

Hoyt, Trina (ATG)

From: ATG MI COR Oly CE Reader
Sent: Wednesday, September 23, 2015 1:25 PM
To: Larson, Ronda (ATG); ATG MI COR OLY LA EF; Hoyt, Trina (ATG)
Subject: FW: D2 473542--PRP Warren L. Forrest--Order
Attachments: Order Dismissing Petition - PRP Forrest.pdf

Importance: High

From: Cleveland, Kim [<mailto:kim.cleveland@courts.wa.gov>]
Sent: Wednesday, September 23, 2015 1:24 PM
To: ATG MI COR Oly CE Reader
Cc: Cleveland, Kim
Subject: D2 473542--PRP Warren L. Forrest--Order
Importance: High

Office Hours
9:00 am to 12:00 pm
1:00 pm to 4:00 pm

You may file documents electronically as provided below. Briefs are considered filed as of the postmark date. RAP 18.6(c). Briefs may only be filed electronically through the portal website. Close of business remains 5 pm.

To Counsel and Interested Parties:

Attached is an Order filed today, 9/23/2015. (copy sent to Mr. Forrest USPS!)

This will be the only notice you will receive from the court.

The court requests that motions and other correspondence be sent to coa2filings@courts.wa.gov, or, if counsel has a JIS USERID (can access SCOMIS/ACORDS), please use the newly established attorney portal at <http://www.courts.wa.gov/coa2efiling>. If you have difficulty accessing or using either method, please contact this office. When filing electronically, please do NOT follow up with a paper copy.

Please contact the court at (253) 593-2970 if you have any questions or comments.

Thank you.

Kim S. Cleveland
Case Manager

*Pending
Served*

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the
Personal Restraint Petition of

WARREN L. FORREST,

Petitioner.

No. 47354-2-II

ORDER DISMISSING PETITION

FILED
COURT OF APPEALS
DIVISION II
2015 SEP 23 AM 9:16
STATE OF WASHINGTON
BY DEPUTY

Warren L. Forrest has filed a personal restraint petition challenging the decision of the Indeterminate Sentence Review Board (Board) to deny him parole and add five years to his minimum term. Forrest claims that the Board improperly based its decision on his unwillingness to admit his guilt to unadjudicated offenses. Forrest further argues that the Board failed to consider the evidence of his rehabilitation and relied instead on speculation and conjecture.

To be entitled to relief, Forrest must show that he is under restraint and that the restraint is unlawful. *In re Pers. Restraint of Cashaw*, 123 Wn.2d 138, 149, 866 P.2d 8 (1994); RAP 16.4(a), (c). Under RAP 16.4(c)(2), a petitioner may obtain relief by showing either a constitutional violation or a violation of state law.

In 1979, the Clark County Superior Court sentenced Forrest to a maximum term of life in prison following his conviction of murder in the first degree. After he was admitted to prison, the Board (then the Board of Prison Terms and Paroles) set an exceptional minimum term of 628 months. As Forrest neared the expiration of his

minimum term, the Board held his first parolability hearing on February 19, 2014. In denying parole, the Board relied on a 2013 forensic psychological evaluation concluding that a relapse was likely if Forrest was not incarcerated. The Board also considered Forrest's criminal history as well as the fact that he had made some progress in a sex offender treatment program (SOTP). Some of the Board's reasoning in denying parole follows:

Based solely on the documented history available to the Board, Mr. Forrest should be considered one of the most dangerous offenders under our jurisdiction. There remains, however, the distinct possibility that Mr. Forrest may have been involved in substantially more criminal activity. He remains a person of interest for several unsolved missing persons cases in the Clark County area and his unwillingness to "fully disclose" had a significant impact on his participation in the SOTP. It also made it difficult to conduct a comprehensive hearing. Mr. Forrest's attorney indicated that there was an unwillingness to fully disclose due to his client's "self-preservation."

.....
Mr. Forrest's therapist testified that he would not fully disclose on what violence may have occurred on unadjudicated victims and that other problems resulted from his not fully discussing violence in other victims and or exploring his homicidal behaviors.

.....
To Mr. Forrest's credit, he did attend treatment and made some progress despite the limitations of his disclosure. It is understandable that Mr. Forrest is reluctant to be more forthcoming about other criminal behavior for fear of additional prosecution. The Board believes that all things considered Mr. Forrest presents too great of a risk to consider for release at this time.

Response to Petition, Ex. 3, at 5-6, 7.

