

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

In the Matter of the Personal Restraint of:

JAMES R. FERRELL,

Petitioner.

No. 57367-9-II

ORDER DISMISSING PETITION

In this personal restraint petition, James R. Ferrell challenges the Department of Corrections' (DOC) implementation of his sentence following his 2005 convictions for two counts of custodial assault. Response at 84 (Ex. 2). Ferrell committed the offenses while serving a life without parole sentence for aggravated first degree murder. Ferrell raises four grounds for relief: (1) Ferrell alleges DOC's designation number for the offense does not match his judgment and sentence, (2) DOC imposed more community custody conditions than were imposed in the judgment and sentence, (3) the DOC did not have authority to run his 2005 sentence consecutively to his aggravated first degree murder sentence, and (4) DOC has miscalculated the amount of time to be served for the custodial assaults. Pet. at 5-8. Ferrell's petition is clearly frivolous and must be dismissed.<sup>1</sup>

A personal restraint petition is frivolous if the petition "fails to present an arguable basis for collateral relief either in law or in fact, given the constraints of the personal restraint petition vehicle." *In re Pers. Restraint of Khan*, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015). To obtain relief in a personal restraint petition, Ferrell must show that he is

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<sup>1</sup> Ferrell's motion to appoint counsel is denied.

under unlawful restraint. RAP 16.4(a). Restraint is unlawful if “[t]he conditions or manner of the restraint of the petitioner are in violation of the Constitution of the United States or the Constitution or laws of the State of Washington[.]” RAP 16.4(c)(6). The petitioner bears the burden of proving they are under unlawful restraint. *In re Pers. Restraint of Brooks*, 197 Wn.2d 94, 99, 480 P.3d 399 (2021).

First, Ferrell claims that DOC’s designation for his sentence information does not match the case number for his judgment and sentence. Pet. at 5. DOC entered Ferrell’s sentencing information into its system under the designation “AG-05001151-Clallum.” Response at 3. Despite Ferrell’s assertion that his number does not match his judgment and sentence, he fails to show how DOC’s system designation for his sentencing information renders his restraint unlawful. Therefore, Ferrell’s first ground for relief is frivolous.

Second, Ferrell claims that DOC entered more community custody conditions than were identified on his judgment and sentence. Pet. at 6. However, DOC “may establish and modify additional conditions of community custody[,]” as long as DOC does “not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions.” RCW 9.94A.704(2)(a), (6). There is nothing inherently unlawful about DOC imposing additional community custody conditions and Ferrell has not shown that any of the additional conditions are contrary to those ordered by the court. Ferrell has failed to show there is any legal basis for his restraint being unlawful. Therefore, Ferrell’s second ground for relief is frivolous.

Third, Ferrell claims that DOC did not have authority to run his 2005 sentence consecutive to his aggravated first degree murder sentence because the 2005 judgment and

sentence did not designate any consecutive sentences. Pet. at 7. However, RCW 9.94A.589(2)(a) provides, “Whenever a person while under sentence for conviction of a felony commits another felony and is sentenced to another term of confinement, the latter term of confinement shall not begin until expiration of all prior terms of confinement.” By operation of the statute, Ferrell’s term of confinement for the 2005 sentence does not begin until his term of confinement for the aggravated first degree murder expires. Ferrell has not shown any legal basis for establishing that his restraint is unlawful because his 2005 sentence will not be served until after his aggravated first degree murder sentence. Therefore, Ferrell’s third ground for relief is frivolous.

Fourth, Ferrell claims that DOC has miscalculated the length of his term by entering the term as 1,156 days with no estimated release date (ERD). Pet. at 8. The Department responds that 1,156 days is the equivalent of the 38 month (3 years and 2 months) sentence imposed in the judgment and sentence. Response at 6. Further, because Ferrell is serving a sentence of life without the possibility of parole, there would be no ERD for DOC to calculate. Ferrell cannot show a factual or legal basis for his claim that DOC has miscalculated his sentence or that his restraint is unlawful. Therefore, Ferrell’s fourth ground for relief is frivolous.

Ferrell has failed to show any factual or legal basis that would entitle him to relief in this petition. Therefore, Ferrell’s petition is frivolous. Accordingly, it is hereby

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

  
PRICE, ACTING CHIEF JUDGE, PRO TEM

cc: James R. Ferrell  
Kelly Ann Fitzgerald