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NO. 83684-1

THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE: PERSONAL RESTRAINT OF:

VERNON JACKSON,

Petitioner.

PETITIONER'S SUPPLEMENTAL BRIEF

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A. ISSUES FOR WHICH REVIEW WAS GRANTED

1. In a Department of Corrections (DOC) disciplinary proceeding where the only evidence consists of a written report of an overheard telephone conversation, and the hearing officer denies the inmate's request for disclosure of the recording of the conversation without providing an explanation for the denial, has DOC denied the inmate an opportunity to present a defense, in violation of his due process rights?

2. Where the only evidence presented at a disciplinary proceeding is a summary of confidential information, does the failure of the hearing officer to review the confidential information, make a determination of the reliability of the source and credibility of the information, make a finding as to whether disclosure of the source would jeopardize the safety of the prison and find guilt based entirely on the conclusion of the author of the infraction report, constitute a violation of the inmate's due process rights and result in a fundamentally unfair hearing?

3. Where the only evidence is a written infraction report, summarizing confidential information, containing ambiguous language showing no evidence linking the inmate to introduction of contraband, does a finding of guilt fail to satisfy the requirement that some evidence must be produced to show guilt and thereby violate the inmate's due process rights, resulting in an arbitrary and capricious decision and a fundamentally unfair hearing?

B. STATEMENT OF THE CASE

An infraction report was filed on Jackson on 12/3/07 for WAC 137-25-030 (606)¹. PRP Exhibit 5² The report indicated that there had been a special investigation of a DOC staff member and that information was received and recovered from that staff member concerning her introduction of contraband. She said that *she had been wired* money for the introduction of contraband. Id. (emphasis added)

The author of the report stated that he had identified Jackson's voice and overheard a telephone conversation between Jackson and his sister about how "this staff had picked up *money*" and were mad that the deal had not been completed by the staff. Id. (emphasis added)

DOC investigative notes pursuant this special investigation indicate that, "a *confidential source* stated that Jackson might also be involved in the receiving of contraband." PRP Exhibit 10, (emphasis added) The notes indicate that these offenders (referring to Jackson and his sister) either *sent money directly to a P.O. Box ...or had family members send the money.*" Id. (emphasis added) An email marked "*confidential*" concerning Jackson, between the Infraction reporter and another investigator, states that during the phone call, Jackson "is talking to a female about a *money order*....that was cashed by Melissa Hopkins. The caller says she should file charges. PRP Exhibit 19 (emphasis added)

¹ Possession, introduction, or transfer of any tobacco, tobacco products, matches, or tobacco paraphernalia.

² Unless otherwise specified, all exhibits refer to exhibits attached to the Personal Restraint Petition filed in this case.

In the written narrative, the infraction report states that , “this infraction serves as both notice and summary of *confidential information*.” PRP Exhibit 5 (emphasis added) At the infraction hearing the hearing officer advised Jackson of his right to review reports and confidential information. PRP Exhibit 6, p 2 (transcript)

Jackson asked repeatedly for a copy of the recording and for the phone recording to be reviewed by the hearing officer or DOC investigators before and during the hearing. PRP Exhibit 6, p.12, 13; Exhibit 7 (written statement of defense); Exhibit 14 (inmate kite) Jackson told the hearing officer that the tape will show that there was no intended connection between him, the staff member and the contraband. Exh. 6, p.14, 15, 16. All requests were denied without explanation by the hearing officer who advised Jackson to make a public disclosure request. *Id.* at 13 Jackson’s defense was that he was involved with another inmate on a longstanding project unrelated to the contraband and the staff person and that a blank money order to pay for his project was cashed by an unknown person, Melissa Hopkins, who turned out to be the staff person involved in the contraband scheme. Investigative notes indicate that the inmate with whom Jackson was involved on his longstanding project, was independently involved with the staff member on the contraband scheme. PRP Exhibit 10; 8

The hearing officer advised Jackson that, “all I need is the infraction report, indicating “if staff says you did this...” Exhibit 6 at 18 The

hearing officer did not listen to the phone recording at any time . In finding Jackson guilty of the infraction, the hearing officer wrote: ‘based on the infraction report, SIU investigator stated he heard and could identify the offender’s voice conspiring to introduce tobacco” PRP, Exhibit 3

On appeal, the Superintendent designee checked the boxes indicating that there was confidential information. PRP Exhibit 4 There is no evidence that the hearing officer reviewed or made a determination of the reliability of the source and credibility of the confidential information. PRP Exhibit 3, Minutes and Findings Jackson was sanctioned to a loss of good time Id..

