

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the
Personal Restraint Petition of

JD JONES BARTON,

Petitioner.

No. 48107-3-II

ORDER DISMISSING PETITION¹

FILED
COURT OF APPEALS
DIVISION II
2016 APR 20 PM 3:05
STATE OF WASHINGTON
BY *[Signature]*
DEPUTY

JD Jones Barton seeks relief from personal restraint imposed following his 2013 pleas of guilty to two counts of second degree assault and one count of first degree unlawful possession of a firearm. In this successive petition,² Barton argues, as he did in his prior petition, that the Department of Corrections (DOC) (1) failed to credit against his sentence 240 days that he was incarcerated for violations of community custody conditions imposed following an earlier conviction and (2) failed to restore the good conduct time he had lost while serving his 2008 and 2011 judgments and sentences.³

¹ Barton's February 9, 2016 motion to strike portions of the respondent's brief and exhibits attached thereto is denied.

² See *In re Pers. Restraint of Barton*, noted at 187 Wn. App. 1024 (2015) (unpublished).

³ As stated in the unpublished opinion disposing of Barton's earlier petition:

Barton originally pleaded guilty in 2008. We remanded his judgment and sentence to the trial court because its 180-month sentence exceeded the statutory maximum sentence. He was resentenced in 2011 to a 156-month sentence. We remanded that sentence to the trial court because his trial counsel misadvised him as to the sentencing consequences of his plea. He withdrew his 2008 pleas of guilty but then pleaded guilty again in 2013 and

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Because Barton challenges the same DOC actions that he had challenged in his prior petition, the successive petition rule bars our consideration of this petition. RCW 10.73.140. We may, however, transfer Barton's petition to our Supreme Court if we determine that RAP 16.4(d) might apply. *In re Pers. Restraint of Johnson*, 131 Wn.2d 558, 566 (1997). RAP 16.4(d) permits our Supreme Court to review a successive petition requesting "similar relief" if the petitioner shows "good cause" for reexamining the previously rejected claim.

Barton does not argue that good cause exists for reexamining his previously rejected claims. And, although Barton revises his previously rejected arguments and raises different legal arguments in support of the identical claims rejected in his prior petition, this is insufficient to satisfy the "good cause" standard of RAP 16.4(d). *See In re Pers. Restraint of Jeffries*, 114 Wn.2d 485, 488 (1990) ("Simply 'revising' a previously rejected legal argument . . . neither creates a 'new' claim nor constitutes good cause to reconsider the original claim. . . . 'So also, identical grounds may be supported by different legal arguments.'") (quoting *Sanders v. United States*, 373 U.S. 1, 16 (1963)). Because Barton's petition is successive and because he fails to demonstrate good cause for our Supreme Court to review his successive petition, we dismiss Barton's

again received a 156-month sentence, to be followed by an 18-month term of community custody.

In re Barton, noted at 187 Wn. App. 1024.

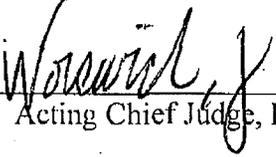
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petition rather than transfer it to our Supreme Court. *Johnson*, 131 Wn.2d at 566.

Accordingly, it is hereby

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

DATED this 20th day of April, 2016.



Acting Chief Judge, Pro Tem

cc: JD Jones Barton
Thurston County Clerk
County Cause No(s). 08-1-0727-1
Timothy N. Lang, Department Of Corrections
Robert W. Ferguson, Attorney General
Mandy L. Rose, Assistant Attorney General - Corrections Division