

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

IN THE MATTER OF THE
PERSONAL RESTRAINT OF:

DION E. JOHNSON,

Petitioner.

No. 83219-1-I

ORDER OF DISMISSAL

Dion Johnson has filed this personal restraint petition (PRP) challenging the calculation of his early release date by the Department of Corrections (DOC). For the reasons set forth below, the PRP must be dismissed.

Johnson was sentenced on March 12, 2021 to 60 months' confinement in DOC custody for attempted assault in the second degree – domestic violence, in King County Superior Court Cause No. 19-1-07447-3 KNT. The sentencing court ordered the sentence to run concurrently with a 364-day jail sentence for false swearing under the same cause number. Both sentences provided that credit would be given for time already served in King County Jail.

On March 19, 2021, the King County Jail transferred Johnson to DOC custody. The jail certified that Johnson entered its custody on November 20, 2019, for a total of 485 days of jail time served before his transfer to DOC.¹

¹ The jail time certification calculates the total days served as 486. However, contrary to

DOC later calculated Johnson's early release date, or "ERD." The ERD is the date when all that remains on a term of confinement is earned release time, or "ERT." In re Pers. Restraint of Gronquist, 192 Wn.2d 309, 316, 429 P.3d 804 (2018). ERT in turn refers to credits that an offender in custody may accumulate "for good behavior and good performance, as determined by the correctional agency having jurisdiction." Id. at 315 (quoting former RCW 9.94A.150(1)). "The total amount of ERT a person may accumulate is capped by statute as a [fraction] of his or her total sentence," depending on the nature of the underlying offense. Id. In Johnson's case, the applicable fraction is one-third. RCW 9.94A.729(3)(e). So, given Johnson's 60-month total sentence, Johnson can earn no more than 20 months' ERT (one third of 60 months), including any jail good time. See DOC Policy 350.100. This means that Johnson's ERD—assuming that he earns the maximum amount of ERT—is the date on which he will have served 40 months (60 months minus 20 months) in confinement. In days, the calculations is as follows: 1,825 days (60 months), minus a maximum of 608 days' ERT (one third of 1,825 days), means that Johnson's ERD is the date on which he will have served 1,217 days in confinement (again, assuming that Johnson earns the maximum amount of ERT).² Given that Johnson has already served 485 of these days in King County Jail, this means that his ERD is 732 days (1,217 days minus 485 days) after March 19, 2021, the date he entered DOC

DOC policy, this calculation includes the date that Johnson was transferred to DOC custody.

² DOC describes the calculation in slightly different terms in its response but arrives at the same result. DOC's calculation describes the breakdown of the (maximum) 608 days of ERT into jail good time, potential earned release time credits, and potential good conduct time. These breakdowns are unnecessary here because, to calculate Johnson's ERD, one need only know his total sentence, the maximum ERT rate, the number of days he was confined in jail, and the date he entered DOC custody.

custody. 732 days is equivalent to two years and two days, so Johnson's ERD is March 21, 2023.

In this petition, Johnson claims he is unlawfully restrained because the foregoing calculation is incorrect. He argues that his ERD should be only 16 months (rather than two years and two days) after March 19, 2021, or sometime in July 2022. But Johnson does not explain how DOC's mere miscalculation of an ERD that has not yet passed constitutes an unlawful restraint. So, he does not establish that he is entitled to collateral relief. See RAP 16.4(a) (collateral relief warranted only where petitioner is under a restraint and the petitioner's restraint is unlawful).

Furthermore, Johnson does not show that any miscalculation occurred. Johnson appears to assert that DOC should have calculated his ERD as follows:

Total Sentence (60 months)	1,825 days
Minus maximum ERT (one-third of total sentence)	- 608 days
Subtotal	1,217 days
Minus jail time served (485 days)	- 485 days
Minus jail good time (242 days) ³	- 242 days
ERD (in days after entry into DOC custody)	490 days

In other words, Johnson contends that in calculating his ERD, his total sentence should be reduced not only by the maximum amount of ERT he can earn, but also by his jail time served and jail good time.

Johnson cites no authority that supports such a calculation, which is inconsistent with the very definition of the ERD (again, the date when all that remains


³ Jail time served and jail good time together comprise the total jail "sentence." Under RCW 9.92.151(1), jail good time cannot exceed one-third of the total jail "sentence." So, DOC calculated Johnson's jail good time by assuming that his jail time served was equal to the remaining two-thirds of the jail "sentence," which means that one-third of the total jail "sentence" is half of that, or 242 days.

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on a term of confinement is ERT—which, as discussed, is capped at 608 days for Johnson). Consequently, he fails to present an arguable basis for collateral relief in law or fact given the constraints of a personal restraint petition. His petition is frivolous and must be dismissed. RAP 16.11(b) (frivolous petition will be dismissed); In re Pers. Restraint of Khan, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015) (“[A] personal restraint petition is frivolous where it fails to present an arguable basis for collateral relief either in law or fact, given the constraints of the personal restraint petition vehicle.”).

Now, therefore, it is hereby

ORDERED that this personal restraint petition is dismissed under RAP 16.11(b).



Acting Chief Judge