Jackson filed a timely Personal Restraint Petition challenging the procedure followed and the findings of the hearing officer. The Court of Appeals issued an Order Dismissing the Petition. On or about 4/2/10, Jackson was released from prison on parole.

C. **ARGUMENT**

1. The Petition Should Not Be Dismissed For Mootness.

Jackson was released on parole on or about 4/2/10. “A case is moot if a court can no longer provide effective relief.” In re Mines, 146 Wn.2d 279, 283-4, 45 P.3d 535 (2002) citing In re Cross, 99 Wn.2d 372, 376-77, 662 P.2d 828 (1983). “A court may decide a technically moot case if it involves ‘matters of continuing and substantial public interest.” Id. at 284

In making such a determination, the courts should consider (1) the public or private nature of the question presented; (2) the desirability of an authoritative determination for future guidance of public officers and (3) the likelihood of future recurrence of the question.” *Id.* at 285

In the instant case, the issues occur frequently in the operation of the Department of Corrections. A decision on procedure regarding infraction hearings will guide hearing officers in future hearing, which occur frequently. Therefore this case should be decided on the merits.

2. Standard of Review

A petitioner seeking relief via a personal restraint petition from prison discipline where no prior judicial review has been afforded is not required to make a prima facie case of constitutional error and actual and substantial prejudice, or nonconstitutional error and a total miscarriage of justice, as a precondition to relief. *In re Grantham*, 168 Wn.2d 204, 227 P.3d 285, 291 (2010) We 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 292, citing *In re Reismiller*, 101 Wn2d 291, 294, 678 P.2d 323 (1984), *In re Gronquist* 138 Wn.2d 388, 396, 978 P.2d 1083 (1999)

A prisoner is only entitled to minimum due process protections, which include notice, 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 In re Grantham, 227 P.3d at 292
citing In re Gronquist, supra, at 396-97, citing Wolff³

3. The hearing officer denied Jackson the opportunity to provide evidence and present a defense, thereby violating his due process rights, resulting in an arbitrary and capricious decision and a hearing that was fundamentally unfair.

Minimum due process includes the right to present witnesses and documentary evidence when not hazardous to institutional safety or correctional goals. While a hearing officer has discretion to limit evidence presented at an infraction hearing, he or she must generally state proper reasons for doing so, either at the time of the hearing or thereafter. In re Malik, 152 Wn.App. 213, 220, 215 P.3d 209 (2009), citing In re Krier, 108 Wn.App. 31, 37, 29 P.3d 720 (2001); Ponte v. Real, 471 U.S. 491, 497, 105 S.Ct.2192, 85 L.Ed.2d 553 (1985); WAC 137-28-300(6)(a). “So long as the reasons are logically related to institutional safety or correctional goals, the explanation should meet the due process requirements as outlined in Wolff” Ponte, 471 U.S. at 496.

Ponte recognized that, “ordinarily the right to present evidence is basic to a fair hearing.” Id. at 496 , citing Baxter v. Palmigiano, 425 U.S. 308, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976) The right to call witnesses is subject to “mutual accommodation between institutional needs and objectives and the provisions of the Constitution.” Id. The court indicated that after eleven years of Wolff, they recognized that across-the-board policies denying witnesses would be improper. Id. The court ultimately

³ Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974)

held that an explanation for denying evidence must be given either at the disciplinary hearing or later, to the court, and that the reasons for denial must be related to institutional safety and security, thus meeting the due process requirements of Wolff. Id. at 498

A hearing officer may deny admission of evidence or testimony he or she determines is irrelevant or unnecessary to the adequate presentation of the inmate's case. In re Malik, *supra*, at 220, fn 10, citing WAC 137-28-300(6)(a). See also In Re Gronquist, 138 Wn.2d 388, 400-01, 978 P.2d 1083 (1999)

In Malik, the court, in finding a due process violation, stated that, "DOC has not offered any explanation for ignoring Malik's requests for statements and recordings and has not contended that such would be unduly harmful to institutional safety or correctional goals." Id. at 219

