmm.

BANUT: And they crossed it out so that there's no evidence. What, what's, what's up with that?

[HEARING OFFICER]: Because it was initially evidence um when they wrote the infraction but once they took the physical evidence and used it for testing then it's no longer, that's why it was crossed out.

Resp. of Dep't of Corrections, Ex. 5, at 8.

The hearing officer found Banut guilty of possessing a substance that was positive for amphetamines, not the positive spice test. The hearing officer did not find Banut's explanation of the infraction persuasive:

[HEARING OFFICER]: . . . Anything else you want to add for your statement?

BANUT: Um . . . mmm . . . no I just—can they test that candy wrapper for floor wax? Because there's no way I can be found guilty on this. I have too much that I've worked for and this would just mess it all up and I get demoted and this is—I can't lose everything I worked hard for.

[HEARING OFFICER]: Well as we talked about a little bit before it's kind of undisputable the amount of evidence that's there. You went down for a positive test or you went down because they suspected that you were having some sort of reaction. You were high. That was the assumption, that you were altered in some way shape or form. You took a test. You tested positive for Spice. That positive test for Spice is not—I'm not going to say it's irrelevant in this, cause that's kind of what the cause of the other tests were, but, it doesn't matter because they are infracting you for the other test which they actually have record of and, like I said, they've done more, they've done more than I've ever seen in the amount of tests. Normally, it's just one of these tests. So because you and I, and them probably had some questions about it and were like this is not—like what is this? This is funky you know it's a wrapper with some black weird.

BANUT: It was a candy wrapper.

[HEARING OFFICER]: So they did multiple tests on it and they all came back positive. For, for me to believe that you touched the wrapper with your floor wax and then—it's not plausible, to me it's just not.

BANUT: Why, why can't you guys have the floor wax sent out? You guys, they found it in my room and they listed on the piece of paper. I mean I just did my nails that day I cut my hand.

[HEARING OFFICER]: You would be asking me to connect too many unknowns. Like I don't know that you actually touched it. I don't know that you actually did your nails. I don't know that—

BANUT: I still have floor wax on my nails.

[HEARING OFFICER]: Okay well I don't know you did them that day. Like you're asking me to go against from, all the evidence that I have. So I'm finding you guilty. That's based on the staff

written testimony, the supplemental information, and all the photos of the evidence. In regards to the sanction um a 752 is a category B2 violation.

BANUT: Even with the discrepancies in, in the paperwork. You're still finding me guilty?

[HEARING OFFICER]: Yes. The discrepancies would be considered harmless errors. Somebody not initialing when they crossed something out. All the evidence, all the information is there. I can clearly see what they intended to do, um as part of the packet and that's what makes them harmless errors. If somebody knows what should have been there or could have been there, why they did something. If it was major like they had your name wrong, the number wrong, the year wrong, the days wrong, like, but even that. If it's one year wrong, it's not enough, if everything else is correct in the infraction packet.

Resp. of Dep't of Corrections, Ex. 2, at 8-9.

The hearing officer found Banut guilty of the infraction. Banut appealed the guilty finding to the superintendent, and the infraction was affirmed.

ANALYSIS

To prevail in a personal restraint petition, the petitioner must show that they are subject to unlawful restraint. RAP 16.4. To meet their burden in a personal restraint petition, the petitioner must state with particularity facts that, if proven, would entitle the petitioner to relief. *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086, *cert. denied*, 506 U.S. 958 (1992). Bald assertions and conclusory allegations are not sufficient. *Id.* at 886. Arguments made only in broad, general terms are also insufficient. *In re Pers. Restraint of Rhem*, 188 Wn.2d 321, 327-28, 394 P.3d 367 (2017).

A petition will be dismissed if it is clearly frivolous. RAP 16.8.1(b). A petition is clearly frivolous if it "fails to present an arguable basis for collateral relief either in law or

in fact, given the constraints of the personal restraint petition vehicle.” *In re Pers. Restraint of Khan*, 184 Wn.2d 679, 686-87, 363 P.3d 277 (2015).

This court “will reverse a prison discipline decision only upon a showing that it was so arbitrary and capricious as to deny the petitioner a fundamentally fair proceeding so as to work to the offender’s prejudice.” *In re Pers. Restraint of Grantham*, 168 Wn.2d 204, 215, 227 P.3d 285 (2010). Offenders subject to prison discipline “are not entitled to the full panoply of constitutional procedures given criminal defendants at trial.” *Id.* “A prisoner is entitled to only minimum due process protections, which include notice, and an opportunity to provide evidence and call witnesses ‘when not unduly hazardous to institutional safety and correctional goals,’ and to receive a written statement of the evidence relied upon and the reasons for the discipline.” *Id.* at 215-16 (quoting *In re Pers. Restraint of Gronquist*, 138 Wn.2d 388, 398 n.8, 978 P.2d 1083 (1999)). Prison discipline will be affirmed if there is some evidence supporting the discipline. *Id.* at 216.

Here, there is indisputable evidence that Banut was in possession of a substance that tested positive for amphetamines. The serious infraction report documents a plastic bag with an unknown substance was found in Banut’s pocket. And the serious infraction report, along with numerous photos of the test results, establish that the unknown substance was amphetamine. Banut offers no argument or evidence disputing either of these facts.

Banut’s arguments related to the spice tests are irrelevant because she was not infractioned for testing positive for spice.

Banut also argues that the substance should have been tested to establish that it was floor wax because the floor wax always tests positive for amphetamine. As an initial matter, Banut’s claim that the floor wax tests positive for amphetamine is nothing more

than a bald assertion unsupported by any evidence. Further, even if Banut's assertions were true, she would still be in possession of a substance that tested positive for amphetamine.

Banut's arguments related to the unreliability of "EMIT" drug tests are irrelevant because DOC did not test the substance using "EMIT" drug tests.

Finally, Banut makes several bald assertions and conclusory allegations claiming that the evidence was improperly handled or cross-contaminated. The fact that evidence was crossed out after it was consumed for testing does not affect the positive tests for amphetamine. And Banut provides no support for her conclusory allegation that the evidence was cross-contaminated.

Banut has provided nothing more than bald assertions and conclusory allegations to challenge her discipline infraction. There was clearly evidence supporting the hearing officers finding that Banut was guilty of possessing a substance that tested positive for amphetamine. None of Banut's arguments to the contrary provide any arguable basis for relief. Therefore, Banut's petition is clearly frivolous and must be dismissed.

Accordingly, it is hereby

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


Acting Chief Judge, Pro Tem

cc: Courtney Banut
Katherine Joy Faber