

FILED
Jan 11, 2021
Court of Appeals
Division III
State of Washington

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

**In the Matter of the Personal Restraint
of:**

DANIEL ALAN GARD,

Petitioner.

No. 37605-2-III

**ORDER DISMISSING PERSONAL
RESTRAINT PETITION**

In 2000, Petitioner Daniel Gard pleaded guilty to and was convicted of six counts of first degree rape of a child, two counts of first degree child molestation, and one count of attempted first degree escape in Spokane County Superior Court Cause Nos. 98-1-01151-4 and 98-1-01652-4. He was sentenced to 280-months' confinement. Mr. Gard's maximum sentence end date is September 10, 2021. His early release date was April 7, 2018. The Department of Corrections has declined to release Mr. Gard on and after his early release date because he meets the criteria of a Sexually Violent Predator and remains a threat to the community. Under the circumstances, Mr. Gard petitions, contending that his continued confinement is unlawful. Neither the facts nor controlling

law supports Mr. Gard's petition; therefore, the petition is dismissed as frivolous. RAP 16.11(b).

As an initial matter, Mr. Gard moved for accelerated briefing and review of his personal restraint petition. Because briefing and consideration of his petition has already occurred in the regular course of review of such petitions, Mr. Gard's motion is denied as moot.

Mr. Gard raises three issues in his petition. First, he contends that an offender who, according to a Department evaluator, meets the criteria of a Sexually Violent Predator cannot be "automatically disqualified" from consideration for early release because of community safety. Mr. Gard acknowledges that he was evaluated and deemed to meet the criteria of a sexually violent predator. In light of this determination, Mr. Gard's proposed release plan was denied "[d]ue to community concerns" because "the proposed address does not sufficiently meet the level of protection necessary to ensure the safety of the community." Response to PRP, Ex. 2, Attach. C.

According to controlling law, our supreme court's opinion in *In re Pers. Restraint of Mattson*, the determination that an offender meets the statutory definition of a sexually violent predator, i.e., someone "likely to engage in predatory acts of sexual violence if not confined in a secure facility", is a legitimate reason to deny an early release plan. 166 Wn.2d 730, 743, 214 P.3d 141 (2009). *Mattson* reversed and abrogated the law Mr. Gard relies upon to support his position. *Id.* at 733, 740-41, 743 (abrogating *In re Pers. Restraint of Dutcher*, 114 Wn. App. 755, 60 P.3d 635 (2002), and *In re Pers. Restraint of*

Liptrap, 127 Wn. App. 463, 111 P.3d 1227 (2005), and reversing *In re Pers. Restraint of Mattson*, 142 Wn. App. 130, 172 P.3d 719 (2007)).

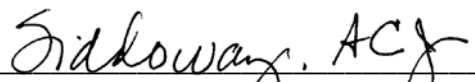
Second, Mr. Gard contends the Department cannot keep him in “extended confinement” beyond his early release date until his maximum release date, but, instead, the Department must (but has failed to) refer him to the prosecutor for a sexually violent predator civil commitment proceeding. However, Mr. Gard has no liberty interest in early release to community custody and no constitutional or inherent right to conditional release before the expiration of his 280-month sentence. 166 Wn.2d at 737, 740. Without an approved early release plan, an inmate must serve his early release time in total confinement up to the inmate’s maximum sentence end date. *In re Pers. Restraint of Capello*, 106 Wn. App. 576, 579, 24 P.3d 1074 (2001).

Moreover, the Department has no duty to refer Mr. Gard to the county prosecutor and the attorney general until “three months prior to” Mr. Gard’s “anticipated release from total confinement.” RCW 71.09.025(1)(a)(i). The statute does not define the word “anticipated.” The word’s ordinary definition is “expected or looked-forward to.” MERRIAM-WEBSTER ONLINE DICTIONARY, <https://www.merriam-webster.com/dictionary/anticipated> (last viewed Jan. 8, 2021). Because an inmate convicted of a sex offense has no *expectation* of early release, “anticipated release from total confinement” is not reasonably interpreted to refer to an inmate’s earned early release date as Mr. Gard urges. “Washington law presumes that a prisoner will serve his or her complete sentence.” *Blick v. State*, 182 Wn. App. 24, 29, 328 P.3d 952 (2014). Consistent with this presumption, an

inmate's "anticipated release from total confinement" is the end date of his maximum sentence – here, September 10, 2021. Three months prior to September 10, 2021, is June 10, 2021, which, at this time, is still in the future. The Department did not violate its duty to refer Mr. Gard for potential civil commitment proceedings, and such a referral does not entitle Mr. Gard to civil commitment proceedings in any event. It is in the prosecutor's discretion to initiate civil commitment proceedings. RCW 71.09.030(1).

Finally, Mr. Gard contends it is cruel and unusual punishment to incarcerate him beyond his early release date until his maximum release date rather than transfer him to the Department of Social and Health Services for treatment. He cites no authority to support his argument. An inmate in a prison facility has no fundamental right to rehabilitation and failure to rehabilitate does not amount to cruel and unusual punishment. *Bresolin v. Morris*, 88 Wn.2d 167, 169, 171, 558 P.2d 1350 (1977).

Mr. Gard's petition "fails to present an arguable basis for relief in law or in fact." *In re Pers. Restraint of Khan*, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015). Accordingly, IT IS ORDERED, the petition is dismissed as frivolous. RAP 16.11(b).

A handwritten signature in black ink, appearing to read "Siddoway. ACJ", is written over a horizontal line.

**LAUREL SIDDOWAY
ACTING CHIEF JUDGE**