

NO. 82194-1

THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE: PERSONAL RESTRAINT OF:

JAMES GRANTHAM,

Petitioner.

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SUPREME COURT
STATE OF WASHINGTON

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

PETITIONER'S SUPPLEMENTAL BRIEF

NANCY P. COLLINS
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, WA 98101
(206) 587-2711

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A. ISSUES FOR WHICH REVIEW WAS GRANTED

1. When a person who had no opportunity for state judicial review files a personal restraint petition, RAP 16.4 requires only a showing of unlawful restraint, and not the more onerous threshold requirement that the petitioner prove he or she was actually and substantially prejudiced by the illegality. The Court of Appeals demanded that James Grantham meet the higher threshold showing even though this was his first chance for judicial review. Did the Court of Appeals misconstrue the nature of the showing Grantham must make to receive review of an unlawful and procedurally invalid deprivation of his liberty for which he had no opportunity for judicial review?

2. Washington law as well as the constitution right to due process expressly require that the State meaningfully provide notice and the opportunity to be heard before depriving a person of liberty, including the liberty interest in receiving earned early release from prison. Here, the Department of Corrections gave Grantham only the barest of information alleging he committed two serious infractions, contrary to the express mandate of administrative regulations detailing the notice requirements, and refused to give him access to the evidence on which the allegations

rested. Was Grantham unlawfully restrained and denied his rights to notice, the opportunity to be heard, and to some evidence establishing his culpability for a charged infraction?

B. STATEMENT OF THE CASE

In October of 2007, the Department of Corrections (DOC) investigated an unnamed corrections officer who was caught bringing contraband into the McNeil Island Corrections Center. Declaration of Baxter, p. 1.¹ The corrections officer said she met with another person, whose name she did not know, received tobacco and a coffee can from him, and brought it to the DOC facility where she worked. *Id.* p. 1-2. The coffee can contained marijuana. The unidentified corrections officer knew only a telephone number for the person who gave her the contraband. *Id.* DOC authorities discovered this number belonged to James Grantham's brother, Richard. *Id.* James Grantham is an inmate at McNeil Island. The corrections officer never alleged she gave contraband to James Grantham nor had contact with him.

Investigating DOC officer Steven Baxter listened to a previously recorded telephone call between James Grantham and

¹ The investigating officer's declaration is attached to the Response of the Department of Corrections filed in the Court of Appeals, as Ex. 2.

his brother, made on an unidentified date, and decided that Grantham was talking in code to his brother. Id., p. 2. Baxter contended that Grantham's request that his brother bring "coffee" and "other stuff" to him was a request to smuggle contraband into the facility.

In December of 2007, DOC filed allegations of two serious infractions against James Grantham, charging him with introducing contraband and tobacco into McNeil Island, contrary to WAC 137-25-030(603) and WAC 137-25-030(606). Initial Serious Infraction Report (attached herein as Appendix A). Grantham denied he committed the alleged infractions and requested a hearing.² He demanded to listen to the recorded telephone conversation on which the allegations rested. He sought the date of the alleged telephone call. DOC provided no further information.

The hearing officer found him guilty and the reviewing officer affirmed.³ As punishment, he lost 90 days of earned early release time, seven days of yard time, and served 25 days in segregation.

² Grantham's written statement is attached to DOC's Response as Ex. 3, Attachment D.

³ The hearing officer's ruling is attached to DOC's Response as Ex. 3, Attachment C, p. 2; and the ruling affirming the infraction is Attachment F.

Grantham timely filed a Personal Restraint Petition objecting to the procedures used to find he violated prison rules and the punishment imposed. The Court of Appeals denied his petition in an unpublished ruling, without appointing counsel to assist him. This Court granted Grantham's motion for discretionary review and appointed counsel.

C. ARGUMENT

1. GRANTHAM HAD NO PRIOR OPPORTUNITY FOR JUDICIAL REVIEW, AND THUS THE HEIGHTENED THRESHOLD REQUIREMENTS USED FOR COLLATERAL ATTACKS FOLLOWING A CRIMINAL APPEAL DO NOT APPLY

- a. Threshold requirements for collateral review

depend on the nature of the challenge presented. Courts place a high premium on the finality of prior appellate rulings. Because of the importance of finality, this Court imposes heightened threshold requirements for a request for collateral review of a conviction and sentence where the petitioner had a prior opportunity for judicial review. The heightened threshold requirements do not apply when a petitioner has not had the opportunity for prior judicial review, and instead, the court considers the petition under the court rule setting

forth the requirements for relief under a personal restraint petition, RAP 16.4.

A personal restraint petition (PRP) is the “single procedure” for seeking relief in the appellate court formerly considered as a writ of habeas corpus or request for post-conviction relief. RAP 16.3(a). A person is entitled to relief in a PRP if unlawfully restrained. RAP 16.4. Incarceration following a criminal conviction qualifies as “restraint,” and such restraint is “unlawful” if it “was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington,” if the manner of restraint violates the state or federal constitution or the laws of Washington, or “other grounds” make the restraint illegal. RAP 16.4(b), (c)(2), (6), (7).

Some petitioners seeking relief in a PRP must meet an additional threshold, beyond showing they are unlawfully restrained under RAP 16.4. In In re Cook, this court adopted a new procedural rule:

The appellate court will reach the merits of a constitutional issue when the petitioner demonstrates that the alleged error gives rise to actual prejudice and will reach the merits of a nonconstitutional issue when the claimed error constitutes a fundamental defect which inherently results in a complete miscarriage of justice.

