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

IN THE MATTER OF THE PERSONAL RESTRAINT OF:	)	No. 72977-2-I
JOHN ROBERT DEMOS, JR., a/k/a/ PRINCE NARALLA NARAYBIN[1],	)	ORDER DISMISSING PERSONAL RESTRAINT PETITION
Petitioner.	)	

John Demos files this personal restraint petition challenging two decisions by the Indeterminate Sentence Review Board (ISRB) denying him parole and extending his minimum sentence, as well as two prison disciplinary hearings. In order to obtain relief by means of a personal restraint petition, Demos bears the burden of showing 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). Because Demos fails to meet this burden, the petition must be dismissed.

1. ISRB Decisions

On June 9, 1978, Demos was sentenced to a maximum term of 10 years for attempted first degree rape and a maximum term of life for first degree burglary. At the time Demos committed the crimes, he was on parole for a previous sexually motivated offense, which resulted in the revocation of his parole. Demos began serving the sentence for the current offense on September 9, 1978, after finishing

[1] Demos attaches a copy of an order from Walla Walla County District Court legally changing his name from "John Robert Demos, Jr." to "Prince Naralla Naraybin."

the prior sentence. Demos has had nine parolability hearings, the most recent being in 2012 and 2014, which are at issue in this petition.

The ISRB may not release an offender prior to the expiration of the maximum term unless "in its opinion his or her rehabilitation has been complete and he or she is a fit subject for release." RCW 9.95.100. 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). An abuse of discretion may be found where the ISRB fails to follow its own procedural rules for parolability hearings or where the ISRB bases its decision on speculation and conjecture only. 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).

Demos first challenges the ISRB's calculation of his sentence time start date. "An individual's sentence will begin on the date the judgment and sentence is signed." WAC 381-30-170. Demos contends, without citation to authority, that an incorrect sentence time start date deprives the ISRB of jurisdiction. But, as explained above, Demos's sentence time start date was properly delayed for Demos to finish serving a prior sentence.

Demos next contends that, in its 2012 and 2014 decisions, the ISRB failed to submit adequate written reasons to support the finding that he was not parolable. He claims the ISRB failed to follow RCW 9.95.009(2) requiring that its decisions

on duration of confinement be reasonably consistent with SRA purposes, standards, and sentencing ranges, and instead simply relied on the unchangeable circumstances of his crime rather than evidence of any lack of rehabilitation. He also contends that the ISRB merely relied on "speculation and conjecture" as well as the "unchangeable circumstances" of his underlying offenses.

But RCW 9.95.009(3) directs the ISRB to give public safety considerations the highest priority when making parole decisions. "[B]etween a statutory duty requirement that a prisoner is not to be released until rehabilitation is complete and a duty to attempt consistency with the SRA, the statutory requirement trumps the duty to attempt." Addleman, 151 Wn.2d at 775. "Examples of reasons for decisions not conforming to the SRA at parole hearings would be insufficient rehabilitation and improper parole plans." Addleman v. Board of Prison Terms, 107 Wn.2d 503, 511, 730 P.2d 1327 (1986).

In its 2012 written decision, the ISRB noted:

> The Psychological Evaluation completed by Dr. McKinney on April 9, 2012 rates Mr. Demos to be at high risk for recidivism and in the moderate to high range for sexual and violent re-offense and escape. The report notes..."His ongoing and entrenched denial of his behavior in all of his sexual convictions has provided a significant block to his ability to participate in much needed sexual offender assessment and treatment...." The evaluation concludes that reducing these risks necessitates a significant decrease in disciplinary action, participation in chemical dependency treatment, cooperative participation in an evaluation by a Certified Sex Offender Treatment Provider, which includes polygraph and plethysmograph testing and follow up with treatment recommendations with a sexual offender treatment program.
>
> Mr. Demos has not demonstrated rehabilitation in any fashion and is not a candidate for parole. He does have significant mental

> health diagnoses and needs that are not being addressed due to his own resistance, actions and subsequent placement in and transfer in/out of several facilities whose focus have had to be on his chronic "misbehavior."

