

FILED
Mar 07, 2022
Court of Appeals
Division III
State of Washington

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Personal Restraint)	No. 38331-8-III
of:)	
)	
CHAD WEST FAIRCLOTH,)	ORDER DISMISSING PERSONAL
)	RESTRAINT PETITION
)	
Petitioner.)	

Chad West Faircloth seeks relief from claimed unlawful personal restraint after a Department of Corrections (DOC) hearing officer revoked his Drug Offender Sentencing Alternative (DOSA) sentence. Due to community custody condition violations, the DOC sanctioned Mr. Faircloth to serve the remainder of his community custody term in prison. This petition followed.

On October 4, 2014, Mr. Faircloth was convicted upon plea of guilty of eleven felonies. The superior court imposed a prison-based DOSA sentence totaling 157 months—78.75 months of incarceration and 78.75 months of community custody.

Following his prison term, the DOC released Mr. Faircloth to community custody

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on December 12, 2018. A few weeks later, Mr. Faircloth violated conditions of his community custody.

On November 19, 2019, the DOC held a DOSA violation hearing at the Grant County Jail. The transcript from the hearing shows Mr. Faircloth was present and participated in the hearing. Ultimately, Mr. Faircloth pleaded guilty to three violations: failing to report to Community Corrections Officer, failing to abide by drug and alcohol testing, and failing to enter outpatient treatment. The hearing officer revoked Mr. Faircloth's DOSA sentence and reclassified him to prison.

Mr. Faircloth filed this personal restraint petition with this Court on July 29, 2021. Since Mr. Faircloth is challenging a DOC decision for which he has had "no previous or alternative avenue for obtaining state judicial review," he must show that he is under restraint and that the restraint is unlawful. *See In re Pers. Restraint of Dalluge*, 162 Wn.2d 814, 817, 177 P.3d 675 (2008); RAP 16.4(a)-(c). A petitioner may obtain relief by showing a federal or state constitutional violation or violation of the laws of the State of Washington. RAP 16.4(c)(2). To avoid dismissal, a personal restraint petition must be supported by facts and not merely bald or conclusory allegations. *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 813-14, 792 P.2d 506 (1990).

In his petition, Mr. Faircloth asserts one ground for relief. He claims he was not present for the DOSA revocation hearing and did not waive his right to be present as

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required by former WAC 137-24-040(1), (6) (2014).¹ Mr. Faircloth argues his signature is missing from the DOC's Hearing and Decision Summary Report. This is the only evidence he provides as proof that he was not present at the hearing. Mr. Faircloth asks this Court to reinstate his DOSA sentence.

Mr. Faircloth cites *In re Pers. Restraint Petition of Cashaw*, 123 Wn.2d 138, 866 P.2d 8 (1994), for the proposition that DOC's failure to follow procedural regulations entitles him to relief. In *Cashaw*, the Washington Supreme Court held the petitioner was entitled to relief under RAP 16.4 because the Indeterminate Sentencing Review Board had violated its own regulations when it extending the expiration of the petitioner's maximum term without providing the petitioner notice and an in-person hearing. *Cashaw*, 123 Wn.2d at 141, 149. Mr. Faircloth does not make a similar showing.

DOC regulations provide that an offender has the right to receive written notification of an alleged DOSA violation and the right to be present during the fact-finding and disposition phases of the revocation hearing. Former WAC 137-24-040(1), (6) (2014); *In re Pers. Restraint Petition of Schley*, 191 Wn.2d. 279, 286, 191 Wn.2d 278 (2018); *State v. Dahl*, 139 Wn.2d 678, 683, 990 P.2d 396 (1999) (discussing minimal due process rights for a DOSA revocation hearing, which includes an opportunity to be heard). The only evidence Mr. Faircloth relies upon is his missing signature on the


¹ Mr. Faircloth references Chapter 137-104 WAC, but that chapter deals with community custody violation hearings and Mr. Faircloth's hearing was a DOSA

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hearing summary document, however, all other evidence suggests Mr. Faircloth was notified of the hearing, was present at the hearing, and participated in the hearing.

Mr. Faircloth makes a conclusory, bald assertion and presents no claim in this petition that presents a debatable issue of fact or law. Accordingly, the petition is dismissed as frivolous pursuant to RAP 16.11(b).



LAUREL SIDDOWAY
ACTING CHIEF JUDGE

revocation hearing, which are governed by Chapter 137-24 WAC.