Judicial review of sentences imposed before the passage of the Sentencing Reform Act of 1981, chapter 9.94A. RCW, is limited to whether the Board abused its discretion in denying parole and setting a new minimum term. *In re Pers. Restraint of Paschke*, 57 Wn. App. 907, 911, 790 P.2d 1250 (1990). As a matter of law, it is presumed that an indeterminate offender will remain incarcerated for the full term of his

maximum sentence. RCW 9.95.100. An indeterminate offender may be released only if the Board determines he is both rehabilitated and a fit subject for release, or if the maximum sentence has been served. RCW 9.95.100; *In re Pers. Restraint of Bible*, 69 Wn. App. 394, 398, 845 P.2d 1336 (1992). In making parole decisions, the Board must give public safety considerations the highest priority. RCW 9.95.009(3). Although a prisoner's lack of rehabilitation is a sufficient reason to impose an exceptional new minimum term, the Board may not rely on mere conjecture in making its decision. *In re Pers. Restraint of Dyer*, 157 Wn.2d 358, 369, 139 P.3d 320 (2006); *In re Pers. Restraint of Ecklund*, 139 Wn.2d 166, 176, 985 P.2d 342 (1999).

In *Ecklund*, the Supreme Court held that the Board was justified in considering an offender's denial of guilt regarding his underlying conviction as a fact bearing on whether he had been rehabilitated and whether he presented a threat to community safety. 139 Wn.2d at 177. The court cited with approval the Ninth Circuit's statement that "the first step toward rehabilitation of an offender is the offender's recognition that he was at fault." *Ecklund*, 139 Wn.2d at 176 (citing *Gollaher v. United States*, 419 F.2d 520, 530 (9th Cir. 1969)). The court determined that the Fifth Amendment privilege against self-incrimination does not apply to minimum term settings. *Ecklund*, 139 Wn.2d at 172-73 (citing *State v. King*, 130 Wn.2d 517, 529, 925 P.2d 606(1996)).

Nonetheless, Forrest argues that the Board's conditioning of parole on his confession to unproven offenses violates the unconstitutional conditions doctrine. This doctrine of unconstitutional conditions provides that the government cannot condition the receipt of a government benefit on the waiver of a constitutionally protected right. *Dyer*, 175 Wn.2d at 203.

In *Dyer*, the Supreme Court declined to find a violation of the unconstitutional conditions doctrine where an offender refused to admit that he was guilty of the offense that led to his indeterminate sentence. 175 Wn.2d at 203. While parole could not be denied solely on the basis that the offender refused to admit his guilt, the Board was justified in considering that denial and a lack of treatment as facts bearing on whether the offender had been rehabilitated and presented a threat to community safety. *Dyer*, 175 Wn.2d at 203. Even if admission was a condition of release, that condition did not constitute a waiver of a constitutionally protected right because inmates have no liberty interest in being released before serving their maximum sentence. *Dyer*, 175 Wn.2d at 203. Because there was no basis to claim that the Board was conditioning the privilege of parole on the offender's waiver of a constitutional right, the Board's decision did not violate the doctrine of unconstitutional conditions. *Dyer*, 175 Wn.2d at 203.

This analysis undermines Forrest's claim that the unconstitutional conditions doctrine applies to his parole denial. Furthermore, the Board did not condition parole on Forrest's confession to unproved crimes. Rather, the Board concluded that Forrest had not been fully rehabilitated after it reviewed evidence that included Forrest's own admissions regarding other offenses, the findings that followed his SOTP treatment, and the separate psychological evaluation. This evidence fully supports the Board's conclusion regarding Forrest's lack of rehabilitation.

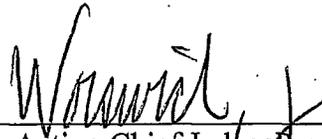
Forrest argues further that the Board's consideration of unadjudicated crimes violated the real facts doctrine. *See State v. Morreira*, 107 Wn. App. 450, 458, 27 P.3d 639 (2001) (sentencing court may not base exceptional sentence on unproved or uncharged crime). This doctrine applies to sentencing rather than parolability hearings.

The Board is expressly authorized to consider all relevant evidence in deciding whether to grant parole. WAC 381-60-150; *see also In re Pers. Restraint of Haynes*, 100 Wn. App. 366, 371, 996 P.2d 366 (2000) (any fact or consideration demonstrating that inmate is not fit for release is sufficient for finding of non-parolability). The Board did not violate the real facts doctrine in considering the evidence presented. Nor did it abuse its discretion in denying Forrest parole.

Forrest's claim that he is under unlawful restraint fails. 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 23rd day of September, 2015.



Acting Chief Judge, Pro Tem

cc: Warren L. Forrest
Clark County Clerk
Clark County Cause No. 10-264
Ronda D. Larson, Assistant Attorney General, Corrections Division