In its 2014 written decision, the ISRB noted:

> The last time the Board saw Mr. Demos was on May 15, 2012 when he was found not parolable and 36 months were added to his minimum term. Since then he has incurred at least 10 new serious infractions, for a total of at least 132 and is currently assigned to the Intensive Management Unit in Close Custody.
>
> Mr. Demos had been transferred to TRU for the Sex Offender Treatment Program (SOTP), but told others he was not guilty and is not a sex offender. He told them he "jumped through the hoops" to get into SOTP because the ISRB wanted him to participate. When asked about this, he claimed that he wanted to be in the program, "...but they kicked me out." When asked about his serious infractions, he gave a meandering account of how DOC staff were conspiring against him and that he "requested protective custody...I believe I was going to be killed." He said that he did want to be released and "will keep my nose clean and stay out of trouble," but then protested that he was not "willing to do what was necessary to stop infractions," again due to a conspiracy against him.
>
> The Board has tried to work with Mr. Demos so that he might be willing to demonstrate a desire to rehabilitate himself, with no apparent cooperation on his part. Unless his attitude and behavior improves dramatically he has limited the possibility for parole consideration. If this changes and he completes offender change programming and treatment the Board may consider seeing him prior to his next PERD.

According to its written decision, the ISRB extended Demos's minimum term based on his lack of rehabilitation. It did not basis its decision on speculation and conjecture, nor the unchangeable facts surrounding his crimes. There was an adequate basis for the denial of parole and the extension of Demos's minimum term.

Demos next contends that the ISRB's 2012 and 2014 decisions are void because they are not signed by the ISRB members. Demos cites a variety of unrelated authority involving signatures on fraudulent checks and grand jury indictments. But Demos points to no authority that ISRB members are required to sign its decisions. As the ISRB points out, Demos may be contemplating WAC 381-30-180, which provides in part "[o]rders fixing the new minimum term will be signed by the members who fixed the term." However, this involves new minimum terms of parole violators, which are set by the ISRB within thirty days of the offender's readmission. WAC 381-30-050. This requirement is not at issue here.

Demos next contends that he was not given the opportunity to rebut adverse information in his file that was presented at the hearings. Due process at an ISRB parolability hearing requires that an offender be advised "of adverse information in the inmate's file and the opportunity to rebut or to explain adverse file information." In re Pers. Restraint of Whitesel, 111 Wn.2d 621, 630, 763 P.2d 199, 203 (1988). But Demos does not identify with any specificity what information he was unable to challenge. Moreover, the record does not appear to support Demos's claim, as Demos was represented by counsel at both hearings and gave lengthy explanations and justifications at both parolability hearings regarding his infraction behavior, mental health treatment, and refusal to engage in rehabilitative programming.

Demos next asserts that the ISRB lacked authority to conduct hearings in 2012 and 2014 because RCW 9.95.003 requires that the ISRB have four

members.[2] However, RCW 9.95.009 provides that, after July 1, 1986, the ISRB may have as few as three members. Demos also contends that RCW 9.95.003 is silent as to the qualifications of ISRB members, asking whether ISRB members must "be a certain race, or ethnic origin" or "have a law degree, a degree in psychology or a degree in criminology." But Demos's questions have no bearing on the legality of his restraint.

Demos contends that the ISRB violated its own regulations because the 2012 and 2014 decisions were not based on a full ISRB vote. WAC 381-30-120 provides "[i]n those cases where the board panel conducting a minimum term review cannot agree as to the term, a deferred decision shall occur and such cases will be referred to the full board for resolution." However, in both 2012 and 2014 Demos's case was referred to the full board for resolution, and all of the ISRB members unanimously agreed to deny parole.

Demos contends that the decisions extending his minimum term constitute an "exceptional sentence" and must be tried to a jury based on Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). However, in State v. Clarke, 156 Wn.2d 880, 885-86, 134 P.3d 188, (2006), our Supreme Court addressed this very issue and held that Blakely does not apply to an exceptional minimum sentence imposed under RCW 9.94A.712 because the statutory maximum sentence under that provision is mandatory, not the outside limit of available sentences.

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[2] RCW 9.95.003 provides: "The board shall consist of a chair and four other members, each of whom shall be appointed by the governor with the consent of the senate."

Finally, Demos contends that the 2014 decision is "silent as to the nature, and risk factor interposed in his latest psychological evaluation." However, it is unclear as to what psychological evaluation Demos refers to. The 2014 decision indicates that the ISRB "completed a review of [Demos's] DOC and ISRB files...[and] considered all information contained in those files, including but not limited to...psychological evaluations." To the extent Demos contends that the 2014 evaluation does not specifically reference the evaluation discussed at length in his 2012 decision, Demos does not identify how this constitutes error.

2. Disciplinary Hearings

Demos challenges the sanctions imposed following two prison disciplinary hearings.

On May 8, 2014, Demos was infracted for violating WAC 137-25-030 (509) (refusing a direct order by any staff member to proceed to or disperse from a particular area). A hearings officer found Demos guilty of the infraction and sanctioned him to 5 days in segregation and 5 days in isolation.

