

*The Court of Appeals  
of the  
State of Washington*

RICHARD D. JOHNSON,  
Court Administrator/Clerk

DIVISION I  
One Union Square  
600 University Street  
Seattle, WA  
98101-4170  
(206) 464-7750  
TDD: (206) 587-5505

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Mandy Lynn Rose  
Attorney General of Washington  
PO Box 40116  
Olympia, WA 98504-0116  
mandyr[atg.wa.gov]

Benjamin Israel Abolafya  
4003 Airport Way S., #11  
Seattle, WA 98108  
biabolafya@gmail.com

Department of Corrections A.G. Office  
Attorney at Law  
PO Box 40116  
Olympia, WA 98504-0116  
correader[atg.wa.gov]

CASE #: 74499-2-I  
Personal Restraint Petition of Benjamin Israel Abolafya

Counsel:

Enclosed please find a copy of the Order Dismissing Personal Restraint Petition entered by this court in the above case today.

Pursuant to RAP 16.14(c), "the decision is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in Rule 13.5A."

This court's file in the above matter has been closed.

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

16/11  
closed file  
8/4/16

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

IN THE MATTER OF THE	)	
PERSONAL RESTRAINT OF:	)	No. 74499-2-1
	)	
BENJAMIN I. ABOLAFYA,	)	ORDER OF DISMISSAL
	)	
Petitioner.	)	
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In 2011, Benjamin Abolafya pleaded guilty to robbery in the second degree in Snohomish County Superior Court Cause No. 11-1-00591-1. He was sentenced to a term of 63 months. Based upon his accrued early release time, Abolafya was released from confinement to serve the remaining portion of his sentence on community custody in November 2014. After his release, Abolafya was repeatedly sanctioned for community custody violations, including drug use.

On July 28, 2015, a Community Correction Officer (CCO) submitted a community custody violation report alleging that on July 23, Abolafya submitted a drug sample that tested positive for opiates.<sup>1</sup> On that date, Abolafya provided a urine sample at his residence. Based upon on-site testing, the sample showed a positive reading for opiates. The CCO asked Abolafya about medications he was currently taking. Abolafya said he had taken medicine for his prostate called Hydroxyzine on July 22 and presented the prescription bottle to the CCO. Due to the CCO's unfamiliarity with Hydroxyzine, Abolafya was not arrested. The CCO sent Abolafya's sample to a laboratory for retesting. The CCO included a

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<sup>1</sup> The sample also tested positive for benzodiazepines, but Abolafya was not charged with a violation based upon that result.

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notation on the sample indicating that Abolafya had taken two 25mg tablets of Hydroxyzine on July 22. The laboratory confirmed the positive result.

The Department of Corrections (DOC) conducted a violation hearing in August 2015. At the hearing, Abolafya denied using any illicit drugs. The CCO testified that as a result of a note she received from Abolafya, she called a certifying scientist from the laboratory that tested Abolafya's sample to ask whether Tylenol PM medication would not result in a positive result for opiates. The scientist said it could not. During the hearing, the hearing officer contacted another certifying scientist from the laboratory who confirmed that the active ingredient in Benadryl would not result in a positive result for opiates. The scientist confirmed that the opiate level of Abolafya's sample, 109 ng/ml, could derive from only one of four sources: codeine, morphine, heroin, or poppy seed consumption. Based on the evidence presented, the hearing officer found Abolafya guilty, revoked his community custody, and returned him to confinement to serve the remainder of his sentence.

Abolafya now contends that DOC erred in revoking his community custody and returning him to confinement. However, it appears that Abolafya has now served the remainder of his sentence on the 2011 charge. Thus, his claim is apparently moot. See In re Pers. Restraint of Cross, 99 Wn.2d 373, 376-77, 662 P.2d 828 (1983) (a claim is moot if the court can provide no effective relief).

Nevertheless, even if this court were to address Abolafya's claim on the merits, he has failed to establish an entitlement to relief. To prevail here, Abolafya must establish (1) that he is currently restrained, and (2) that the restraint is

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unlawful. RAP 16.4; In re Pers. Restraint of Cashaw, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994).

Abolafya challenges the sanctions because (1) his urine sample was sent to the laboratory for retesting without his signature; (2) neither his healthcare provider nor his pharmacy was provided with a DOC form 14-036 to certify his prescriptions; (3) he was not properly notified of the result of the test; (4) he was not allowed to call witnesses at the violation hearing; and (5) the hearing officer revoked his community custody based on an unsupported finding that he had a history of heroin addiction.

However, as the hearing officer noted, DOC policy does not require additional laboratory drug testing following instant on-site testing. See DOC Policy 420.380. Nor does DOC policy require obtaining medical certification forms from an offender's healthcare providers when an offender is tested in the community. To the extent that there was a failure to strictly comply with testing protocol because Abolafya did not initial the seal of the sample and instead, the CCO wrote "unavailable," Abolafya's challenge goes to the weight of the evidence. This court does not re-weigh the evidence considered by the hearing officer. In re Pers. Restraint of Johnston, 109 Wn.2d 493, 497, 745 P.2d 864 (1987). And, as explained by the hearing officer, the result of the instant on-site test was sufficient to support the finding of guilt.

The record also does not support the assertion that Abolafya was not notified of the test result. He was notified in person and there is no dispute that he received the notice of violation. Also, Abolafya did not request the presence of any specific witness at the violation hearing. At one point, he asked the hearing officer

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to call a pharmacy and ask for a list of his prescriptions. But then, he agreed that the hearing officer would call the certifying scientist and take testimony over the telephone. According to the scientist's testimony, only four substances would generate the test result confirmed by both the instant on-site testing and the laboratory testing. Abolafya denied consuming any of those substances.

The hearing officer did not revoke Abolafya's community custody due to a history of heroin addiction. The decision was based on multiple factors, including the fact that he had at least 6 violation processes within 6 months, had been terminated from drug treatment, and had not completed a sexual deviancy evaluation. And although Abolafya denied an opiate addiction, he admitted to using heroin, but merely said it was not his drug of choice and he never used the drug two days in a row.

And finally, although Abolafya speculates that DOC intends to erroneously impose additional community custody upon release from confinement, there is nothing in the record to substantiate his claim, and it appears that community custody would still apply after Abolafya completes his term of confinement.

Abolafya has failed to establish any basis for relief by means of a personal restraint petition.

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Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed under RAP  
16.11(b).<sup>2</sup>

Done this 4<sup>th</sup> day of August, 2016.

Trickey, ACT  
Acting Chief Judge

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<sup>2</sup> Abolafya has filed various motions in connection with his petition, including a motion on the merits, a motion to expand the record, and a motion for protective and enforcement orders. All motions are hereby denied.