

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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DIVISION II
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STATE OF WASHINGTON
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In re the Personal Restraint Petition of
JUSTIN EDWARD LEWIS,
Petitioner.

No. 50993-8-II

ORDER DISMISSING PETITION

Justin Lewis seeks relief from the decision of the Department of Corrections to revoke his community custody and require him to serve the remainder of his sentence in confinement. In 2011, he was convicted of second degree assault and was sentenced to 78 months of confinement, to be followed by 18 months of community custody. On March 1, 2016, in light of his earned early release time, he was released early to community custody. On August 14, 2017, the Department charged him with violating the conditions of his community custody by absconding from supervision, failing to abide a geographical boundary, failing to be available for urinalysis and failing to be available for breathalyzer. At an August 17, 2017 hearing, he pleaded guilty to the first two violations and not guilty to the third and fourth violations. The hearing officer found him guilty as to all four violations, revoked his community custody and ordered that he serve the remainder of his 78-month sentence in confinement. He appealed to a Department appeals panel, which affirmed the revocation of his community custody.

Lewis argues that he was denied due process in the proceeding that led to the revocation of his community custody. In examining such claims, we look to whether petitioner received the due process protections afforded him under *Morrissey v. Brewer*,

408 U.S. 471, 489, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). These protections include: (1) written notice of the claimed violations; (2) disclosure of evidence against the petitioner; (3) the opportunity to be heard in person and to present witnesses and documentary evidence; (4) the right to confront and cross-examine adverse witnesses; (5) a “neutral and detached” hearing body; and (6) a written statement of the evidence relied on and the reasons for the revocation. Lewis received all of these protections. Further, by pleading guilty, he waived his opportunity to claim he was denied due process. *Tollet v. Henderson*, 411 U.S. 258, 267, 93 S. Ct. 1602, 36 L. Ed. 2d 235 (1973).

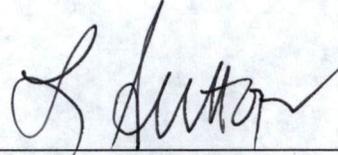
Lewis argues that the Department erred in denying him appointed counsel for his revocation hearing. Before denying his request for counsel, the hearing officer conducted the case-by-case analysis of whether to appoint counsel required by *Gagnon v. Scarpelli*, 411 U.S. 778, 789-91, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973) and *Grisby v. Herzog*, 190 Wn. App. 786, 799-813, 362 P.3d 763 (2015). Lewis does not show that the hearing officer abused his discretion in denying his request because his case was not complex. *In re Personal Restraint of Price*, 157 Wn. App. 889, 906-07, 240 P.3d 188 (2010).

Lewis argues that the revocation of his community custody subjected him to double jeopardy. It does not, because it only requires him to serve the remainder of his sentence in confinement.

Finally, Lewis argues that he should not have had his community custody revoked because his were only low level violations of his community custody. But absconding from supervision is a high level violation, which subjected him to revocation of his community custody. Department Policy 460.130 subsection LE and RCW 9.94A.633(2)(a).

Lewis does not demonstrate that he was denied due process. We therefore affirm the Department's decision. Accordingly, it is hereby

ORDERED that Lewis's petition is dismissed under RAP 16.11(b). His request for appointment of counsel is denied.



Acting Chief Judge Pro Tempore

cc: Justin E. Lewis
Annie L. Yu