

**COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON**

<b>In the Matter of the Personal Restraint</b>	)	<b>32628-4-III, consolidated with</b>
<b>of:</b>	)	<b>32797-3-III, 32798-1-III</b>
	)	
	)	
<b>AMEL W. DALLUGE,</b>	)	
	)	<b>ORDER DISMISSING PERSONAL</b>
<b>Petitioner.</b>	)	<b>RESTRAINT PETITIONS</b>
	)	

Amel W. Dalluge seeks relief from personal restraint imposed by Department of Corrections (DOC) conditions imposed during community custody served on three Grant County convictions: a 2004 conviction of possession of methamphetamine (petition no. 327697-3-III), a 2006 conviction of third degree assault (petition no. 32798-1-III), and a 2007 conviction of second degree assault (petition no. 32628-4-III). Mr. Dalluge contends the DOC is harassing him with prohibitions on consumption of marijuana and alcohol, and asserts that these conditions have been imposed beyond the statutory maximums for his offenses.

Because Mr. Dalluge has had no prior opportunity for judicial review of these community custody conditions imposed by the DOC, he need only show that he is unlawfully restrained. RAP 16.4; *In re Pers. Restraint of Dalluge*, 162 Wn.2d 814, 817,

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177 P.3d 675 (2008). He is under restraint to the extent that he is subject to continuing supervision in the community by the DOC. *In re Pers. Restraint of Crowder*, 97 Wn. App. 598, 599 n.3, 985 P.2d 944 (1999). That restraint is unlawful if the DOC's action is unconstitutional or violates state law. *In re Pers. Restraint of Liptrap*, 127 Wn. App. 463, 469, 111 P.3d 1227 (2005). Restraint is also unlawful if the DOC failed to comply with its own rules or regulations. *In re Pers. Restraint of Cashaw*, 123 Wn.2d 138, 149, 866 P.2d 8 (1994). Mr. Dalluge must not rely on conclusory allegations, but must show with a preponderance of the evidence that the unlawful action caused him prejudice. *In re Pers. Restraint of Lord*, 152 Wn.2d 182, 188, 94 P.3d 952 (2004).

It must first be noted that the DOC is not supervising Mr. Dalluge for his 2007 conviction because that conviction was reversed. *See State v. Dalluge*, unpub. op'n no. 26404-1-III (Wa. Ct. App. 2013). Accordingly, he cannot show that he is unlawfully restrained under that cause number (petition number 32628-4-III). RAP 16.4.

Although Mr. Dalluge is still under restraint related to the conditions of community custody for the 2004 and 2006 convictions, he fails to show that this restraint is unlawful. Former RCW 9.94A.715(2)(b) (2001) (now codified in relevant terms in RCW 9.94A.704(2)(a)) authorized the DOC to perform a risk assessment and impose conditions based on the risk to community safety. "The statute grants DOC broader authority than that given the trial courts in order to follow up on the department's duty to

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conduct an individualized risk assessment.” *In re Pers. Restraint of Golden*, 172 Wn. App. 426, 433, 290 P.3d 168 (2012). The only statutory limitation is that the department may not impose conditions that contravene or decrease court-imposed conditions. Former RCW 9.94A.715(2)(c); RCW 9.94A.704(6). Here, the DOC assessed Mr. Dalluge’s risk to the community and imposed prohibitions on his consumption of alcohol and marijuana. These conditions do not conflict with any conditions imposed by the trial court and were within the authority of the DOC.

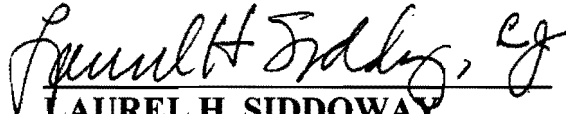
Mr. Dalluge also contends his terms of community custody exceed the statutory maximum for his crimes. Each of his offenses in the 2004 and 2006 convictions were class C felonies, with a statutory maximum sentence of five years. RCW 69.50.401(2)(d) (possession of methamphetamine); RCW 9A.36.031(1)(g) (third degree assault of an officer); RCW 9A.20.021(1)(c). The trial court imposed a sentence of 12+ months plus 9 to 12 months of community custody for the 2004 conviction, and 35 months plus 9 to 18 months of community custody for the 2006 conviction. Neither sentence exceeds the statutory maximum of five years. According to records supplied by the DOC, the terms of community custody were properly tolled during those time periods that Mr. Dalluge had absented himself from supervision or that he was in confinement. Former RCW 9.94A.625 (2000) (now RCW 9.94A.171(2), (3)(a)). (“Tolling” means a pause in community custody that is not credited toward the community custody term. RCW

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9.94A.171(5).) Thus, he fails to show with a preponderance of the evidence that his terms of community custody exceeded the statutory maximum.

His petition is dismissed. RAP 16.11(b). The court also denies his request for appointment of counsel. *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 390, 972 P.2d 1250 (1999); RCW 10.73.150.

DATED: April 8, 2015

  
LAUREL H. SIDDOWAY  
CHIEF JUDGE