

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

Filed  
Washington State  
Court of Appeals  
Division Two

November 17, 2023

In the Matter of the Personal Restraint of  
  
DARRELL BERRIAN,  
  
Petitioner.

No. 58703-3-II

ORDER DISMISSING PETITION  
AND DENYING MOTION FOR  
APPOINTMENT OF COUNSEL

Darrell Berrian challenges the sufficiency of the evidence supporting a prison disciplinary infraction. Because some evidence supports the guilty finding, this petition is dismissed.

When addressing the sufficiency of the evidence to support a prison disciplinary infraction, this court must determine whether “some evidence” supports the guilty finding. *In re Pers. Restraint of Grantham*, 168 Wn.2d 204, 216, 227 P.3d 285 (2010). Determining whether “some evidence” exists does not require this court to examine the entire record, conduct an independent assessment of witness credibility, or independently weigh the evidence. *In re Pers. Restraint of Johnston*, 109 Wn.2d 493, 497, 745 P.2d 864 (1987). Instead, this court determines whether any evidence in the record could support the conclusion reached by the hearing officer. *Id.* The evidence must, however, connect the petitioner to the infraction. *In re Pers. Restraint of Reismiller*, 101 Wn.2d 291, 297, 678 P.2d 323 (1984).

In July 2023, prison staff discovered a suspicious letter addressed to Berrian, an incarcerated individual, in the incoming prison mail. The return address on the letter was to the current address of Anthony Harris, a former inmate. The handwriting on the letter in question was later determined to match Harris' handwriting. Upon investigation, it was determined that the letter's contents had been saturated with "[s]ynthetic cannabinoids/marijuana." Personal Restraint Petition (PRP) App. A at 2.

A review of Berrian's phone conversations at the time the letter was discovered disclosed several conversations with Harris in which Berrian arranged for Harris or Harris's girlfriend to send him what appeared to be a supply of drugs. And, according to the jail staff, when the jail staff confronted Berrian with this information, he "took responsibility for his actions and admitted that he was involved in a conspiracy to introduce narcotics into the prison." PRP App. A at 9.

Berrian was charged with violating WAC 137-25-030 (603), "[i]ntroducing or transferring any unauthorized drug or drug paraphernalia."<sup>1</sup> PRP App. B. Berrian denied admitting to any conspiracy and argued that there was no evidence that he had agreed with anyone to attempt to transfer drugs into the prison. Based on the facts above, the hearing officer found Berrian guilty of the (603) violation.

These facts provide some evidence in support of the (603) guilty finding. They show that at the time Harris's letter arrived, Berrian had recently engaged in phone conversations during which he appeared to be arranging for Harris to send illegal

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<sup>1</sup> Berrian was also charged with and found guilty of violating (889), "[u]sing facility phones, information technology resources/systems, or related equipment without authorization." PRP App. B. He does not argue that the evidence was insufficient to support the (889) infraction.

substances to him through the prison mail. An illegal substance was found on a letter to him from Harris. And Berrian admitted his actions to the jail staff. This is sufficient to establish some evidence that Berrian had introduced the drugs into the prison.

Although Berrian later denied admitting his participation and asserted that he was unaware of the drugs, the hearing officer was not required to find his statements credible. And this court will not review the hearing officer's credibility determinations. *Johnston*, 109 Wn.2d at 497.

Because some evidence supports the guilty finding, Berrian fails to demonstrate that the infraction is improper. Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b), and Berrian's motion for appointment of counsel is denied.

  
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Acting Chief Judge

cc: Darrell Berrian  
Timothy N. Lang, Department Of Corrections  
Pierce County Clerk  
County Cause No(s). 13-1-03133-9