Other courts hold that the failure of the hearing examiners to review and allow relevant evidence prevents the inmate from presenting a defense. The 7th Circuit has treated the denial of documentary evidence, in the form of a videotape, as a due process, Brady⁴ violation, where the inmate had requested to review the tape of the infraction and claimed there would be exculpatory evidence. In Piggie v. Cotton, 344 F.3d 674 (7th Cir 2003), the court explained that, "the function of the Brady rule in prison disciplinary proceedings, as in criminal cases, is twofold: to insure that the disciplinary board considers all the evidence relevant to guilt or

⁴ Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), requiring the disclosure of material exculpatory evidence.

innocence and to enable the prisoner to present his or her best defense”
Piggie at 678, citing Chavis v. Rowe, 643 F.2d 1281, 1286 (7th Cir. 1981)
“Accordingly an inmate is entitled to disclosure of material, exculpatory
evidence in prison disciplinary hearings unless such disclosure would
unduly threaten institutional concerns.” Id., citing Chavis at 1285-86

If an inmate requests exculpatory evidence that would defeat an
infraction report that contains some evidence of guilt, and if the hearing
officer denies disclosure of the requested evidence and does not review
that evidence himself, then the inmate is denied his due process right to
defend himself. In re Leland, 115 Wn.App. 517, 61 P.3d 357, 367
(2003)⁵ In Leland, the disputed evidence was a toxicology report that the
hearing officer did not review. The inmate had requested a copy of the
toxicology report. The court found that the hearing officer’s findings were
conclusory where he found, “[P] guilty based upon the following reason:
staff report—UA test was confirmed positive by testing...” Id. at 367 The
court held that the inmate ‘was denied his due process right to defend his
claim that others had access to his specimen cup. It is central to the
existence of the infraction that the toxicology lab tested a specimen
actually obtained from [the inmate on the date reported]. Id. Since the
hearing officer failed to review the actual evidence (toxicology report), he
violated the inmate’s due process rights.

⁵ In re Leland was abrogated by In re Higgins, 95 P.3d 330, 332 152 Wash.2d 155, 161(2004) on grounds
unrelated to minimum due process at disciplinary hearings.

In a newly decided case, this court has addressed the issue of fundamental fairness and the opportunity of the defendant to present a defense. Although decided in a criminal trial context, this court, in remanding for a new trial, stated that, “The right of an accused...to due process is, in essence, the right to a fair opportunity to defend against the State’s accusations..” State v. Jones, _Wn.2d_, Slip op. at 6 (S.Ct No. 82613-3) citing Chambers v. Mississippi, 410 U.S. 284, 294 (1973) This court stated what constitutes fundamental fairness in a trial context: “ [The defendant’s evidence, if believed,] would provide a [defense to the charge]. Since no State interest can possibly be compelling enough to preclude the introduction of evidence of high probative value, the trial court violated the [Sixth Amendment right to present a defense].” Id. at 8

Jackson made repeated requests for disclosure of the phone recordings, which would contain exculpatory evidence. Exh. 6; 7 He gave specific reasons, such as that the staff person is never named and there was no wire sent to the staff person. The hearing officer denied every request without explanation other than that he accepted whatever the written infraction report said and that the only way to obtain the recording would be for Jackson to make a public disclosure request, which would be impossible under RCW 9.73.095(3)(b). PRP Exh. 6 at 13

In the same manner as the inmates in Leland and Piggie and Malik supra, Jackson requested documentary evidence, the actual phone recording, that would overcome, defeat and contradict the scant and

erroneous evidence contained in the written infraction report. The requested evidence would show that he was not involved in a contraband scheme and not involved with the staff person. The evidence would also show that the entire written infraction report was either taken out of context or not accurate. See Exhibit 9 (Jackson declaration); 7 (written defense statement submitted at the hearing); 6 (transcript); 4 (hearing appeal with written statement). No explanation for non-disclosure of the evidence was given at the time of the hearing or at a later time in a court.

Since he was not allowed to present exculpatory evidence, Jackson was unable to present a defense. The hearing officer told Jackson that his decision would be based on who he believed – Jackson or the written report of the investigator. Exhibit. 6 at 19 The hearing officer also told Jackson that “all I need is the infraction report. If staff says you did this...” *Id.* at 18 Since the hearing officer based his findings on “investigator [hearing] offender’s voice conspiring to introduce tobacco,” Jackson’s only defense was that the overheard phone conversation was not reported accurately and that if the hearing officer listened to it, he could base his findings on the facts, not on the conclusion of the reporting officer. Jackson would be exonerated. Jackson’s written and oral defense at the hearing had no probative value to the hearing officer, because the officer simply accepted the written report. The failure of a hearing officer to address the inmate’s request for recordings prevented him from presenting a defense. *In re Malik*, supra at 220. Since only Jackson and

his sister participated in the phone conversation, there could not possibly be any prison security issues. Just as in State v. Jones, *supra*, no state or institutional interest can possibly be compelling enough to preclude the introduction of evidence of high probative value, and prohibition of that evidence violates the right to present a defense. Jones at 8.

