


IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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DIVISION II
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STATE OF WASHINGTON
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In re the
Personal Restraint Petition of

MICHAEL JOSEPH GONZALEZ,

Petitioner.

No. 48511-7-II

ORDER DISMISSING PETITION

Michael Joseph Gonzalez seeks relief from personal restraint imposed after the Department of Corrections (DOC) revoked his prison-based Drug Offender Sentencing Alternative (DOSA) sentence. To obtain relief, Gonzalez must show that he is under unlawful restraint. RAP 16.4(a).

The prison-based DOSA statute, RCW 9.94A.662, vests DOC with authority to find that an offender willfully violated mandatory conditions. DOC policy authorizes revocation where an offender commits a major infraction resulting in a change in custody level. In order to revoke an inmate's DOSA, the Department must find the necessary violations by a preponderance of the evidence. *In re Pers. Restraint of McKay*, 127 Wn. App. 167, 170, 110 P.3d 856 (2005).

Gonzalez argues that a preponderance of evidence does not show he committed a major infraction that resulted in a change in custody level. He further alleges DOC's revocation was based on assumptions rather than a preponderance of the evidence. We disagree.

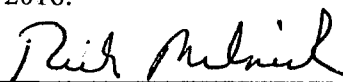
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Gonzales acknowledges he received a major infraction for tobacco possession on July 10, 2015. (Petitioner's Opening Brief at 3). He, however, claims the infraction did not result in a change in custody. But, the Serious Infraction Report shows he received 5-days of segregation and 15-days without recreation. (DOC Response Exhibit 10) Thus, a preponderance of the evidence shows a change in custody. Moreover, a major infraction with a change in custody is not the only basis for revocation of a DOSA sentence. Gonzalez's DOSA agreement, and RCW 9.94A.662(3), provide that a DOSA sentence will be revoked if the offender is terminated from a treatment program. Gonzalez was terminated from his program for a pattern of behavioral issues, failure to respond to treatment, and receiving a major infraction. (DOC Response Brief Exhibits 5-12, 17-19). These factors are documented by treating personnel and not mere assumptions as Gonzalez alleges. Thus, a preponderance of the evidence supports DOC's prison-based DOSA revocation. Gonzalez fails to show unlawful restraint.

Accordingly, it is hereby

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

DATED this 11th day of August, 2016.


Acting Chief Judge, Pro Tem

cc: Michael J. Gonzalez
Dept. of Corrections
Kitsap County Cause No. 12-1-00705-3
Mandy L. Rose, Assistant Attorney General, Corrections Division