In re Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990).

The heightened threshold requirements discussed in Cook do not apply if the petitioner had no prior opportunity for judicial review. In re Pers. Restraint of Isadore, 151 Wn.2d 294, 299-300, 88 P.3d 390 (2004) (citing In re Pers. Restraint of Cashaw, 123 Wn.2d 138, 147, 866 P.2d 8 (1994); In re Pers. Restraint of Garcia, 106 Wn.App. 625, 629, 24 P.3d 1091 (2001)). In Cashaw, the Court reviewed an inmate's complaint that the prison failed to follow its procedural regulations in determining his minimum release date. The court refused to require proof of actual prejudice stemming from a constitutional violation as a threshold requirement. The prison board's action violated the laws of Washington, and RAP 16.4(c) did not require more. Id. at 148. "None" of the policies favoring finality and underlying the heightened threshold requirement for PRPs challenging a conviction and sentence "justify" imposing these added threshold requirements when a prisoner challenges a decision "from which the inmate generally has had no previous or alternative avenue for obtaining state judicial review." Id. at 148-49.

This Court continues to rely on its analysis in Cashaw. In Isadore the court cited Cashaw, and Garcia as examples of situations in which a petitioner had no prior opportunity for judicial review and thus, the heightened threshold requirements of “actual and substantial prejudice” or a fundamental defect constituting a miscarriage of justice do not apply. 151 Wn.2d at 299. Garcia involved an inmate’s loss of good time credits for refusing to attend chemical dependency treatment while incarcerated. 106 Wn.App. at 627.

Likewise, in In re Pers. Restraint of Shepard, 127 Wn.2d 185, 191, 989 P.2d 828 (1995), the court held that the heightened threshold did not apply to a case involving DOC’s requirement that a person had a right to appear at a parolability hearing. The same lesser threshold test applied in In re Pers. Restraint of Mines, 146 Wn.2d 279, 286, 45 P.3d 535 (2002), a challenge to a DOC Board decision revoking parole where the inmate had no prior opportunity for judicial review. And this Court recently ruled “when, as here, direct review is not available, we apply a more lenient standard,” for resolving a jailed inmate’s objection to a community custody sanction. In re Pers. Restraint of Dalluge, 162 Wn.2d 814, 817, 177 P.3d 1675 (2008).

This Court's rulings show no substantive disagreement over the application of the basic threshold requirements of RAP 16.4, rather than the more rigorous threshold requirements of Cook, when a petitioner seeks review of a decision for which no he had no opportunity for prior judicial review. Cashaw, Isadore, Shepard, Dalluge, and Mines unanimously apply this standard of review.

In Mines, the State contended that failing to insist on heightened threshold requirements set the bar too low and would trigger too many frivolous claims. The Court disregarded the asserted "open the floodgates" concern as "unjustified" after reviewing the decisions filed since Cashaw. 146 Wn.2d at 290-91.

The Mines Court also noted that some prison disciplinary decisions may not be reviewable in a PRP because the petitioner has no due process right to judicial review of all prison-imposed sanctions, citing Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995). The Sandin Court ruled a prisoner has no due process right to review his placement in segregation as a punishment for a prison infraction, because a prison's internal housing decisions do not implicate a liberty interest. Sandin further criticized court decisions entertaining picayune prisoner complaints that did not implicate fundamental rights. But Sandin pointedly

refused to overrule or question cases that reviewed prisoner complaints about being denied liberty interests such as early release credits. 515 U.S. at 483 n.5, 485, 487. Because a prisoner retains her limited liberty interest in early release, she has due process rights in securing early release. Id.; In re Pers. Restraint of Fogle, 128 Wn.2d 56, 65-66, 904 P.2d 722 (1995) (“This court has recognized the statutory right to earned early release credit creates a limited liberty interest requiring minimal due process.”).

Furthermore, as discussed in Cashaw, the failure to follow the laws of the state of Washington provides an additional ground for review of a PRP. 123 Wn.2d at 147-48. Accordingly, under Sandin, Mines, Cashew, and Isadore, Grantham’s complaint that he was denied his liberty interest in his earned early release time by DOC’s impermissible punishment without according him his right to due process of law and by failing to follow mandatory administrative laws was properly presented in a PRP and need not comply with the heightened threshold requirements applied to a collateral attack on a criminal conviction.

b. The deprivation of a prisoner’s liberty interest without due process and in violation of the laws of Washington does not require the onerous additional burden of showing actual

and substantial prejudice or a fundamental miscarriage of justice.

In In re Burton, 80 Wn.App. 573, 910 P.2d 1295 (1996), the Court of Appeals rejected the application of Cashaw to a PRP challenging a prison disciplinary sanction, and instead ruled that the prisoner must meet the heightened procedural threshold of actual and substantial prejudice in order to state a proper claim in a PRP. Here, the Court of Appeals relied on Burton as requiring Grantham prove actual and substantial prejudice from DOC's probable failure to follow its mandatory procedures before it would consider his PRP. Order Dismissing Petition, COA 37396-3-II.

