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Division II
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Court of Appeals No. 54265-0-II

In the

Court of Appeals for the State of Washington

Division II

In Re the Personal Restraint of:

CANDICE R. BAUGHMAN
Petitioner.

REPLY TO THE DEPARTMENT OF CORRECTION'S RESPONSE TO PERSONAL RESTRAINT PETITION

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TABLE OF CONTENTS

I. INTRODUCTION..... 1
II. DEPARTMENT OF CORRECTIONS' ARGUMENT FAILS 2
III. CONCLUSION 4

TABLE OF AUTHORITIES

Cases

In re Gault, 387 U.S. 1 (1967) 3

In re Pers. Restraint of Grantham, 168 Wn.2d 204 (2010) 3

In re Pers. Restraint of Schley, 191 Wn.2d 278 (2018) 4

Mohr v. Grant, 108 P.3d 768 (2005) 3

Morrisey v. Brewer, 408 U.S. 471 (1972) 3

State v. Roy, 107 P.3d 750 (2005) 2

Statutes

WAC 137-104-050(14) 3

I. INTRODUCTION

Ms. Candice Baughman ("Ms. Baughman") files this Reply to the Department of Corrections' Response to her Personal Restraint Petition. As such she incorporates all previously arguments. Nothing in this Reply should constitute a waiver of any arguments previously made in this matter.

Ms. Baughman is currently incarcerated and was charged with violation of Rule 725 – Phone/Written/Electronic Communication Misuse and violation of Rule 889 – Unauthorized Use of a Phone/IT Resources/Systems. Both are serious infractions. In the disciplinary hearing, she was found guilty of violation of both rules. As a result, she was sanctioned to 45 days of loss of good conduct time (suspended for 180 days), 60 days loss or limitation of store privileges, and 60 days inter/restrict/term corresp/tele/select communication. She was also administratively terminated from treatment and, after a hearing, her DOSA was revoked based on "her behavior". The instant charges against Ms. Baughman were based on a statement made by another inmate, Tara Deutch.

Ms. Baughman claims relief based on violation of minimum due process rights in a prison disciplinary hearing. The decision to discipline her was based, in part, on alleged infractions that occurred prior to a

January 4, 2019, Clinical Infraction. Additionally, the decision to revoke her DOSA status was based on a pattern behavior, including behavior for which she was already disciplined. As such, the Department violated Ms. Baughman's rights by denying her due process.

The Department of Corrections only addresses Ms. Baughman's argument regarding her DOSA sentence. It also does not address her arguments regarding unlawful restraint. Therefore, Ms. Baughman contends that, due to a lack of response on the issue, the Department has conceded those points.

As for the DOSA sentence, the Department's sole argument is that it provided Ms. Baughman with Due Process because it followed the proper procedures regarding a hearing. While, it is true that Ms. Baughman was afforded a hearing, Due Process is more than simply giving an inmate notice and an opportunity to be heard and, therefore, the Department's argument fails.

II. DEPARTMENT OF CORRECTIONS' ARGUMENT FAILS

The Department's only argument is that it followed the proper procedure when revoking Ms. Baughman's DOSA sentence. While it is true that the Department has the power to revoke a DOSA sentence and determine penalties for noncompliance, *State v. Roy*, 107 P.3d 750 (2005),

it must provide the inmate with due process when it does so. WAC 137-104-050(14).

The Department relies on the fact that the process for a revocation hearing was followed, but it ignores the fact that due process is *more* than just following proper procedures. As the Court is aware, individuals have procedural due process rights, but they also have *substantive* due process rights. See *In re Gault*, 387 U.S. 1 (1967). While the Department may have followed the protocols necessary to provide *procedural* due process, it neglected to provide Ms. Baughman with *substantive* due process when it revoked her DOSA sentence.

To revoke Ms. Baughman's DOSA, the hearing officer must have found proof of each alleged offense based upon a preponderance of the evidence. *Id*. Preponderance of the evidence means that "the evidence establish[s] the proposition at issue is more probably true than not true." *Mohr v. Grant*, 108 P.3d 768 (2005). And, the evidence must be based on "verified facts… and accurate knowledge." *Morrisey v. Brewer*, 408 U.S. 471 (1972).

This standard is a higher standard than the standard used for infraction charges, which only requires "any evidence in [the] record" to support a guilty finding. *In re Pers. Restraint of Grantham*, 168 Wn.2d 204, 2016 (2010). Unfortunately for the Department, the hearing officer

clearly considered Ms. Baughman's pattern of behavior, not just the instant allegations, in deciding to revoke her DOSA. Because she considered information that was only proven by the "some evidence" standard, this is error. See *In re Pers. Restraint of Schley*, 191 Wn.2d 278 (2018).

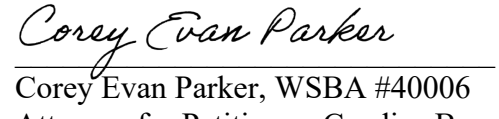
Because the hearing officer improperly considered evidence that was not proven by a preponderance of the evidence, the termination from DOSA was improper and should be reversed.

III. CONCLUSION

Because the Department only addresses Ms. Baughman's argument regarding the revocation of the DOSA sentence and does not discuss her arguments regarding the other punishments, nor does it discuss her argument regarding unlawful restraint, it is Ms. Baughman's position that the Department has conceded those points and the Court should grant her petition as conceded. As for the sole point of contention remaining, whether or not the hearing officer violated her right to due process when it revoked her DOSA sentence, for the reasons set forth above, Ms. Baughman respectfully requests this Court grant the petition, reverse the hearing officer's ruling and remand for further proceedings to reinstate her good behavior time as well as her DOSA sentence.

Respectfully submitted this 28th Day of May, 2020.

THE APPELLATE LAW FIRM



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CERTIFICATE OF SERVICE

I, Dave Evanson, certify under penalty of perjury under the laws of the United States and of the State of Washington that on May 28th, 2020, I caused to be served the document to which this is attached to the parties listed below in the manner shown below:

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