

**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  
  
JANNIE LEE,  
  
Petitioner.

No. 47200-7-II  
  
ORDER DISMISSING PETITION

Jannie Lee seeks relief from personal restraint imposed following her 2013 convictions of inciting criminal profiteering, first degree identity theft, first degree theft, and second degree identity theft (2 counts). She claims that her restraint is unlawful because the Department of Corrections violated her due process rights in revoking her Special Drug Offender Sentencing Alternative (DOSA).

The DOSA statute, RCW 9.94A.662, vests the Department with authority to find that an offender willfully violated community custody conditions, including mandatory conditions under RCW 9.94A.662(1)(b) requiring the offender to participate in an “appropriate substance abuse treatment” program. The provisions further provide that such willful violation or failure to complete a substance abuse treatment program operates to revoke the offender’s DOSA sentence as a matter of law, without requiring a hearing before the sentencing court.

An offender facing DOSA revocation is entitled to minimal due process protections. These include:

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(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a "neutral and detached" hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the fact finders as to the evidence relied on and reasons for revoking parole.

*In re Pers. Restraint of McKay*, 127 Wn. App. 167, 168 n.7, 110 P.3d 856 (2005)

(quoting *Morrissey v. Brewer*, 408 U.S. 471, 489, 33 L. Ed. 2d 484, 92 S. Ct. 2593

(1972)). In order to revoke an inmate's DOSA, the Department must find the necessary violations by a preponderance of the evidence. *McKay*, 127 Wn. App. at 170.

Petitioner does not assert any violations of her due process rights other than claiming that DOC failed to apply the preponderance of the evidence standard. But the evidence presented at the hearing clearly met this standard. The hearing officer considered testimony about petitioner's ongoing behavioral problems. It considered testimony from petitioner's witnesses. It considered petitioner's unauthorized absences and infractions during treatment. It considered that petitioner's behavior issues resulted in extensions of her behavior contracts. And it considered that petitioner was terminated from her treatment program. A preponderance of the evidence supported the hearing officer's decision to revoke petitioner's DOSA.

Petitioner also asserts that she was denied a fair hearing because she had a conflict of interest with her program manager and therefore having her program manager participate in her revocation hearing violated the appearance of fairness doctrine. But her program manager was simply a witness at the hearing, not the person making the revocation decision. *See Side v. Cheney*, 37 Wn. App. 199, 201, 679, P.2d 403 (1984)

(the appearance of fairness doctrine applies to the person who renders findings of fact and conclusions of law based on the evidence presented at the hearing).

Petitioner fails to show unlawful restraint. Accordingly, it is hereby

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

DATED this 10<sup>th</sup> day of August, 2015.

  
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Acting Chief Judge

cc: Jannie Lee  
Dept. of Corrections  
Pierce County Cause No(s). 11-1-02180-9  
Mandy L. Rose