Burton is neither dispositive nor correct. Burton relied on the absence of Washington case law dictating a less stringent threshold for prison disciplinary challenges. But not all prison disciplinary challenges are of the same ilk. Some challenges may not raise cognizable issues, if there is no liberty interest at stake and no violation of a mandatory procedural requirement.⁴ This Court has repeatedly adhered to the rule set forth in Cashaw and applied the standard of review required by RAP 16.4 when

confronted with a PRP involving challenges that could not have been previously litigated on appeal, as discussed *supra*.

Burton also mischaracterized the decision in In re Reismiller, 101 Wn.2d 291, 678 P.2d 323 (1984), and incorrectly claimed it supported the heightened threshold's application to all challenges to prison discipline. 80 Wn.App.at 582-83. In Reismiller, a prisoner objected to the lack of evidence connecting him to a marijuana cigarette and thus challenged the sufficiency of the evidence underlying his disciplinary sanction. Reismiller predated both Cook and Cashaw. The decision focused on the standard of reviewing the sufficiency of evidence in a prison disciplinary setting. The court set an "arbitrary and capricious" standard for review of the sufficiency of evidence for a serious prison infraction. 101 Wn.2d at 245. This substantive legal standard does not dictate the threshold showing required by RAP 16.4. Thus, while Reismiller applies to Grantham, as it did to the petitioners in Burton, it does so in the context of setting the substantive standard for reviewing the sufficiency of evidence and does not dictate a threshold showing of

⁴ For example, the governing statute gives DOC discretion to decide when an offender "may become eligible" for release and therefore an inmate has no substantive right to DOC's eligibility review, and cannot receive relief in a PRP. In re Pers. Restraint of Mattson, _ Wn.2d _, Slip op. at 7-8 (S.Ct. No. 81324-8,

actual and substantial prejudice as a necessary placeholder for mere consideration of a PRP when the petitioner had no prior opportunity for state judicial review.

In sum, the threshold for considering Grantham's claim that DOC disregarded its procedural rules and found him guilty of several infractions in an arbitrary and capricious manner does not also require him to prove that he was actually and substantially prejudiced by the disregard for mandatory procedures. Moreover, Grantham meets this standard as well, and thus, the petition should be granted and the improperly ordered punishment vacated.

2. DUE PROCESS PROTECTIONS REQUIRED TO PUNISH SOMEONE FOR A PRISON INFRACTION INCLUDE NOTICE AND A REASONABLE OPPORTUNITY TO DEFEND.

DOC refused to give James Grantham a reasonable opportunity to defend himself against allegations of misconduct before denying him earned early release time and imposing other sanctions disciplining him. DOC did not give him the necessary notice of the time or place of the allegations, let him listen to the telephone call in which he purportedly spoke in coded words about contraband, or offer some evidence that he committed the charged

decided Aug. 20, 2009).

infractions. Absent reasonable access to evidence, specificity in the allegations against him as mandated by procedural regulations, or bare evidence that he committed the charged infractions, DOC denied Grantham his right to minimal due process protections and violated the laws governing prison discipline hearings.

a. A prison may not restrict a person's liberty without minimum due process. Although a person sentenced to prison loses his or her freedom, the State is not entitled to unreasonably or inequitably impose stricter deprivations of liberty absent a minimal level of due process. Due process requires that an inmate facing a prison disciplinary hearing: "(1) receive notice of the alleged violation; (2) be provided an opportunity to present documentary evidence and call witnesses when not unduly hazardous to institutional safety and correctional goals; and (3) receive 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, cert. denied, 528 U.S. 1009 (1999) (citing Wolff v. McDonnell, 418 U.S. 539, 563-66, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974)). The right to receive earned early release credits for custodial detention may not

be arbitrarily abrogated, or denied without minimum due process. Wolff, 418 U.S. at 557.

The Legislature expressly authorized DOC to promulgate regulations governing the allocation and denial of earned early release credits. RCW 72.09.130; State v. Simmons, 152 Wn.2d 450, 454-55, 98 P.3d 789 (2004). The administrative regulations were authorized by the Legislature and once made, “have the force of law.” Cashaw, 123 Wn.2d at 149 n.6 (citing Home Owners’ Loan Corp. v. Rawson, 196 Wash. 548, 559-60, 83 P.3d 765 (1938)).

The WAC contains a number of mandatory regulations specifying the procedural requirements of serious infraction hearings. See e.g., WAC 137-28-270, *et seq.* They were enacted in an effort to comply with the Legislature’s mandate that DOC create such formal regulations. Simmons, 152 Wn.2d at 454. These administrative regulations qualify as “laws of the State of Washington” for purposes of RAP 16.4. Cashaw, 123 Wn.2d at 149 n.6.

Principles of due process and Washington law both require that a person accused of violating prison rules is entitled to notice of the conduct at issue and the specific infraction alleged. Wolff, 418 U.S. at 564; In re Krier, 108 Wn.App. 31, 39, 29 P.3d 720

(2001). The purpose of advance written notice is not only to inform the individual of the charges but also “to enable him to marshal the facts and prepare a defense.” Wolff, 418 U.S. at 564.

