

*The Court of Appeals
of the
State of Washington*

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
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CASE #: 72482-7-1
Personal Restraint Petition of Shawn Michael Casey

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

In the Matter of the Personal
Restraint of:

SHAWN MICHAEL CASEY,

Petitioner.

No. 72482-7-1

ORDER OF DISMISSAL

Shawn Casey files this personal restraint petition, alleging that the Department of Corrections (DOC) violated his due process rights when it revoked his Special Drug Sentencing Alternative (DOSA). To prevail here, Casey must establish (1) that he is currently being restrained, and (2) that the restraint is unlawful. RAP 16.4. Because he makes no showing that he can satisfy this burden, the petition is dismissed. See In re Pers. Restraint of Cashaw, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994); RAP 16.4.

Casey is currently serving the sentence imposed in King County No. 10-1-05637-4 KNT following his convictions for residential burglary and bail jumping. The court imposed a prison-based DOSA sentence, including 36.75 months of confinement and an equal term of community custody. The judgment and sentence notified Casey that noncompliance with the conditions of community custody could result in his return to prison to serve the balance of the community custody term:

If the defendant fails to comply with conditions of supervision as defined by the Department, he/she shall be sanctioned. Sanctions may include reclassification by the Department to serve the balance of the unexpired term of sentence.

The DOC released Casey to begin serving his community custody term on September 5, 2012. Upon release, the DOC provided documents to Casey notifying him of the conditions of supervision. The DOC also provided a document

to Casey informing him of his eligibility for the "swift and certain violation process." According to this document, an initial low level violation would be addressed by a stipulated agreement. Subsequent low level violations, up to 5, would be addressed through sanctions of short term confinement for up to 3 days. Any high level violation or subsequent low level violations would be addressed through an in-custody hearing process. A finding of guilty following an in-custody hearing would result in a sanction of up to 30 days in confinement.

In March 2014, Casey's community corrections officer (CCO) filed a notice of violation alleging that Casey violated the conditions of supervision by, among other things, failing to report to the Department on or after January 28, 2013, and failing to provide proof that he had obtained a chemical dependency evaluation. According to the CCO's report, Casey had been sanctioned on six previous occasions for violations of conditions of supervision. The previous sanctions were imposed for Casey's failure to report to the Department, failure to report for treatment, and drug and alcohol use. The previous sanctions were also imposed according to the swift and certain violation process and three days of confinement was ordered in each instance.¹ The CCO characterized Casey's adjustment to supervision as "atrocious" and recommended revocation of Casey's DOSA sentence.

At the hearing, Casey pleaded guilty to each of the 4 alleged violations. He did not challenge the Department's authority to revoke his DOSA. He admitted that

¹ According to supplemental documents the DOC provides, there was also a previous in-custody violation hearing not mentioned in the CCO's report that took place approximately two months before the hearing at issue. Casey pleaded guilty to four violations of community custody and the Department imposed a sanction of 30 days of confinement.

during the period that he failed to report, he was avoiding contact with the Department because he thought he would be sent back to prison. The hearing officer revoked Casey's DOSA. Casey filed two levels of administrative appeals. On appeal, he claimed that the hearing officer revoked his DOSA based on the belief that DOSA sentences are impossible to complete. He also argued that instead of revocation, he should have been transferred to inpatient treatment.

In accordance with the minimal due process required for DOSA revocation proceedings, the DOC provided Casey with notice of the violations, disclosed the evidence against him, presented him with an opportunity to be heard and to present testimony and evidence before a neutral hearing body, accorded him a limited right to confront adverse witnesses, and provided him with a written statement of the decision and the sanction imposed. See In re Pers. Restraint of McKay, 127 Wn. App. 165, 168-689 n.7, 110 P.3d 856 (2005); see also Morrissey v. Brewer, 408 U.S. 471, 408, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

Casey does not challenge the process provided at the hearing. Instead, he argues that having notified him of his eligibility for the swift and certain violation process, the DOC's authority was limited to imposing sanctions in accordance with that process. Therefore, the maximum sanction that could be imposed was 30 days of confinement.

As the DOC points out, the judgment and sentence clearly notified Casey that his DOSA could be revoked if he failed to comply with the conditions of supervision. Nothing in the DOC form nullified or superseded the provisions of the judgment and sentence. Under RCW 9.94A.662(3), when an offender is subject to

a prison-based DOSA sentence, "If the department finds that conditions of community custody have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence."

And, as the DOC maintains, the swift and certain structured violation process applies to all offenders subject to community custody, including those serving DOSA sentences, and the DOC is required by statute to notify offenders of the violation process. See RCW 9.94A.737(1). The Department concedes that when it imposes a sanction under RCW 9.94A.737, it is subject to the limits imposed under that statute. But where, as here, the Department imposes the sanction of revocation under the DOSA statute, Casey fails to establish that the Department's authority to revoke is affected or constrained by the process outlined in RCW 9.94A.737. See In re Pers. Restraint of Price, 157 Wn. App. 889, 909, 240 P.3d 188 (2010) ("the legislature's command in former RCW 9.94A.737(3) that the DOC 'develop hearing procedures and a structure of graduated sanctions' did not impede the DOC's power to revoke [petitioner's] DOSA sentences.").

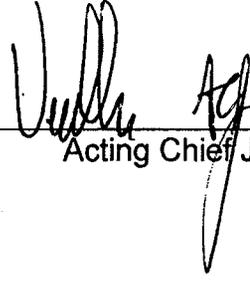
In sum, the provisions of RCW 9.94A.737 do not prohibit the Department from revoking a DOSA sentence under the authority of RCW 9.94A.662. Casey fails to demonstrate that the DOC violated his right to due process by revoking his DOSA.

Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed under RAP

16.11 (b).

Done this 8th day of October, 2015.



Acting Chief Judge

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STATE OF WASHINGTON
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