The Court of Appeals erred in holding that it was sufficient for the hearing officer to provide him with a summary of the overheard phone conversation without his giving any reasons for nondisclosure.

Since Jackson was not allowed to present a defense, the proceedings violated due process, the decision was arbitrary and capricious, and fundamentally unfair, causing prejudice to Jackson.

4. The hearing officer did not listen to the recording nor allow Jackson to listen; therefore the findings of fact were arbitrary and capricious resulting in a fundamentally unfair hearing

In In re Grantham, 168 Wash.2d 204, 227 P.3d 285 (2010), this court also recently recognized that when the evidence at a prison disciplinary hearing is primarily based on an overheard phone conversation, linking the inmate to introduction of contraband, the inmate should be allowed to listen, but regardless, he was not denied a fundamentally fair hearing, because other evidence did tie the inmate to the contraband. Id. at 293 The court noted that, given time constraints, “it is not *necessarily* arbitrary and capricious for a hearing examiner not to listen to the call.” Id. at fn 5 (emphasis added). In Grantham, the majority found that some evidence existed independent of the phone conversation

linking the inmate to the infraction. In addition, Grantham, in his proffered defense, did not contradict any of the information contained in the written report of the overheard phone conversation. The inmate merely wanted to point out, and he did, “that the investigating officer did not hear him actually use the word ‘tobacco’ or marijuana.” Id.

The dissent differed, in that it felt that that there was no evidence independent of the phone conversation and stated that, “it was essentially the only evidence against [the inmate] and he should have been allowed to hear it.” Id. at 294 The dissent added that, “at the very least the hearing officer should have listened to the recording before he made his ruling, and it was arbitrary and capricious for him not to do so.” Id. Finally, the dissent also opined that limited public resources should not be a factor in the hearing officer’s listening to a recording as it “would have [taken] a brief amount of time to fully examine the critical evidence against Grantham.” Id.

The decision of this court in Grantham does not preclude the inmate or hearing officer from listening to the recording. The decision does not rule out the possibility that there may be circumstances when it is necessary for the hearing officer to listen to the recording.

In Jackson’s case, there was absolutely no evidence connecting him to the infraction. The evidence independent of the phone conversation indicated that the staff had received tobacco and that she was wired money. The hearing officer’s findings stated in conclusory fashion, that

he was basing the guilty finding on the offender's voice overheard to be conspiring to introduce contraband. In this case, where the phone recording was the only evidence that would defeat evidence contained in the written infraction report, the failure of the hearing officer to provide the recording or to listen to the recording, prevented Jackson from presenting a defense and resulted in a fundamentally unfair hearing.

Jackson's case is also clearly distinguishable from Grantham in that no exculpatory evidence was offered by Grantham, while the requested recording in Jackson would exonerate him and, therefore, Jackson would fall under an exception to Grantham, where it would *necessarily* be arbitrary and capricious for the hearing officer not to listen.

DOC policy also supports the proposition that the hearing officer must listen to the recording. DOC Policy 450.200 forbids disclosure of the recording to an inmate for the purposes of defending himself at a disciplinary proceeding. See Appendix 3, Motion for Discretionary Review. The policy states that the hearing officer may listen to the recording if it is going to be used as evidence at an infraction hearing. See also WAC 137-28-300(3)⁶ RCW 9.73.095(3) also prohibits disclosure of the phone recording to anyone other than the superintendent or his or her designee. Where the overheard recording constitutes the only evidence, and the inmate claims that there is exculpatory evidence contained in the actual recording that was omitted from the written report, it would be

⁶ In relevant part, "The hearing officer may consider relevant evidence presented outside the hearing when not feasible to present the evidence within the hearing."

arbitrary and capricious for the hearing officer to disregard the facts⁷ and not follow the permissive DOC policy and WAC language on listening to the recording.

In this case, the hearing officer did not make a factual determination based on the evidence. He read the infraction report, ignored the inmate's request for the exculpatory evidence, and issued conclusory findings that, "based on the [written report the offender was heard] conspiring to introduce tobacco." See *In re Leland*, *supra* ("[P] guilty based upon ...staff report—UA test was confirmed positive by testing" is a conclusory finding by the hearing officer).

