

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
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Lonnie L. Burton
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CASE #: 72781-8-1
Personal Restraint Petition of Lonnie L. Burton

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

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enclosure

Served
at

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

IN THE MATTER OF THE)	No. 72781-8-1
PERSONAL RESTRAINT OF:)	
)	
LONNIE L. BURTON,)	ORDER OF DISMISSAL
)	
Petitioner.)	
<hr style="width: 30%; margin-left: 0;"/>)	

Lonnie Burton has filed this personal restraint petition challenging the calculation of his early release date by the Department of Corrections (DOC). He claims that the DOC unlawfully denied him early release credit, or "earned time," during an approximately three month period when he was placed in an Administrative Segregation unit between September and December of 2013. He seeks restoration of approximately 5 days of earned time he failed to accrue during this period.

To obtain relief from a DOC decision from which he has had "no previous or alternative avenue for obtaining state judicial review," Burton must show that he is under restraint and the restraint is unlawful. In re Pers. Restraint of Cashaw, 123 Wn.2d 138, 149, 866 P.2d 8 (1994); RAP 16.4. Burton is under restraint by virtue of his incarceration. In re Pers. Restraint of Pullman, 167 Wn.2d 205, 211, 218 P.3d 913 (2009). An offender has the right to ensure that the DOC follows its own established policies. In re Pers. Restraint of Mattson, 166 Wn.2d 730, 742, 214 P.3d 141 (2009); Pullman, 167 Wn.2d at 218. A showing that a decision by a government agency failed

to comply with the agency's own rules or regulations is sufficient to show the unlawfulness of the restraint. Cashaw, 123 Wn.2d at 149.

An inmate's "earned release time" consists of a combination of "good time," which credits good behavior, and "earned time," which is determined on a monthly basis and rewards an inmate's successful completion of assigned programming. See In re Pers. Restraint of Forbis, 150 Wn.2d 91, 98, 74 P.3d 1189 (2003). Inmates have no constitutionally protected liberty interest in earning early release time credits. In re Pers. Restraint of Galvez, 79 Wn. App. 655, 657-59, 904 P.2d 790 (1995). DOC policy 350.100, in effect during the challenged timeframe, sets forth a variety of factors that can affect the award of earned time, including segregation time. DOC Policy 350.100 states that an offender is not eligible for earned time if he "serves 20 days or more in one calendar month in Administrative Segregation/Intensive Management status or disciplinary segregation for negative behavior." See also WAC 137-30-030(3)(b)(iv) (offenders ineligible for earned time if they "serve twenty days or more in one calendar month in administrative segregation or disciplinary segregation for negative behavior" or unfounded/unsubstantiated protection concerns).

The DOC placed Burton in Administrative Segregation while investigating the complaint of another offender alleging that Burton violated the Prison Rape Elimination Act (PREA). An investigator determined that the complaint was substantiated and Burton was charged with infractions based on the complaint. Burton argues, however, that because infraction stemming from the complaint was eventually dismissed, he did not serve time in administrative segregation for "negative behavior." Consequently, he claims that he was eligible for earned time during the three-month period.

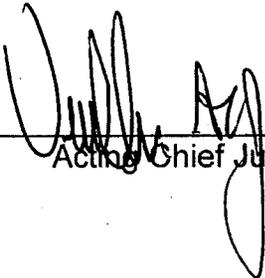
But the policy denies eligibility to those placed in segregation due to “negative behavior,” and does not specify that the negative behavior must result in a disciplinary charge or an infraction following a disciplinary hearing. Burton does not assert, and there is nothing in the record to suggest, that he was placed in administrative segregation for his protection or some other purpose other than to investigate his alleged violation of PREA. This is not a case where the complaint was determined to be unfounded. And, contrary to his assertion, documents in the record demonstrate that Burton had multiple opportunities during the three-month period to participate in the periodic reviews of his segregation placement and to challenge his detention.

Burton fails to establish that the DOC failed to follow its own policies in denying him eligibility for earned time during the months that he served more than 20 calendar days in segregation.

Now, therefore, it is hereby

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

Done this 29th day of July, 2015.



Acting Chief Judge

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