

RICHARD D. JOHNSON,  
Court Administrator/Clerk

*The Court of Appeals*  
of the  
*State of Washington*

DIVISION I  
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CASE #: 75989-2-I  
Personal Restraint Petition of Steven Sonny Black

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

emp

enclosure

John L. M. # 10743541

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

IN THE MATTER OF THE	)	
PERSONAL RESTRAINT OF:	)	No. 75989-2-I
	)	
STEVEN SONNY BLACK,	)	
	)	ORDER DISMISSING PERSONAL
Petitioner.	)	RESTRAINT PETITION
_____	)	

Steven Black filed a personal restraint petition challenging the decision of the Department of Corrections (DOC) to revoke his release to community custody and return him to prison. In order to obtain relief in this setting, Black 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 Black fails to meet this burden, his petition is dismissed.

In 2007, Black was convicted of first degree robbery in King County Superior Court Cause No. 06-1-10954-2 SEA and sentenced to 87 months confinement and an 18-36 month term of community custody (later modified to a fixed term of 18 months, pursuant to Laws of 2009, ch. 375, § 9) or "for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer." Black was released from confinement 796 days early to begin serving the community custody portion of his sentence on January 17, 2012.

On November 24, 2015, while still on community custody, Black committed a new felony and was charged with residential burglary in King County Superior Court Cause No. 15-1-07135-8 KNT. Black ultimately pled guilty to attempted first degree possession of stolen property and was sentenced on March 4, 2016 to 24.75 months.

On September 9, 2016, DOC held a violation hearing to address Black's violation of community custody by committing a new felony. The hearing officer reviewed evidence of the violation and a form containing the conditions of Black's community custody. In addition, Black pleaded guilty to the violation. The hearing officer revoked Black's community custody and returned him to prison to serve his remaining term pursuant to RCW 9.94A.633(2)(a).<sup>1</sup> Black was released on the 2006 cause on or about April 9, 2017, at which time he began serving confinement time on the 2015 cause.

Black contends that his right to be free from double jeopardy was violated when DOC sanctioned him for the 2015 cause, because he was already being punished for that incident. The double jeopardy clause of the United States Constitution states that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. CONST. amend. V. Similarly, article I, section 9 of the Washington Constitution provides that "no person shall be . . . twice put in jeopardy for the same offense." The federal and state double jeopardy clauses afford the same scope of protection. In re Pers. Restraint of Percer, 150 Wn.2d 41, 49, 75 P.3d 488 (2003); In re Pers. Restraint of Davis, 142 Wn.2d 165, 12 P.3d 603 (2000).

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<sup>1</sup> RCW 9.94A.633(2)(a) provides, in relevant part, as follows:

(2) If an offender was under community custody pursuant to one of the following statutes, the offender may be sanctioned [for violating a sentence condition] as follows:

(a) If the offender was transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.728, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for

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However, double jeopardy does not apply to a revocation hearing because it is not a criminal prosecution. Instead, the sanction imposed for violating the community custody conditions of a sentence are consequences of the original prosecution, rather than part of a new prosecution. See State v. Prado, 86 Wn. App. 573, 578, 937 P.2d 636 (1997). “[There is no double jeopardy protection against revocation of probation and the imposition of imprisonment.” U.S. v. DiFrancesco, 449 U.S. 117, 137, 101 S. Ct. 426, 66 L. Ed. 2d 328 (1980).

Because Black has not shown that he is unlawfully restrained or entitled to relief, the petition must be dismissed. Now, thereby, it is

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

Done this 1st day of June, 2017.

Trickey, A.J.  
Acting Chief Judge

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any period actually spent in community custody or in detention awaiting disposition of an alleged violation.