

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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COURT OF APPEALS  
DIVISION II  
2015 JUN 23 AM 11:02  
STATE OF WASHINGTON  
BY DEPUTY

In re the  
Personal Restraint Petition of  
  
JAREL E. ELLIOTT,  
  
Petitioner.

No. 47131-1-II

ORDER DISMISSING PETITION

Jarel E. Elliott seeks relief from personal restraint imposed after he pleaded guilty in 2008 to murder in the second degree while armed with a deadly weapon. Elliott contends that the Department of Corrections (DOC) erred in running his sentence for this offense consecutively to an existing DOSA-revoke sentence.<sup>1</sup>

To obtain relief, Elliott must show that his restraint is unlawful. *In re Pers. Restraint of Cashaw*, 123 Wn.2d 138, 148-49 (1994); RAP 16.4(a), (c). Elliott committed murder while under DOSA supervision for a felony committed in 2005. As a consequence, DOC revoked his DOSA sentence and Elliott returned to prison to serve the remaining time from the community custody portion of his DOSA sentence. His 2008 judgment and sentence for the murder conviction stated that “[t]he sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced.” Response, Ex. 3 at 5. DOC set the start

<sup>1</sup> DOSA is an abbreviation for a Drug Offender Sentencing Alternative imposed under RCW 9.94A.660.

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date for the murder sentence as the date that Elliott finished serving confinement time on the DOSA-revoke cause.

Whenever a person under sentence for conviction of a felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until the prior term expires. RCW 9.94A.589(2)(a). Persons serving community supervision are “under sentence of felony” and must serve their underlying terms before the terms for subsequent felony convictions start. *State v. Roberts*, 76 Wn. App. 290, 291-92 (1994).

In arguing that he is entitled to relief, Elliott relies on *Dress v. Wash. State Dept. of Corr.*, 168 Wn. App. 319 (2012). In *Dress*, an offender committed six crimes in Snohomish County while serving a DOSA sentence from King County. 168 Wn. App. at 323. The Snohomish County sentence stated that it would run concurrently to any other felony sentence not referred to in the judgment, and the judgment did not refer to the King County cause. *Dress*, 168 Wn. App. at 328. The Court of Appeals held that DOC lacked authority to run the sentences consecutively without obtaining a corrected judgment and sentence from the trial court. *Dress*, 168 Wn. App. at 329.

Elliott’s 2008 judgment and sentence clearly states that his murder sentence is to run consecutively with any previous felony sentence. Elliott complains in his reply brief that DOC stopped the sentence on his 2008 conviction so that he could serve his DOSA-revoke sentence, but this decision was not error given the consecutive nature of these sentences.

Because DOC did not err in running his 2008 sentence consecutively to his 2005 DOSA-revoke sentence, Elliott fails to show that he is under unlawful restraint.

Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b), and the petitioner's request for the appointment of counsel is denied.

DATED this 23<sup>rd</sup> day of June, 2015.

  
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Acting Chief Judge, Pro Tem

cc: Jarel E. Elliott  
Dept. of Corrections  
Pierce County Cause Nos. 05-1-02231-2; 07-1-00776-0  
Timothy N. Lang, Department Of Corrections  
Mandy L. Rose, Assistant Attorney General, Corrections Division