

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

IN THE MATTER OF THE
PERSONAL RESTRAINT OF:

DANIEL LYLE RINKER,

Petitioner.

No. 85070-9-I

ORDER OF DISMISSAL

Daniel Rinker is in the custody of the Department of Corrections (DOC). He filed this personal restraint petition challenging the guilty finding and sanctions imposed following a prison disciplinary hearing. In order to obtain relief in this setting, Rinker 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, 212, 227 P.3d 285 (2010) (quoting In re Pers. Restraint of Isadore, 151 Wn.2d 294, 229, 88 P.3d 390 (2004)). Because Rinker fails to meet this burden, his petition must be dismissed.

BACKGROUND

On December 15, 2022, DOC charged Rinker with violating WAC 137-25-030(752) (Possessing, or receiving a positive test for use of, an unauthorized drug, alcohol, or intoxicating substance), WAC 137-25-030(709) (Out-of-bounds: Being in another offender’s cell or being in an area in the facility with one or more offenders without authorization), and WAC 137-25-030(603) (Introducing or transferring any

unauthorized drug or drug paraphernalia). The initial serious infraction report described the incident as follows:

On 12/15/22 , C/O Lopez observed I/I Rinker, D leave the unit on a supposed call out, immediately return, and then turn around and leave again, saying that he initially went at the wrong time. C/O Lopez requested a check of video to confirm that he didn't go early to meet up with anyone or do anything nefarious.

I, IJU A Reining , observed on video, his movements from the unit and he walked all the way around to the area of the pill line where he is observed receiving a pass (WAC 603) from I/I Mobley , D 356883 who came from his unit/cell IA42. He did not have a pill line call out and had no reason to be out of bounds (WAC 709) meeting with I/I Mobley. I immediately contacted C/O Lopez and advised him to search Rinkers cell as a pass had occurred. He advised he would get that done. I then contacted the Shift Lieutenant to have UA's completed on I/I Rinker and all the occupants of cell IA 42. As well as a search of cell IA 42.

Rinker has initially refused to be UA'd but did change his mind and was negative. However, during the [s]earch of his cell, C/O Correa and C/O Gonzales located a small clear plastic bindle with what appeared to be gridded paper directly in I/I Rinkers possessions under his bunk and a second small bundle that was made of green cloth was located. The items were placed by officers into evidence for testing.

IJU A Reining retrieved the items for testing. The green bindle was opened and had sage in it. The plastic bindle with gridded paper was opened and tested positive for Spice paper.¹ Test results and photos provided (WAC 752).

At the conclusion of this investigation, I/I Rinker is in violation of WAC 709 being out of bounds on the pill line to receive a pass (WAC 603) of narcotics that were located in I/I Rinkers property (WAC 752) within 15 minutes of the pass.

At the disciplinary hearing on December 27, 2022, Rinker appeared and testified that he did not go out of bounds on purpose and did not receive drugs from Mobley. Rather, he had a chance encounter with Mobley, who passed him his aunt's email address on a slip of paper. Rinker also claimed that the gridded paper found

¹ "Spice" is synthetic cannabis.

in his cell was used to play a game. Based upon Rinker's testimony and the documentary evidence, including staff written statements, search reports, test results, photographs, and videos, the hearing officer found Rinker guilty as charged and imposed multiple sanctions including loss of good time. Rinker appealed, and on January 4, 2023, the decision and sanctions were affirmed.

DISCUSSION

Review of prison disciplinary proceedings is limited to a determination of whether the action taken was so arbitrary and capricious as to deny the inmate a fundamentally fair proceeding. 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 inmate was afforded the applicable minimum due process protections and the decision was supported by at least "some evidence." In re Pers. Restraint of Krier, 108 Wn. App. 31, 38, 29 P.3d 720 (2001).

Due process requires that an inmate facing a disciplinary hearing 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 upon and the reasons for the disciplinary action. In re Pers. Restraint of Gronquist, 138 Wn.2d 388, 396-97, 978 P.2d 1083 (1999). Determination of whether the "some evidence" standard has been met "does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence." Superintendent, Mass. Correctional Inst. v. Hill, 472 U.S. 445, 455, 86 L. Ed. 2d 356, 105 S. Ct. 2768 (1985)). Instead, "the relevant question is whether there is any

evidence in the record that could support the conclusion reached by the disciplinary board.” Id. at 455-56. The evidence relied upon must link the inmate to the infraction. Reismiller, 101 Wn.2d at 296-97.

Rinker asserts that he was denied due process because no evidence connects the paper Mobley passed to Rinker to the spice paper found in Rinker’s cell. This is so, he contends, because there is no proof that he returned to his cell prior to the search.

The hearing officer’s guilty finding is supported by “some evidence.” The record shows that the hearings officer relied on staff incident reports showing that Rinker initially raised suspicion by leaving his unit on a supposed call out, returning, then leaving again. Video showed Rinker and another inmate walking from recreation to the sidewalk in front of dining, where they stood waiting until Mobley arrived. There, Mobley handed Rinker an item that he shoved up his sleeve. The hearings officer considered Rinker’s statement that the handoff was his aunt’s email address, but was not persuaded by Rinker’s statements after reviewing the video of Rinker putting the item up his sleeve, rather than in his pocket, contrary to Rinker’s statement. The hearings officer also found it “too coincidental” that Rinker would walk to an area he was not supposed to be, wait there, and encounter Mobley, who happened to have something Rinker wanted.

The hearing officer acknowledged that the staff reports do not indicate whether Rinker returned to his cell once he returned to his unit following the handoff. But the hearings officer was persuaded that this was more likely than not a handoff of drugs based on Rinker’s surreptitious behavior and implausible explanations. This

was a reasonable conclusion based on the totality of the evidence. The hearing officer's decision was not arbitrary and capricious.

Because Rinker makes no showing that he was denied a fundamentally fair proceeding or that the finding of guilt was based on less than constitutionally sufficient evidence, the petition must be dismissed.

Now, therefore, it is hereby

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

A handwritten signature in black ink, appearing to read "H. S. A. J.", is written over a horizontal line.