All serious infractions require a report that not only describes the incident but also “must include” information such as: “the time and place of the incident,” describe the “specific rule violated,” list names of witnesses, victims, and other persons involved, and summarize confidential information. WAC 137-28-270(1) (full text attached as App. B); WAC 137-28-290 (attached as App. C).

b. DOC did not comply with the requirements of the laws of Washington. Contrary to the mandate of WAC 137-28-270 and the notice required as a matter of due process, Grantham did not receive the required explanation of the “time and place of the incident.” See App. A. The “infraction report” provided no specific date or place of incident. It indicated an incident occurred in “Oct 2007” in “Community/Tacoma,” but did not explain if this date was when the corrections officer received purported contraband or when Grantham was alleged to have spoken with his brother, or

simply what occurred at this time and where.⁵ This notice did not comply with WAC 137-28-270(1)(c).

Similarly, the notice did not list the names of any witnesses or people involved, including the name of Grantham's brother or the corrections officer, although this information is required by WAC 137-28-270(1)(d).

WAC 137-28-270(1)(h) states the infraction report "must include . . . copies of any relevant documentation" unless it falls under the provisions governing confidentiality. Mandatory provisions when using confidential information are set forth in WAC 137-28-300. Neither Grantham nor the hearing officer were given copies of the telephone call that purportedly established his connection to contraband, its date, or any substantive information about it beyond investigator Baxter's claim he listened to an undated telephone call.

In its briefing before the Commissioner, DOC insisted Grantham received all due notice because he was given the name of the infraction he was alleged to have violated and a summary of

⁵ The "initial serious infraction report" is attached herein as App. C.

the allegations. WAC 137-28-270(1) expressly mandates certain specific factual information as part of the necessary notice and Grantham did not receive such notice.

Furthermore, the bare minimum due process requirements include notice of specific information on which a person could marshal evidence and prepare a defense. Wolff, 418 U.S. at 564. Notice must be meaningful to satisfy due process. City of Redmond v. Arroyo-Murillo, 149 Wn.2d 607, 620, 70 P.3d 947 (2003) (J. Chambers, concurring) (“irreducible core of procedural due process is meaningful notice and meaningful opportunity to comment.”). Without any information about the time and date of Grantham’s alleged efforts to introduce contraband, much less specific information about the content of the telephone call, he could not provide context for his alleged “coded” words, offer witnesses who could testify as to his activities at the time in question, show that he was not the person involved in the telephone conversation, or demonstrate that he never received a coffee can. He could not contest the necessary but unproven

DOC also served Grantham with a “disciplinary hearing notice” that cites the WAC provision alleged without any factual explanation whatsoever. The hearing notice form is contained in Attachment B of the State’s Response to the PRP filed in the Court of Appeals.

connection between his telephone call and the corrections officer's effort to bring contraband into the facility.

The failure to comply with these mandatory rules constituted a violation of the laws of Washington and under RAP 16.4, rendered Grantham's deprivation of liberty resulting from the infraction hearing unlawful.

c. DOC violated confidentiality regulations by limiting Grantham's access to information. If the State limits the accused person's access to evidence, the hearing officer must make a record of a proper reason for doing so and determine the reliability of the confidential information along with the necessity for confidentiality. Krier, 108 Wn.App. at 43-44; WAC 137-28-290; WAC 137-28-300.

Here, Grantham requested to listen to the undated telephone call that was the sole evidence connecting him to the allegations. But the hearing officer never gave him that opportunity. Grantham complained of the lack of specificity in naming the corrections officer but he was never given any identifying information about the officer, the specifics of her introduction of contraband, or further information about how and when the alleged introduction of contraband occurred. Although

the hearing officer retains discretion over revealing confidential information, the officer must make the necessary record explaining the necessity for confidentiality, and “shall” independently determine the reliability of the confidential source, credibility of the information, and necessity of confidentiality. Krier, 108 Wn.App. at 43-44; WAC 137-28-300(7)(b). If the telephone conversation or further specific information was too confidential to tell Grantham, the hearing officer’s failure to make the mandatory record regarding the need for confidentiality undermines its authority to shield Grantham from the evidence against him. Id. The failure to follow the administrative regulations was a violation of the required procedures and rendered Grantham’s restraint unlawful.

d. DOC did not produce the requisite minimal evidence connecting Grantham to the charged offenses. At the bare minimum, prison discipline imposed for an alleged violation of prison rules is arbitrary and capricious if not supported by “some evidence” or a resulting deprivation of liberty violates the due process clause. Reismiller, 101 Wn.2d at 295.

In Reismiller, the court found insufficient evidence connecting the petitioner to a marijuana cigarette allegedly found in his cell when there was no testimony that Reismiller possessed the

cigarette presented to the hearing officer. Id. at 296. At a minimum, there must be evidence connecting the individual accused of the infraction to the evidence presented.

Here, DOC alleged Grantham possessed or introduced a controlled substance and tobacco into the facility. There was no evidence Grantham actually possessed any controlled substance or tobacco. There was also no evidence Grantham himself introduced a controlled substance or tobacco into the facility. The corrections officer did not say she gave any substances to Grantham or planned on doing so. Grantham was obviously not in "Community/Tacoma," the location where the alleged incident occurred. App. C (initial infraction report).

The only evidence against Grantham was that he urged his brother to bring him "coffee" that was "wrapped," but there was no evidence of when this conversation occurred. On an unknown date, the unidentified corrections officer received a coffee can containing marijuana from an unnamed source whose telephone number matched Grantham's brother.

Some evidence that Grantham's brother helped introduced a controlled substance or marijuana into the facility does not provide evidence linking James Grantham to this completed transaction.