The Court of Appeals erred in holding that RCW 9.73.095(3) is sufficient is sufficient to keep the recording of the phone conversation out of consideration for Jackson's hearing.

5. The hearing officer failed to review confidential information and make a determination of the reliability of the source and credibility of the information, thereby violating Jackson's due process rights and resulting in an arbitrary and capricious decision and a hearing that lacked fundamental fairness

Due Process and Washington law require that DOC provide an inmate with a summary of any confidential information used in a disciplinary proceeding, and that the hearing officer make an independent determination of the reliability of the informant, the credibility of the information, and the necessity of confidentiality. *In re Malik*, 152

⁷ "Arbitrary and capricious has been defined as willful and unreasoning action, without consideration and in disregard of facts and circumstances." *Heinmiller v. Dept. of Health*, 127 Wn.2d 595, 609-10, 903 P.2d 433 (1995)

Wn.App. at 220, fn 12, citing, WAC 137-28-290, -300(7). The court also indicated that two federal due process cases, Zimmerlee v. Keeney, 831 F.2d 183, 186-87 (9th Cir. 1987) and Wells v. Israel, 854 F.2d 995, 999 (7th Cir. 1988) “provide guidance for a hearing officer’s consideration of reliability of sources and credibility of confidential information.” Malik at 220, fn 2.

In Zimmerlee, the court pointed out that findings that result in a loss of liberty will satisfy due process if there is some evidence which supports the decision of the disciplinary board. Id at 186, citing Superintendent, Mass. Corr. Inst. v. Hill, 472 U.S. 445, 455-56, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985) See also, In re Reismiller, 101 Wn2d 291, 294, 678 P.2d 323 (1984). Where the evidence comes from an unidentified informant, the “some evidence” standard is not met unless (1) the record contains some factual information from which the [hearing officer] can reasonably conclude that the information was reliable and (2) the record contains a prison official’s affirmative statement that safety considerations prevent the disclosure of the informant’s name.” Zimmerlee at 186.

Reliability may be established by, (1) the oath of the investigating officer appearing before the committee as to the truth of his report that contains confidential information; (2) corroborating testimony, (3) a statement on the record by the [hearing officer] that he had firsthand knowledge of sources of information and considered them reliable based

on the informant's past record or (4) an in camera review of the documentation from which credibility is assessed. Id. at 186-7 In Zimmerlee, on the record, the [hearing officer] found credibility and reliability. The [hearing officer] had before it the state police report of the investigation, the results of the informant's polygraph examination, statements made by the informant during the examination, a confidential memorandum from the reporting staff that included the verbatim statement of the informant, the informant's identity and prior instances in which he had supplied information. Id. at 187 In Wells v. Israel, supra, the court stated that: "assessment of the reliability of inmate informants is an essential prerequisite to imposing discipline for violations established through the use of informant testimony...[N]o adjudicative conclusion can be reliable, and no meaningful due process can be accorded, if accusations are accepted at face value, with no consideration of their source." Wells , 854 F.2d at 999, citing Hensley v. Wilson, 850 F.2d 269 (6th Cir.1088) . "How a court conducts its reliability inquiry must be compatible with prison security and not expose informants to undue risk." Id.

While the federal due process cases provide guidance, WAC 137-28-290, -300(7) provide the institutional framework for finding reliability and credibility. WAC 137-28-300(7)(b) requires the hearing officer to make an independent determination regarding the reliability of the confidential source and the credibility of the information. In addition, the officer must determine whether safety concerns justify nondisclosure of

the source of confidential information. Id. The findings regarding reliability and credibility and the need for confidentiality must be made on the record. WAC 137-28-300(7)(b)

The Court of Appeals erred in holding that there was no confidential information presented at Jackson's hearing. There was confidential information coming from a confidential source. The Initial Serious Infraction report stated in the narrative that it served as both "notice and summary of confidential information." The report itself stated that information was received as part of a "special investigation." The special investigation notes state that a "confidential source" stated that Jackson might be involved in the contraband scheme. Other information contained in the investigation notes, appear in an email marked "confidential" and indicates that Melissa Hopkins, the staff person, cashed a money order and that angered Jackson and his sister, who felt charges should be filed. This confidential information, which contradicted the written report, was omitted from the infraction report and was not reviewed by the hearing officer. (See Exhibit 19)

Unlike the hearing examiners in Zimmerlee, the hearing officer in Jackson's case conducted no review and made no findings regarding the safety of the institution. The decision to withhold the recording appears to have constituted a policy decision rather than reflecting a concern for prison safety and security. Based on Jackson's claims, the information

contained in the reports was not irrelevant, duplicative or unnecessary to the adequate presentation of his case. See WAC 137-28-290(2)(d).

