

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

IN THE MATTER OF THE	)	
PERSONAL RESTRAINT OF	)	No. 77341-1-I
	)	
RONALD W. BUZZARD, JR.,	)	ORDER OF DISMISSAL
	)	
_____ Petitioner.	)	

At age 24, Ronald Buzzard had sexual contact with his six-year-old niece on several occasions. In 2003, he was convicted, upon a guilty plea, to rape of a child in the first degree in King County No. 02-1-02656-3 KNT. The trial court imposed a special sex offender sentencing alternative (SSOSA) sentence with a 123-month term of confinement suspended upon 180 days of confinement in jail and a period of community custody. Within seven months, Buzzard violated the conditions of his SSOSA by consuming alcohol, viewing pornography, having unapproved contact with minors and sexual relationships without approval of his treatment provider, and being terminated from his sexual deviancy treatment program. The court revoked the SSOSA sentence and ordered Buzzard to serve the remainder of his sentence in the custody of the Department of Corrections (DOC).

In 2010, 2012, and 2014, the Indeterminate Sentence Review Board (ISRB) conducted releasability hearings under RCW 9.95.420(3) (.420 hearings). Each time, the Board found Buzzard not releasable and added 24 months to his minimum term. Finally, in 2016, after another .420 hearing, the Board did not find, by a preponderance of the evidence, that Buzzard would more likely than not commit a sex offense if released upon conditions. Therefore the Board

determined that Buzzard was releasable. The Board's decision was partly based on the fact that Buzzard had applied for prison-based sex offender treatment following the 2014 hearing, he agreed to participate in community-based sex offender treatment upon release, and had community support from his parents. The Board subsequently approved an Offender Release Plan that included numerous conditions of release.

Buzzard filed a "Petition for Writ of Habeas Corpus-State; Hybrid § 1983 Civil Lawsuit Filing" in superior court, seeking relief from most of the conditions of release imposed by the Board. He claims that the conditions are unconstitutional, not crime-related, and/or beyond the authority of the Board. The superior court transferred the petition to this court for consideration as a personal restraint petition. As the petitioner, it is Buzzard's burden to show that his current restraint is unlawful. RAP 16.4; In re Cashaw, 123 Wn.2d 138, 866 P.2d 8 (1994).

The DOC has the authority to supervise offenders on community custody to impose conditions of conditions of community based upon its assessment of risks to community safety.

The department shall assess the offender's risk of re-offense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. In addition, the department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

Former 9.94A.715(2)(b)(2002).

The Board likewise has broad authority to impose conditions of release and the court must require the offender to comply with those conditions. Former

RCW 9.94A.712(6)(b)(2002). According to the statute that sets forth the standards for release of offenders under the Board's jurisdiction, the Board must "order the offender released, **under such affirmative and other conditions as the board determines appropriate**, unless the board determines by a preponderance of the evidence that, **despite such conditions**, it is more likely than not that the offender will commit sex offenses if released." Former 9.5.420(3)(a)(2002) (emphasis added).

The Board considered Buzzard's history in establishing conditions for release. That history included his conviction for raping his six-year-old niece and his prior arrest for possessing a handgun and a substantial amount of child pornography. His history also included evidence of sexual relationships with minors and internet communications with minors not related to him. The Board also considered Buzzard's prior poor compliance with the conditions of his initial SSOSA sentence and lack of success in completing sex offender treatment in the community following his conviction.

Buzzard appears to believe that the Board's authority is limited to imposing conditions of release that are directly related to the offense of his conviction. See Former RCW9.94A.030(12) (crime related conditions are those imposed by order of the sentencing court). But nothing in the SRA or elsewhere limits the conditions that the Board or the DOC may impose to those that are "crime related" or contributed to the offense. The DOC and the Board have broader authority to impose conditions and may focus on the risk posed by the defendant, whereas the trial court generally must focus on the defendant's

particular crime. See In re Pers. Restraint of Golden, 172 Wn. App. 426, 433, 290 P.3d 168 (2012) (the DOC could impose conditions related to defendant's history as a sex offender even though he was not being supervised for a sex offense).

Buzzard's constitutional challenges to the conditions of release are without merit. For instance, the condition prohibiting Buzzard's possession of "sexually explicit material intended for sexual gratification" is not unconstitutionally vague because it includes specific descriptions of the types of images he is prohibited from accessing. And Buzzard describes the internet restriction as a ban, but in fact, the condition requires a written safety plan for internet use to be approved by the community corrections officer (CCO) and treatment provider and the installation of equipment or controls if required by that plan.

Buzzard contends that the travel restrictions imposed by the Board impermissively infringe upon his right to travel. But the Board is authorized to impose geographic boundary conditions based on community and victim safety concerns. See RCW 9.95.420(3); RCW 9.95.064(2). Reasonable restrictions on travel during community supervision do not violate a person's constitutional right to travel. State v. McBride, 74 Wn. App. 460, 466-67, 873 P.2d 589 (1994). The condition at issue is not a banishment order, Buzzard is simply required to obtain permission before traveling to the restricted area, much like the standard community custody condition prohibiting offenders from traveling outside of their county of residence without DOC permission.

With respect to monitoring Buzzard's compliance with conditions of release by polygraph, such testing is clearly authorized by his conviction and

sentence. State v. Riles, 135 Wn.2d 326, 343, 957 P.2d 655 (1998). See also State v. Combs, 102 Wn. App. 949, 10 P.3d 1101 (2000). Although Buzzard claims that he is indigent and therefore should not be required to pay the cost of such monitoring, he has not shown that the Board has or actually intends to charge him for polygraph testing.

Buzzard also contends that prohibiting his contact with minors is overbroad. He argues that the condition should be modified to allow supervised contact so that he may attend church events and family functions. However, the judgment and sentence actually provides that as to minors other than the victim, Buzzard's contact must be supervised by a responsible adult who has knowledge of his offense. This condition was imposed by the sentencing court and is clearly related to Buzzard's offense of rape of a child.

In sum, Buzzard fails to demonstrate that the conditions of release imposed by the Board amount to unlawful restraint.

Now, therefore, it is hereby

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

Done this 28<sup>th</sup> day of November, 2017.

Trikey, AC  
Acting Chief Judge

FILED  
COURT OF APPEALS DIV. 2  
STATE OF WASHINGTON

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