The telephone call between Grantham and his brother used alleged “code” and its date, or even its recentness, was never offered. No evidence connects these various acts. “Some evidence” requires the actual connection between Grantham and the introduction of contraband. Reismiller, 101 Wn.2d at 296. Because no such evidence was presented, the finding he committed the infractions was arbitrary and capricious.

e. Grantham was actually and substantially prejudiced by the deprivation of due process and insufficient proof.

The Court of Appeals ruled that even if Grantham did not receive adequate notice, he could not show that he was actually prejudiced in his ability to defend against the charges because he denied his guilt and there is little else he could do in his defense.

But the limited information provided meant he could not mount any defense. He could not show he was not the person who made the call, or if it was him, he could not explain what words he used and what they meant. He could not show that the call had no relationship to the coffee can received in Tacoma. He could not specifically challenge the allegations against him, even though there was no actual evidence of his involvement in introducing contraband. Had Grantham been supplied with the mandatory

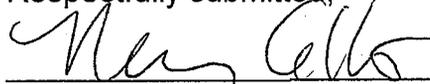
specifics of notice, including the time and place of the incident and who was involved, or given information about the telephone call used against him including its date and its content, he would have been apprised of the evidence and could have marshaled any available evidence in an effort to counter the claimed infractions. But he had no such chance and thus, was actually and substantially prejudiced by the failure to comply with the administrative regulations and due process guaranteed by the state and federal constitutions.

D. CONCLUSION.

For the foregoing reasons, James Grantham respectfully requests this Court reverse the punishment imposed for the unproven and unreliable infraction entered against him.

DATED this 28th day of August 2009.

Respectfully submitted,



NANCY P. COLLINS (WSBA 28806)
Washington Appellate Project (91052)
Attorneys for Petitioner

APPENDIX A



MICC HEARINGS OFFICIAL SERIOUS INFRACTION REPORT

| | | | |
|--------------------------------|---|----------------------|--|
| Date of Infraction 12/03/07 | Offender Name (Last, First) Grantham, James | DOC Number 703436 | Housing Assignment Segregation 7 A IL |
| Rule Violation #(s) 603,606 | | | |
| Time Occurred Unk | Place of Incident (Be Specific) Community/Tacoma | | Date Occurred Oct 2007 |
| Witness (1) NA | Days Off | Witness (3) NA | Days Off |
| Witness (2) NA | Days Off | Witness (4) NA | Days Off |

NARRATIVE

State a concise description of the details of the rule violations, covering all elements and answering the questions of When? Where? Who? What? Why? and How?; Describe any injuries, property damage, use of force, etc., attach all related reports. During the course of a HQ Special Investigation Unit (SIU) investigation of staff misconduct at MICC, information was received and evidence recovered that the staff member under investigation was introducing contraband into MICC. This staff member turned over one plastic bag of contraband to the SIU unit that contained two (2) large Top tobacco tins, five (5) cans of Grizzly chew tobacco, one (1) large bag of Gambler tobacco and one (1) jar of Folgers coffee. Inside the folgers jar was a package wrapped in plastic and duct tape that contained a green leafy substance that later tested positive for marijuana. The staff member who surrendered the package did not know the name of the person dropping off the package in Tacoma, but did have the phone number which was 253-905-0525. This number verified by phone records belongs to the brother of offender James Grantham DOC#703436. This type of drop off to this staff member had occurred on more than one occasion since June 2007. I, knowing offender Grantham's voice overheard offender Grantham tell his brother to buy the coffee and make sure he had it ready for Sunday, then asked his brother if he had gotten the other stuff. Offender Grantham and his brother talked about meeting people to complete deals in Tacoma. Offender Grantham's brother has been alerted on at least one time at MCC by the narcotic K-9.

This Infraction serves as both notice and summary of confidential information

| | | | |
|--|---|--|--|
| Reporting Staff Name (Last, First) (Print Name) Baxter, Steven | | Shift 1st | Days Off S/S |
| Evidence Taken <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Evidence Case Number | Evidence Locker Number | Photo Submitted <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Disposition Of Evidence (If Not Placed In Locker) Turned over to Pierce County sheriff's Office | | Placed In Pre-Hearing Confinement <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | |
| NAME(S) OF ALLEGED VICTIMS OF THIS INCIDENT | | | |
| Last, First 1) | Staff <input type="checkbox"/> | Volunteer/Visitor/Other <input type="checkbox"/> | Offender <input type="checkbox"/> DOC# |
| Last, First 2) | Staff <input type="checkbox"/> | Volunteer/Visitor/Other <input type="checkbox"/> | Offender <input type="checkbox"/> DOC# |
| RELATED REPORTS ATTACHED | | | |
| <input type="checkbox"/> Supplemental | <input type="checkbox"/> Staff Witness Statements | <input type="checkbox"/> Tele-Incident | <input type="checkbox"/> Other (Specify) |
| <input type="checkbox"/> Background Memos | <input type="checkbox"/> Medical | <input type="checkbox"/> Use of Force | |

| | |
|-------------------------------|------------------|
| Reporting Staff Signature | Date 12/11/07 |
|-------------------------------|------------------|

APPENDIX B

WAC 137-28-270
Serious infraction procedure
Infraction report.

