

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

In the Matter of the Personal)	
Restraint of:)	No. 69399-9-I
)	
RONALD W. BUZZARD, JR.,)	ORDER OF DISMISSAL
)	
Petitioner.)	
_____)	

Ronald Buzzard is serving a sentence imposed upon his guilty plea to first degree rape of a child in King County No. 02-1-02656-3 KNT. Buzzard files this personal restraint petition challenging the July 30, 2012 decision of the Indeterminate Sentence Review Board (ISRB) following a RCW 9.95.420 hearing. In order to obtain relief by means of a personal restraint petition, Buzzard 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).

An ISRB decision setting a new minimum term is reviewed for an abuse of discretion, and this court gives substantial deference to the judgment of the ISRB. In re Pers. Restraint of Locklear, 118 Wn.2d 409, 418, 823 P.2d 1078 (1992); In re Pers. Restraint of Shepard, 127 Wn.2d 185, 192, 898 P.2d 828 (1995). An abuse of discretion occurs where the ISRB fails to follow its own procedural rules or where the ISRB bases its decision on merely speculation and conjecture. In re Pers. Restraint of Dyer (Dyer I), 157 Wn.2d 358, 363, 139 P.3d 320 (2006). The petitioner bears the burden to prove the ISRB abused its discretion. In re Pers. Restraint of Addleman, 151 Wn.2d 769, 776, 92 P.3d 221 (2004).

Following the hearing, the IRSB concluded based, on a preponderance of the evidence, that Buzzard would more likely than not, commit another sex offense if released. The IRSB added 24 months to his minimum term. In its Reasons and Decisions, the Board stated:

Not much has changed with Mr. Buzzard since the last time the Board met with him in 2012. He continues to refuse to participate in sex offender treatment; although in the past he told the Board he knows he needs treatment.

The Board further determined:

Mr. Buzzard's behavior reflects a lack of motivation to address his deviant behavior to mitigate his risk to reoffend. He told the Board he's reading psychology books and taking classes to enhance his employability and explained these as his efforts at rehabilitation. He also reminded the Board his victim had forgiven him (which he also reported to the psychologist conducting the SSOSA evaluation). The bottom line, as far as the Board is concerned, is that Mr. Buzzard remains an untreated sex offender and is more likely than not to commit another sex offense. The Board urged him, especially if he's as concerned about getting out to help his family as he stated, that he focus his efforts on treatment.

Buzzard challenges the Board's decision and claims that, apart from the offense itself, nothing in the record supports the conclusion that more likely than not he will commit a sex offense if released.

Buzzard relies on two federal district court cases, Saldate v. Adams, 573 F. Supp. 1303 (E.D. Cal. 2008), and Mayfield v. Carey, 747 F. Supp.2d 1200 (E.D. Cal. 2010) for the position that the Board's decision must be supported by "some evidence". These cases involve the California parole board's determination about whether the offenders posed a current threat to public safety. Although Buzzard analogizes to the facts of these cases, unlike Buzzard, during their years of incarceration, the offenders in those cases took rehabilitative steps to specifically address the behavior related to their offenses.

Even assuming the “some evidence” standard is applicable here, there is some evidence in the record supporting the Board’s decision. In addition to the underlying facts of the rape and molestation and Buzzard’s other criminal behavior involving minors, the Board also relied on Buzzard’s failure in treatment before his SOSSA sentence was revoked. According to his treatment provider, his violations were indicative of an escalating risk of reoffense. The Board additionally relied on the fact that while incarcerated in 2009, Buzzard was found in possession of sexually explicit photographs and his incoming mail contained a request for additional sexually explicit photographs. Finally, the Board relied on Buzzard’s in person testimony, his refusal to participate in treatment, and his status as an untreated sex offender. The Board is entitled to consider and base its decision, at least in part, on the lack of treatment. In re Pers. Restraint of Dyer (Dyer II), 164 Wash.2d 274, 2888, 189 P.3d 759 (2008).

Buzzard also claims that he had the right to be represented by counsel at the .420 hearing and was denied that right. However, while offenders have a liberty interest in .420 hearings and are entitled to minimal due process, this right does not include the right to counsel. In re McCarthy, 161 Wn.2d 234, 245, 164 P.3d 1283 (2007).

Finally, Buzzard claims the Board failed to comply with the requirements of RCW 9.95.420 because a psychological evaluation was not administered and he was not allowed to participate in the actuarial assessments considered by the Board. Buzzard raised this precise claim in his petition challenging the ISRB’s 2010 decision following the previous .420 hearing. See No. 67082-4-I. This court will generally not review issues that were raised and rejected in a prior personal restraint petition unless the interests of justice require relitigation. See In re Pers. Restraint of Lord, 123 Wn.2d

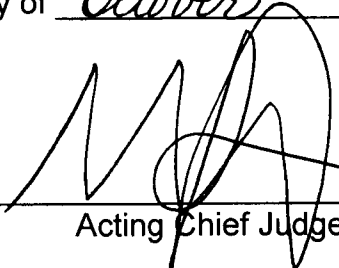
296, 303, 868 P.2d 835 (1994); In re Pers. Restraint of Haverty, 101 Wn.2d 498, 502-03, 681 P.2d 835 (1984). Simply revising a previously rejected legal argument does not create a “new” claim or provide good cause for revisiting the issue. In re Pers. Restraint of Jeffries, 114 Wn.2d 485, 488, 789 P.2d 731 (1990). Buzzard fails to identify any fundamental error, intervening change in the law, or other circumstances justifying reconsideration of this issue.

Buzzard fails to establish that the ISRB violated its own procedures as set forth in RCW 9.95.420. Its determination that Buzzard will more likely than not reoffend is supported by tenable reasons. Because Buzzard has failed to make any showing that he is unlawfully restrained, his petition is dismissed.¹

Now, therefore, it is hereby

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

Done this 3rd day of October, 2013.



Acting Chief Judge

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CLERK OF SUPERIOR COURT
JANIS M. HARRIS

¹ In addition, Buzzard’s motion to seal and for accelerated review are denied.