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*The Court of Appeals
of the
State of Washington
Division III*



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February 13, 2017

Makayla Mae Keeney
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CASE # 346820
Personal Restraint Petition of Makayla Mae Keeney
SPOKANE COUNTY SUPERIOR COURT No. 131016894

Dear Counsel and Mr. Keeney:

Enclosed is a copy of the Order Dismissing Personal Restraint Petition filed by this Court today in the above-referenced case.

In accordance with RAP 16.14(c) and RAP 13.5 A, review of this Order may be obtained only by filing a Motion for Discretionary Review in the Washington State Supreme Court within 30 days after the filing of this Order. A copy must be filed with the Court of Appeals.

The address for the Washington State Supreme Court is Temple of Justice, P. O. Box 40929, Olympia, WA 98504-0929.

Sincerely,

Renee S. Townsley
Clerk/Administrator

RST:ko
Enclosure

FILED
FEBRUARY 13, 2017
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Personal Restraint)
of:)

34682-0-III

MAKAYLA MAE KEENEY,)
)
Petitioner.)

ORDER DISMISSING PERSONAL
RESTRAINT PETITION

In August 2013, Makayla Mae Keeney pleaded guilty in Spokane County Superior Court to first degree theft and riot. The trial court imposed concurrent sentences of three months, with three months' credit for time served, and 12 months of community custody. After she was released from her jail sentence, she failed to report to supervision, was confined on new charges four days, and then absconded to Wyoming, where she was convicted of new felonies. She then returned to Washington on March 15, 2016, after she served her Wyoming sentence and probation. She now seeks relief from personal restraint, contending that the Department of Corrections (DOC) should count the period of probation she served in Wyoming toward her Washington community custody time.

No. 34682-0-III
PRP of Keeney

Because Ms. Keeney has had no alternate opportunity for judicial review of the DOC action, she need only show that she is unlawfully restrained. *RAP 16.4; In re Pers. Restraint of Grantham*, 168 Wn.2d 204, 214, 227 P.3d 285 (2010). Ms. Keeney contends she had 12 months of supervised probation in Wyoming that should satisfy her community custody obligation in Washington. Her argument is without merit.

Under RCW 9.94A.171(2), a term of community custody must be tolled during any period that the offender has absented herself from supervision without prior approval. The term of community custody is also tolled during any period that the offender is in confinement. RCW 9.94A.171(3)(a). During the tolling period, community custody time is paused and is not credited for the ordered term. RCW 9.94A.171(5). The DOC has exclusive authority to determine the tolling period. RCW 9.94A.171(4); *In re Post-Sentence Review of Combs*, 176 Wn. App. 112, 118-19, 308 P.3d 763 (2013).

According to the DOC records here, Ms. Keeney absented herself from supervision or was confined on four occasions after she was sentenced on August 5, 2013: she was confined on another charge from August 5, 2013 until her release on September 13, 2013 (39 days); she failed to report from September 16, 2013 to September 20, 2013 (4 days); she was confined on other charges from September 28, 2013 to October 2, 2013 (4 days); and she absconded to Wyoming from October 3, 2013 until she returned to Washington and reported to the DOC on March 15, 2016 (894 days).

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During each of these periods her community custody time was properly tolled under RCW 9.94A.171(2) and (3)(a). She is not entitled to credit against her period of community custody for any of the time served in Wyoming on a different conviction.

Accordingly, Ms. Keeney's petition is dismissed as frivolous. RAP 16.11(b). The court also denies her request for appointment of counsel. *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 390, 972 P.2d 1250 (1999); RCW 10.73.150.


ROBERT E. LAWRENCE-BERREY
ACTING CHIEF JUDGE