(1) In the event of a serious infraction, the staff member who discovers such violation shall prepare and submit an infraction report. The infraction report shall be submitted promptly upon discovery of the incident or upon completion of an investigation. The infraction report must include:

- (a) Name, number and housing assignment of offender;
- (b) A description of the incident;
- (c) The time and place of the incident;
- (d) The names of witnesses, victims, and other persons involved;
- (e) The specific rule alleged to have been violated;
- (f) A description of any action taken;
- (g) A summary of any confidential information;
- (h) Copies of any relevant documentation or supplemental reports. Confidential information and the identities of confidential informants shall not be included;
- (i) Name and signature of reporting staff.

(2) The infracting staff member may recommend action to be taken on the infraction to the hearing officer. This may include a recommendation that the inmate be referred for a mental health consultation.

(3) Serious infraction reports may be reviewed by the infraction review officer who may:

- (a) Approve the report and forward it to the hearing clerk;
- (b) Require the report be revised, rewritten or reinvestigated by the

reporting staff member to ensure that the alleged facts support the charges;

(c) Add, dismiss, delete or reduce the indicated WAC violations as appropriate, based upon the information and/or evidence provided by the reporting staff member and any mitigating factors;

(d) Recommend referral to a mental health professional for consultation if there is a question whether:

(i) Mental illness contributed to the behavior that led to the infraction; or

(ii) The inmate's mental health status may need to be monitored.

(4) If a negotiated hearing process is in place in the facility, the report may be forwarded to the designated hearings officer.

APPENDIX C

WAC 137-28-290

Preparations for hearing.

In preparation for the hearing, the hearing clerk or designee shall, at least twenty-four hours in advance of the hearing:

- (1) Provide copies of the infraction report to the inmate;
- (2) Advise the inmate in writing:
 - (a) Of his/her right to have a hearing;
 - (b) That if he/she chooses not to testify at or attend the hearing, his/her silence may be used against him/her;
 - (c) To present written statements from other inmates, staff, or other persons only if those statements would be relevant to the infraction and have a tendency to demonstrate his/her innocence;
 - (d) To request that staff members, other inmates, and other persons be present as witnesses in his/her defense for the hearing if it is determined by the hearing officer that to do so would not be unduly hazardous to institutional safety or correctional goals. Limitations may be made by the hearing officer if the information to be presented by the witnesses is deemed to be irrelevant, duplicative, or unnecessary to the adequate presentation of the inmate's case;
 - (e) To have a staff advisor assist in preparation of the inmate's case when it is determined by appropriate staff that the inmate is unable to adequately represent him/herself on the basis of literacy, competence, or other disability;
 - (f) To have access to nonconfidential reports and records used by the hearing officer during the fact-finding stage. However, where reports and records contain information that might reasonably compromise the security or safety of the institution or its inmates, these reports and records shall be identified as confidential and withheld. A summary of the confidential information shall be provided to the inmate. This summary may be included in the infraction report.

(g) The inmate must establish that any requested witness has relevant and exculpatory evidence to present at the hearing. The inmate must list all intended witnesses on the notice of hearing. The hearing officer may, in his/her discretion, allow additional witnesses for good cause shown;

(3) Advise the inmate that he/she does not have a right:

(a) To cross-examine witnesses;

(b) To have the infracting staff member present at the hearing;

(c) To a polygraph or other supplemental tests;

(4) Obtain written acknowledgement of the inmate's receipt of the information;

(5) Determine from the inmate whether the inmate wishes to contest the allegation;

(6) Schedule the hearing within seven working days after discovery of the incident. If an inmate is placed in prehearing confinement, a hearing shall be held within three working days after the day of placement, unless the time is extended by the superintendent. If the hearing is continued, a determination shall be made whether the inmate should remain on prehearing confinement and the reasons for that confinement.

APPENDIX D

WAC 137-28-300
Conduct of hearing

(1) The hearing officer shall ensure that the inmate is capable of understanding the charge against him/her, the nature of the proceedings, and is able to adequately take part in the hearing. If there is reason to doubt the inmate's understanding or ability, the hearing officer may order a continuance of the hearing in order to obtain additional information, refer the inmate to a mental health staff member for assessment, appoint a mental health staff member to represent the inmate at the hearing, or request a staff advisor.

(2) The inmate shall be present at all stages of the hearing except during deliberations and any inquiry the hearing officer may make concerning the source of confidential information.

(3) The hearing officer may consider relevant evidence presented outside the hearing when not feasible to present that evidence within the hearing. The inmate shall be apprised of the content of that evidence and shall be allowed to rebut that evidence during the hearing. An inmate may waive his/her presence at a hearing. Failure without good cause to attend a scheduled hearing may be deemed a waiver of personal attendance. An inmate may be removed from his/her disciplinary hearing and the hearing may be continued in the inmate's absence if the inmate's behavior disrupts the disciplinary hearing.

(4) Where institution staff members are witnesses against the inmate, a written statement from the staff member may be considered by the hearing officer instead of in-person testimony, except where the hearing officer determines that the staff member's presence is necessary to an adequate understanding of the issues in the case.

(5) The hearing officer has the authority to question all witnesses. The inmate may submit proposed questions to be asked of witnesses, but the hearing officer has discretion over the questions asked.

(6) The inmate shall be allowed to present witnesses in his/her defense and to present documentary evidence in his/her defense when permitting him/her to do so will not be unduly hazardous to institutional safety or correctional goals. Testimony of witnesses from outside the facility will be

submitted in writing.

