

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

IN THE MATTER OF THE  
PERSONAL RESTRAINT OF:

RICHARD GEORGE HUMPHRIES,

Petitioner.

No. 82977-7-I

ORDER OF DISMISSAL

Richard Humphries filed this personal restraint petition challenging the revocation of his Drug Offender Sentencing Alternative (DOSA) by the Department of Corrections (DOC). In order to obtain relief in this setting, Humphries must demonstrate that he is being “restrained under RAP 16.4(b) and that the restraint is unlawful under RAP 16.4(c).” In re Pers. Restraint of Grantham, 168 Wn.2d 204, 227 P.3d 285, 290 (2010) (quoting In re Pers. Restraint of Isadore, 151 Wn.2d 294, 298, 88 P.3d 390 (2004)). Because Humphries fails to meet this burden, his petition is dismissed.

BACKGROUND

Humphries is confined pursuant to a conviction for domestic violence felony violation of a court order in King County Superior Court No. 18-1-07595-5. He received a prison-based DOSA sentence of 23.75 months of confinement and 23.75 months of community custody, and was remanded to DOC in October 2020 to begin serving his sentence. In January 2021, Humphries completed his prison term and DOC released him to a transitional residence in Spokane County to begin

serving his community custody term. He signed paperwork at that time that set forth the conditions of supervision and informed him that failure to comply with those conditions could result in sanctions, including temporary confinement or revocation of the DOSA sentence.

Humphries did not adjust well to life in the community. On June 3, 2021, DOC charged Humphries with violating his conditions of supervision by (1) concealing a cell phone, (2) consuming alcohol, (3) failing to obtain a Domestic Violence Perpetrator Program evaluation or comply with programming, (4) refusing a police search, (5) failing to call his transitional residence as directed, and (6) threatening DOC staff. Humphries pleaded not guilty to the allegations.

A DOSA revocation hearing took place on June 6, 2021. Humphries requested attorney representation at the hearing. The hearing officer found that Humphries did not present competency concerns and denied his request for counsel.<sup>1</sup> Based on the supporting evidence presented at the hearing, the hearing officer found Humphries guilty on five of the six allegations and revoked his DOSA sentence. Humphries filed a motion for discretionary review, which this court converted to a personal restraint petition.

### DISCUSSION

Humphries first argues that DOC violated his right to due process by denying his request for counsel at the hearing. But Humphries is not automatically

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<sup>1</sup> At the hearing, Humphries requested that his trial court counsel, who had been appointed for a post-conviction motion in King County, be called as a telephonic witness. The hearing officer allowed counsel to appear as a witness, but limited her comments to factual evidence regarding the allegations against Humphries.

entitled to counsel in this setting. Rather, “due process require[s] the Department to decide on a case-by-case basis whether representation is warranted at a DOSA revocation hearing.” In re Pers. Restraint of Schley, 191 Wn.2d 278, 291, 421 P.3d 951 (2018) (citing Grisby v. Herzog, 190 Wn. App. 786, 806, 362 P.3d 763 (2015)).

Humphries’ reliance on In re Pers. Restraint of Bufalini, 4 Wn. App. 2d 392, 423 P.3d 262 (2018), is misplaced. In Bufalini, Division Two held that DOC violated the petitioner’s due process rights by failing to inform him that he had a right to have a request for counsel considered on a case-by-case basis at his urinalysis (UA) violation hearing. Id. at 402. But here, DOC properly informed Humphries in writing prior to the hearing of his right to request attorney representation and that representation would be authorized if “necessary due to the complexity of your case or your ability to represent yourself.”

Humphries also contends that representation was required because the issues in his case were complex. It is true that counsel should be provided “where the argument against revocation is complex or difficult to present.” Grisby, 190 Wn. App. at 803 (citing Gagnon v. Scarpelli, 411 U.S. 778, 790-91, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973)). In Bufalini, Division Two held that the petitioner raised “potentially complex factual inquiries” warranting legal representation, such as whether his positive UA result was caused by taking Aleve, whether the violation was willful, whether the test was unreliable, and whether the sample was destroyed or inadequately preserved. 4 Wn. App. 2d at 403-04. Here, in contrast, the allegations consisted of failing to disclose a cell phone, consuming alcohol, failing to enter treatment, refusing searches, not following directives, and making threats.

