

Hoyt, Trina (ATG)

From: ATG MI COR Oly CE Reader
Sent: Monday, May 04, 2015 3:16 PM
To: Hoyt, Trina (ATG); Ronning, Kate (ATG)
Subject: FW: COURT OF APPEALS 72372-3-I Personal Restraint Petition of John E. Bettys
Attachments: 72372-3 Bettys - 5.4.15 letter.pdf; 72372-3 Bettys - Order Dismissing.pdf

Importance: High

State strike.

From: Considine, Brian J (ATG)
Sent: Monday, May 04, 2015 2:16 PM
To: ATG MI COR Oly CE Reader; ATG MI COR OLY LA EF
Subject: FW: COURT OF APPEALS 72372-3-I Personal Restraint Petition of John E. Bettys
Importance: High

From: Wise, Laurel
Sent: Monday, May 04, 2015 2:15:05 PM (UTC-08:00) Pacific Time (US & Canada)
To: Considine, Brian J (ATG); ATG MI COR Oly CE Reader
Subject: COURT OF APPEALS 72372-3-I Personal Restraint Petition of John E. Bettys

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
Seattle, WA
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(206) 464-7750
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The attached order is being transmitted to counsel electronically. No hard copy will follow.

*Sand
State strike
done
for
✓*

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Court Administrator/Clerk

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May 4, 2015

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CASE #: 72372-3-1
Personal Restraint Petition of John E. Bettys

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

law

enclosure

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

In the Matter of the Personal)	
Restraint of:)	No. 72372-3-1
)	
JOHN E. BETTYS,)	
)	ORDER OF DISMISSAL
Petitioner.)	
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John Bettys challenges the enforcement of Department of Corrections (DOC) policy regarding outgoing mail at the Coyote Ridge Correction Center (CRCC). According to Bettys, DOC policy allows offenders to send mail to opposing counsel, but CRCC mailroom staff members refuse to provide postage for outgoing mail to opposing counsel. He also claims that DOC violated a court order by denying him access to a telephone on September 4, 2014, when he was scheduled to appear in a court proceeding telephonically. In support of his petition, Bettys has provided copies of documents indicating that certain mail was returned to him as well as several offender kites about scheduling his September 4, 2014 telephone appearance in his dissolution case. He seeks an order directing DOC to stop violating the rights of offenders and to correct its policies to allow access to the courts.

In order to obtain relief by means of a personal restraint petition, Bettys must demonstrate that he is under restraint and that the restraint is unlawful. RAP 16.4; see also In re Pers. Restraint of Cashaw, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994); In re Pers. Restraint of Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990). Unlawful restraint occurs when the "conditions or manner of restraint of 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). But the only relief this court can grant in a

personal restraint petition is removal of an allegedly unlawful restraint. See In re Sappenfield, 138 Wn.2d 588, 595, 980 P.2d 1271 (1999). Bare assertions and conclusory allegations do not warrant relief in a personal restraint proceeding. In re Pers. Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992) (competent, admissible evidence, such as affidavits, required to establish facts entitling petitioner to relief).

In response, DOC admits that CRCC staff initially implemented Policy 450.100 by not allowing indigent inmates to incur a debt for postage for legal mail sent to an opposing party but expected them to use their monthly allotment of 10 free pre-franked envelopes. DOC acknowledges that staff returned eight separate legal pleadings in four separate cases to Bettys, but allowed him to incur postage debt for documents sent to the courts. After Bettys filed his petition, CRCC began allowing indigent inmates to accumulate postage debt for legal mail sent to opposing parties. DOC argues that the change in CRCC practices render his claim regarding mail moot. DOC has also provided evidence that Bettys has accumulated debt of \$1,274.21 for legal mail and postage and \$3,992.04 for photocopies.

In response to his claims regarding telephone use, DOC indicates that inmates are allowed to use offender telephones and legal telephone booths to make direct paid calls, collect calls, or calls to pre-approved "1-800" numbers. DOC has provided a note from a Counselor Roper indicating that Bettys "demanded" that she facilitate his scheduled telephonic court appearance in her office, but she refused based on DOC policy giving counselors discretion to grant requested access to their office telephones

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for cases related to an inmate's criminal appeal, habeas corpus proceeding, or §1983 case. DOC points out that Bettys has not identified any authority requiring CRCC to provide him access to his counselor's telephone.

In his reply, Bettys claims that CRCC staff returned his legal mail addressed to an attorney and containing a 40-page brief. He complains that his failure to use his counselor's phone for his dissolution hearing resulted in a continuance which will allow his wife to claim access to his inheritance and leave his son without a parenting plan.

Since filing his original petition, Bettys has also filed several motions to supplement the record. He has attached various documents, and argues that CRCC staff members are preventing him from serving various DOC employees he has named as individual defendants in his various lawsuits. But none of these documents appear to relate to the claims of his initial petition.

Bettys does not claim or establish that DOC prevented him from accruing debt for outgoing mail to courts or opposing counsel since the time he filed his initial petition. And Bettys fails to identify any authority prohibiting DOC from limiting the amount of debt an inmate may accrue for outgoing legal mail addressed to persons or parties other than courts or opposing counsel. Moreover, Bettys offers nothing other than his own conclusory allegations to establish that the other telephones provided by DOC for inmate use are inadequate to allow him to appear telephonically at a hearing in his civil proceedings.

In light of DOC's evidence indicating that CRCC staff currently allow indigent inmates to accrue debt on postage for legal mail to the courts and opposing counsel,

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Bettys's claim of unlawful restraint is 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). And Bettys has not demonstrated an existing unlawful restraint with respect to the availability of telephones for inmates at CRCC. To the extent he seeks affirmative relief other than the removal of an allegedly unlawful restraint, Bettys must resort to a civil action. See Sappenfield, 138 Wn.2d at 598.

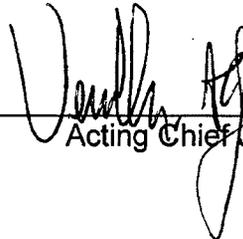
Under these circumstances, this petition must be dismissed.

Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed under RAP

16.11(b).

Done this 4th day of May, 2015.



Acting Chief Judge

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2015 MAY -4 PM 1:40