Demos's sole claim regarding this infraction is that he "was not given or afforded a full and fair hearing" because the associate superintendent who reviewed Demos's appeal of the hearing officer's decision reviewed only the guilty finding, not the sanction imposed. But the record does not support Demos's claim because the appeal decision notes that the associate superintendent upheld both the guilty finding and the sanction. In any event, Demos's claim, regardless of its merit, is moot. See In re Pers. Restraint of Cross, 99 Wn.2d 373, 376-77, 662 P.2d 828 (1983) (a claim is moot if the court can provide no effective

relief). Because Demos confines his challenge to the sanctions imposed, not the guilty finding itself, and the sanctions imposed did not include the loss of good conduct or earned time, there is no effective relief this court can provide.

On May 15, 2014, Demos was infracted for violating WAC 137-25-030 (549) (providing false or misleading information during any stage of an investigation of sexual misconduct). The infraction report states: "John Demos, DOC 287455 submitted a PREA allegation and a subsequent investigation was initiated. As a result of the investigation it was determined Demos provided inconsistent and fabricated information against staff. The outcome of the investigation was unfounded. Due to the fact Demos provided false or misleading information during an investigation of sexual misconduct he is in violation of WAC 549." A hearings officer found Demos guilty of the infraction and sanctioned him to 5 days in isolation.

Demos contends that the infraction report was defective and that the guilty finding was not supported by sufficient evidence because there was no recorded audio evidence of the incident. But review of prison disciplinary proceedings is limited to a determination of whether the action taken was so arbitrary and capricious as to deny the inmate a fundamentally fair proceeding. In re Pers. Restraint of Reismiller, 101 Wn.2d 291, 294, 678 P.2d 323 (1984). A disciplinary proceeding is not arbitrary and capricious if the inmate was afforded the applicable minimum due process protections and the decision was supported by at least some evidence. In re Pers. Restraint of Krier, 108 Wn. App. 31, 38, 29 P.3d 720 (2001). Due process requires that an inmate facing a disciplinary

hearing receive adequate notice of the alleged violation, an opportunity to present documentary evidence and call witnesses when not unduly hazardous to institutional safety and correctional goals, and a written statement of the evidence relied upon and the reasons for the disciplinary action. In re Pers. Restraint of Gronquist, 138 Wn.2d 388, 396-97, 978 P.2d 1083 (1999). This court will not re-weigh the evidence considered by the hearing officer. In re Pers. Restraint of Johnston, 109 Wn.2d 493, 497, 745 P.2d 864 (1987). Bare assertions and conclusory allegations are not sufficient to command judicial consideration and discussion in a personal restraint proceeding. In re Pers. Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992).

Here, the record provided by Demos shows that he received adequate notice of the allegations, enabling him to submit lengthy written briefing and provide testimony in his own defense at the hearing. The minutes and findings from the disciplinary hearing show that the hearings officer found Demos guilty based on "[w]ritten staff testimony that offender provided false or misleading information during an investigation of sexual misconduct." Demos fails to meet his burden to show that minimum due process protections were not met.

In reply, Demos raises a variety of new claims involving his alleged status as a "foreign national of Morocco," alleged deficiencies in his charging document and judgment and sentence, and the ISRB's jurisdiction over a "pre-trial detainee." He also moves to vacate the mandate in his direct appeal. However, this court will not consider issues raised and argued for the first time in a reply brief. State v. Clark, 124 Wn.2d 90, 95-96 n.2, 875 P.2d 613 (1994).

Now, therefore, it is hereby

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

Done this 9th day of November, 2015.

Acting Chief Judge

RICHARD D. JOHNSON,
Court Administrator/Clerk

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of the
State of Washington

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November 9, 2015

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CASE #: 72977-2-I
Personal Restraint Petition of John Robert Demos, Jr.

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

law

enclosure

Hoyt, Trina (ATG)

From: ATG MI COR Oly CE Reader
Sent: Monday, November 09, 2015 12:18 PM
To: Hoyt, Trina (ATG)
Subject: FW: COURT OF APPEALS 72977-2-I Personal Restraint Petition of John Robert Demos, Jr.
Attachments: 72977-2 Demos - 11.9.15 letter.pdf; 72977-2 Order Dismissing.pdf

Importance: High

From: Wise, Laurel [mailto:Laurel.Wise@courts.wa.gov]
Sent: Monday, November 09, 2015 12:07 PM
To: Larson, Ronda (ATG); ATG MI COR Oly CE Reader; Dittman, John (ATG)
Subject: COURT OF APPEALS 72977-2-I Personal Restraint Petition of John Robert Demos, Jr.
Importance: High

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The attached order is being transmitted to counsel electronically. No hard copy will follow.