

September 13, 2023

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

In the Matter of the Personal Restraint of:

TODD EDWARD FEARS,

Petitioner.

No. 57772-1-II

ORDER DISMISSING PETITION

Todd E. Fears seeks relief from personal restraint imposed following a guilty finding on two prison infractions. He argues that he was denied due process because he was denied his discovery requests for confidential information.

Fears is currently in the custody of the Department of Corrections (DOC) serving sentences on multiple offenses under Cowlitz County Cause Numbers 20-1-01181-08 and 21-1-01027-08. In November 2022, Fears was investigated for using the inmate phone system and JPay messaging system to conspire with community members to bring contraband into the correctional facility. The investigation involved interception of recorded communications between Fears and former inmates and community members. Fears used code language that DOC was able to decipher with the assistance of a confidential informant. DOC found Fears guilty of unauthorized phone use and introducing or transferring unauthorized drugs or drug paraphernal to the correctional facility.

To prevail in a personal restraint petition, the petitioner must show that he is subject to unlawful restraint. RAP 16.4. When a petitioner is seeking review of a decision that has not been subject to prior judicial review, he or she is not required to make a heightened showing of prejudice to obtain relief. *In re Pers. Restraint of Grantham*, 168 Wn.2d 204, 214, 227 P.3d 285 (2010).

Rather, 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.” *Id.* at 215.

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, 396-97, 978 P.2d 1083 (1999)). Prison discipline will be affirmed if there is some evidence supporting the discipline. *Grantham*, 168 Wn.2d at 216.

Fears argues that his right to due process was violated because he was not permitted to review the documentary evidence supporting his infractions. However, due process does not require that Fears review the documentary evidence.

Due process in a prison disciplinary proceeding requires notice, an opportunity to provide evidence and call witnesses, and to receive a written statement of the evidence relied upon and the reasons for the discipline. *Id.* at 215-16. It does not entail the right to confidential information. WAC 137-28-285(2)(e).

Here, Fears received notice of the infractions and had the opportunity to provide evidence and call witnesses at the hearing. Fears also received a written summary of the evidence relied on in the infraction report. Fears did not have a due process right to review the confidential evidence reviewed by the hearing examiner.

Based on the above, the prison discipline proceeding complied with the minimum requirements of due process. Therefore, the proceeding was not so arbitrary and capricious as to deny Fears a fundamentally fair proceeding. *See Grantham*, 168 Wn.2d at 215.

Fears has failed to show that he is subject to unlawful restraint due to the prison disciplinary proceeding.¹ Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b). Fears request for the appointment of counsel is denied.



Acting Chief Judge, Probation Department

cc: Todd E. Fears
Cowlitz County Clerk
County Cause Nos. 20-1-01181-08 and 21-1-01027-08
Kelly A. Fitzgerald, AAG

¹ Fears also appears to request a stay of a Drug Offender Sentencing Alternative reclassification hearing. That hearing took place on July 6, 2023. Because the hearing already took place, the motion for a stay is denied as moot.