(a) The hearing officer may deny the admission of evidence or testimony if the hearing officer determines that the testimony or evidence is irrelevant, immaterial, unnecessarily duplicative of other information before the hearing officer, or otherwise found to be unnecessary to the adequate presentation of the inmate's case.

(b) The testimony of witnesses that is adverse to the inmate may be given in person, in writing, or by telephone.

(c) The hearing officer shall document on the written record the reasons for denial of in-person testimony that is requested in writing by the inmate.

(7) If the hearing officer determines that a source of information would be subject to risk of harm if his/her identity were disclosed, testimony of the confidential source may be introduced by the testimony of a staff member. The confidential testimony may be provided by the source or by the written and signed statement of the source. If the staff member to whom the source provided information is unavailable, the written statement of this staff member may be used.

(a) The hearing officer shall, out of the presence of all inmates and off the record, identify the confidential source, and how the testifying staff member received the confidential information.

(b) The staff member presenting the information from a confidential source shall identify the source and the circumstances surrounding the receipt of the confidential information to the hearing officer, off the record. The hearing officer shall make an independent determination regarding the reliability of the confidential source, the credibility of the information, and the necessity of not revealing the source of the confidential information. In determining whether the confidential source is reliable and the confidential information is credible, the hearing officer should consider all relevant circumstances including, but not limited to:

(i) Evidence from other staff members that the confidential source has previously given reliable information;

(ii) Evidence that the confidential source had no apparent motive to fabricate information;

(iii) Evidence that the confidential source received no benefit from providing the information;

(iv) Whether the confidential source is giving first-hand information;

(v) Whether the confidential information is internally consistent and is consistent with other known facts; and

(vi) The existence of corroborating evidence.

The hearing officer shall also determine whether safety concerns justify nondisclosure of the source of confidential information. The reliability and credibility determination and the need for confidentiality must be made on the record.

137-28-290 << 137-28-300 >> 137-28-310

WAC 137-28-300
Conduct of hearing.

No agency filings affecting this section since 2003

(1) The hearing officer shall ensure that the inmate is capable of understanding the charge against him/her, the nature of the proceedings, and is able to adequately take part in the hearing. If there is reason to doubt the inmate's understanding or ability, the hearing officer may order a continuance of the hearing in order to obtain additional information, refer the inmate to a mental health staff member for assessment, appoint a mental health staff member to represent the inmate at the hearing, or request a staff advisor.

(2) The inmate shall be present at all stages of the hearing except during deliberations and any inquiry the hearing officer may make concerning the source of confidential information.

(3) The hearing officer may consider relevant evidence presented outside the hearing when not feasible to present that evidence within the hearing. The inmate shall be apprised of the content of that evidence and shall be allowed to rebut that evidence during the hearing. An inmate may waive his/her presence at a hearing. Failure without good cause to attend a scheduled hearing may be deemed a waiver of personal attendance. An inmate may be removed from his/her disciplinary hearing and the hearing may be continued in the inmate's absence if the inmate's behavior disrupts the disciplinary hearing.

(4) Where institution staff members are witnesses against the inmate, a written statement from the staff member may be considered by the hearing officer instead of in-person testimony, except where the hearing officer determines that the staff member's presence is necessary to an adequate understanding of the issues in the case.

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(c) The hearing officer shall document on the written record the reasons for denial of in-person testimony that is requested in writing by the inmate.

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(i) Evidence from other staff members that the confidential source has previously given reliable information;

(ii) Evidence that the confidential source had no apparent motive to fabricate information;

(iii) Evidence that the confidential source received no benefit from providing the information;

(iv) Whether the confidential source is giving first-hand information;

(v) Whether the confidential information is internally consistent and is consistent with other known facts; and

(vi) The existence of corroborating evidence.

The hearing officer shall also determine whether safety concerns justify nondisclosure of the source of confidential information. The reliability and credibility determination and the need for confidentiality must be made on the record.

[Statutory Authority: RCW 72.01.090. 00-10-079, § 137-28-300, filed 5/2/00, effective 6/2/00. 95-15-044, § 137-28-300, filed 7/13/95, effective 8/15/95.]

137-28-260 << 137-28-270 >> 137-28-280

WAC 137-28-270
Serious infraction procedure.
Infraction report.

Agency filings affecting this section

(1) In the event of a serious infraction, the staff member who discovers such violation shall prepare and submit an infraction report. The infraction report shall be submitted promptly upon discovery of the incident or upon completion of an investigation. The infraction report must include:

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- (b) A description of the incident;
- (c) The time and place of the incident;
- (d) The names of witnesses, victims, and other persons involved;
- (e) The specific rule alleged to have been violated;
- (f) A description of any action taken;
- (g) A summary of any confidential information;
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(2) The infracting staff member may recommend action to be taken on the infraction to the hearing officer. This may include a recommendation that the inmate be referred for a mental health consultation.

(3) Serious infraction reports may be reviewed by the infraction review officer who may:

- (a) Approve the report and forward it to the hearing clerk;
- (b) Require the report be revised, rewritten or reinvestigated by the reporting staff member to ensure that the alleged facts support the charges;
- (c) Add, dismiss, delete or reduce the indicated WAC violations as appropriate, based upon the information and/or evidence provided by the reporting staff member and any mitigating factors;
- (d) Recommend referral to a mental health professional for consultation if there is a question whether:
 - (i) Mental illness contributed to the behavior that led to the infraction; or
 - (ii) The inmate's mental health status may need to be monitored.