Since the confidential information was never reviewed for credibility and the source for reliability and since the hearing officer made no findings concerning institutional safety, this disciplinary hearing was conducted in an arbitrary and capricious manner resulting in the denial of a fundamentally fair hearing, contrary to the due process requirements of Wolff. This resulted in prejudice, in that Jackson could not present a defense, he lost good time.

6. No evidence in the written infraction report linked Jackson to the introduction of tobacco and therefore a finding of guilt violated his due process rights and resulted in an arbitrary and capricious decision and a hearing lacking fundamental fairness

A prisoner is only entitled to minimum due process protections (citations omitted) There has to be at least some evidence to affirm the discipline. In re Grantham 227 P.3d at 292, citing In re Reismiller, 101 Wn.2d 291,295, 678 P.2d 323 (1984)

In Jackson's case, even if the evidence as contained on the record is accepted as the truth, and no procedural violations exist, the decision was still arbitrary and capricious, because there is no evidence connecting Jackson to introduction of the contraband.

A comparison with In re Grantham shows how little evidence the hearing officer had against Jackson. In Grantham, the written narrative indicates that the staff person turned over the contraband, some of which

was contained in a coffee can. The staff person had the phone number of the person she was doing business with. That phone number belonged to the inmate's brother. The overheard phone conversation indicated that Grantham told his brother to buy the coffee and make sure he had the other stuff.

In Jackson's case, the staff person turned over contraband consisting of tobacco. She also said she was wired several hundred dollars to introduce contraband. Exhibit 5 Jackson and his sister were overheard saying that "this staff" had picked up money and they were mad that the deal was not completed by the staff, and reference was made to at least six other offenders sending money to Jackson's sister. The written report is ambiguous in its reference to "this staff". Is "this staff" a reference by the author of the narrative or did Jackson refer to "this staff" as an unknown person?

On its face, this evidence shows no hint of a connection between Jackson and tobacco or any contraband. The evidence only shows that the staff person ran a contraband scheme involving multiple inmates. There are only ambiguous statements from which no conclusions could possibly be drawn.

The Court of Appeals erred in holding that there was sufficient evidence. The Court ignored the fact that multiple offenders were involved and that the language of the report was ambiguous. As argued above, investigative notes show, and the recording would show, that the written

infraction report is erroneous; however, even on its face, the infraction report shows no evidence connecting Jackson to the introduction of tobacco, and therefore, there is no 606 infraction for introduction of tobacco.

7. **Jackson was prejudiced as a result of the fundamentally unfair hearing**

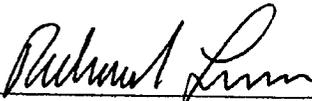
By denying Jackson, without explanation, the opportunity to present evidence, not reviewing the evidence and sources for reliability, credibility or institutional safety and finding some evidence when there was none, Jackson could not present evidence that would defeat the allegations against him and was sanctioned to the loss of good time.

D. **CONCLUSION**

For the foregoing reasons, Vernon Jackson respectfully requests this court to reverse the finding of guilt and to expunge the infraction from his prison record.

DATED this 28th day of April, 2010

Respectfully submitted.


RICHARD LINN (WSBA 16795)
Attorney for Petitioner

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CERTIFICATE OF SERVICE

On this day, the undersigned sent to the Attorney(s) of Record for the Department of Corrections listed below, a copy of this document (Petitioner's Supplemental Brief) via Mail, 1st class prepaid. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Sarah J. Olson
Assistant Attorney General
Corrections Division
P.O. Box 40116
Olympia, WA 98504-0116

Richard Linn Bellvue, WA 4/28/10
Signed Place Date

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From: Richard Linn [mailto:Linn@RLinnLaw.net]
Sent: Wednesday, April 28, 2010 9:54 AM
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To the Clerk:

Attached for filing is the Petitioner's Supplemental Brief and Certificate of Service in the matter described below:

In re Personal Restraint of Vernon Jackson, No. 83684-1;

filed by:

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