Humphries simply denied the allegations, thus creating a straightforward factual dispute for the hearing officer to adjudicate.

Humphries further contends that his history of mental health issues impaired his ability to represent himself at the revocation hearing. But Humphries offered no evidence in support of this claim.<sup>2</sup> A personal restraint petition must set out the facts underlying the claim and the evidence available to support the factual assertions. See In re Pers. Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992) (bare assertions and conclusory allegations are not sufficient to command judicial consideration and discussion in a personal restraint proceeding). In any case, the hearing officer found that Humphries did not present a competency concern, and the record indicates that Humphries was able to articulate his position at the hearing. DOC did not violate Humphries' due process rights by denying his request for counsel at the hearing.<sup>3</sup>

Humphries next argues that due process required that he be transferred to King County to appear before the sentencing judge on his post-conviction motion before his DOSA was revoked. This is so, he contends, because

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<sup>2</sup> Humphries filed a designation of clerk's papers in this court indicating he intended to obtain clerk's papers for his pending motion for discretionary review. But the designation was not filed in superior court. A commissioner of this court directed Humphries to file the designation in superior court "[t]o the extent [h]e intends to have the designated clerk's papers transferred to this Court for consideration with this motion for discretionary review." It appears that he did not do so; accordingly, the designated clerk's papers were not transferred to this court.

<sup>3</sup> Humphries also claims that DOC violated his due process rights by conducting the hearing at the prison rather than in the community. But he provides no authority or legal analysis in support of this claim. Unsupported assertions or vague allegations are not sufficient. Rice, 118 Wn.2d at 886.

RCW 9.94A.660(7) authorizes the superior court to take certain actions in modifying or revoking a DOSA sentence. Humphries is incorrect. RCW 9.94A.662(4) authorizes DOC to revoke an offender's DOSA sentence and return the offender to prison to serve the remaining balance of the original sentence if it finds that "conditions of community custody have been willfully violated." Humphries points to no statutory language, case law, or policy that would require DOC to postpone the DOSA revocation hearing until after the trial court hearing on his post-conviction motion.

Finally, Humphries claims that DOC violated agency policy by releasing him to Spokane County. Under RCW 72.09.270(8), DOC may not release an offender for community placement to a county other than the offender's "county of origin" unless it determines "that the offender's return to his or her county of origin would be inappropriate considering any court-ordered condition of the offender's sentence, victim safety concerns, negative influences on the offender in the community, or the location of family or other sponsoring persons or organizations that will support the offender."<sup>4</sup> In accordance with this statutory authority, DOC Policy 350.200 provides that "[i]ndividuals who require an approved release address will be returned to their county of origin/alternate county of origin" as determined and approved according to DOC guidelines.

Humphries contends that DOC should have released him to King County, which is his county of origin. He contends that releasing him to Spokane County

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<sup>4</sup> For homeless individuals such as Humphries, the statute defines "county of origin" as "the county of the offender's first felony conviction in Washington state." RCW 72.09.270(8)(d)(ii).

created an environment in which he was homeless and without any community support. But the record shows DOC determined that Humphries posed “strong safety concerns in King County and parts of Pierce County, which cannot be mitigated,” whereas there were “no current safety concerns in Spokane County.” DOC further determined “Humphries has previously been supervised in Whatcom, Skagit, and Snohomish Counties without success and a release plan to these counties is not feasible.” Under these circumstances, release to Spokane County was not an unreasonable decision.

Because Humphries fails to demonstrate that he is subject to an unlawful restraint, the petition is dismissed. See In re Pers. Restraint of Khan, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015) (petition must be dismissed as frivolous if it “fails to present an arguable basis for collateral relief either in law or in fact, given the constraints of the personal restraint petition vehicle”).

Now, therefore, it is hereby

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

  
Acting Chief Judge