(4) If a negotiated hearing process is in place in the facility, the report may be forwarded to the designated hearings officer.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. 09-01-195, § 137-28-270, filed 12/24/08, effective 1/24/09. Statutory Authority: RCW 72.01.090. 00-10-079, § 137-28-270, filed 5/2/00, effective 6/2/00. 95-15-044, § 137-28-270, filed 7/13/95, effective 8/15/95.]

APPENDIX E

In re Personal Restraint of James Grantham, S.Ct. No. 82194-1

Inmate Telephone System

Inmate Call Records

Run Date : 12/26/2007

Run Time: 14:55:30

From: 10/01/2007 - 00:00:00

Thru: 10/31/2007 - 23:59:00



| Inmate Name | Inmate ID | Start Date/Time | Duration | Number Called | Jail Facility | Completion Code |
|-------------------|-----------|------------------------|----------|---------------|---------------|------------------------|
| GRANTHAM, JAMES W | 703436 | 10/24/2007 8:43:07 PM | 0 | 2538394048 | MICC | Call not accepted |
| GRANTHAM, JAMES W | 703436 | 10/22/2007 7:12:17 PM | 0 | 2538394048 | MICC | Call not accepted |
| GRANTHAM, JAMES W | 703436 | 10/21/2007 10:01:21 PM | 0 | 2534415818 | MICC | Carrier Blocked Called |
| GRANTHAM, JAMES W | 703436 | 10/15/2007 10:04:00 PM | 0 | 2067220401 | MICC | Ring no answer or busy |
| GRANTHAM, JAMES W | 703436 | 10/15/2007 10:02:23 PM | 0 | 2067220401 | MICC | Ring no answer or busy |
| GRANTHAM, JAMES W | 703436 | 10/15/2007 9:35:39 PM | 0 | 2538394048 | MICC | Call not accepted |
| GRANTHAM, JAMES W | 703436 | 10/15/2007 9:35:04 PM | 0 | 2538394048 | MICC | Call not accepted |
| GRANTHAM, JAMES W | 703436 | 10/15/2007 9:34:32 PM | 0 | 2535355337 | MICC | Ring no answer or busy |
| GRANTHAM, JAMES W | 703436 | 10/15/2007 9:33:47 PM | 0 | 2535355337 | MICC | Ring no answer or busy |
| GRANTHAM, JAMES W | 703436 | 10/15/2007 6:20:47 PM | 0 | 2538394048 | MICC | Call not accepted |
| GRANTHAM, JAMES W | 703436 | 10/15/2007 4:48:10 PM | 0 | 2538394048 | MICC | Call not accepted |
| GRANTHAM, JAMES W | 703436 | 10/15/2007 2:26:28 PM | 0 | 2538394048 | MICC | Call not accepted |
| GRANTHAM, JAMES W | 703436 | 10/14/2007 10:37:41 PM | 0 | 2538394048 | MICC | Call not accepted |
| GRANTHAM, JAMES W | 703436 | 10/14/2007 10:37:10 PM | 0 | 2535355337 | MICC | Ring no answer or busy |
| GRANTHAM, JAMES W | 703436 | 10/14/2007 10:26:58 PM | 0 | 2535355337 | MICC | Ring no answer or busy |
| GRANTHAM, JAMES W | 703436 | 10/14/2007 10:24:27 PM | 0 | 2535355337 | MICC | Ring no answer or busy |
| GRANTHAM, JAMES W | 703436 | 10/14/2007 10:23:29 PM | 0 | 2534415818 | MICC | Carrier Blocked Called |
| GRANTHAM, JAMES W | 703436 | 10/14/2007 10:23:17 PM | 0 | 2538394048 | MICC | Call not accepted |
| GRANTHAM, JAMES W | 703436 | 10/14/2007 10:22:44 PM | 0 | 2538394048 | MICC | Call not accepted |
| GRANTHAM, JAMES W | 703436 | 10/9/2007 9:53:00 PM | 0 | 2538394048 | MICC | Trunk type was busy |
| GRANTHAM, JAMES W | 703436 | 10/4/2007 9:43:21 PM | 19 | 2535355337 | MICC | Completed Call |
| GRANTHAM, JAMES W | 703436 | 10/4/2007 9:32:47 PM | 0 | 2538394048 | MICC | Call not accepted |

Total Calls : 22

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT)
PETITION OF) SUPREME COURT NO. 82194-1
)
)
JAMES GRANTHAM,)
)
)
Petitioner.)

DECLARATION OF SERVICE

I, ANN JOYCE, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

1. THAT ON THE 28th DAY OF AUGUST, 2009, A COPY OF **PETITIONER'S SUPPLEMENTAL BRIEF** WAS SERVED ON THE PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] Peter William Berney
Attorney Generals Ofc/CJ Division
PO Box 40116
Olympia WA 98504-0116

[X] James Grantham
703436
Clallam Bay Correction Center
1830 Eagle Crest Way
Clallam Bay, WA 98326-9723

SIGNED IN SEATTLE, WASHINGTON, THIS 28TH DAY OF AUGUST, 2009

x *Ann Joyce*