

Hoyt, Trina (ATG)

From: vanRoojen, Cassie (ATG)
Sent: Tuesday, July 28, 2015 9:06 PM
To: Hoyt, Trina (ATG)
Subject: RE: 330532 Longoria PRP Order

Nope. You can put it over on the left side of the folder because it's one of the RAP 16.11(b) dismissals where it's an open question whether it's a state strike so we are waiting until its settled to add them all.

-----Original Message-----

From: Hoyt, Trina (ATG)
Sent: Tuesday, July 28, 2015 3:26 PM
To: vanRoojen, Cassie (ATG)
Subject: FW: 330532 Longoria PRP Order
Importance: High

Is this a state strike? It is not a Federal one.

-----Original Message-----

From: ATG MI COR Oly CE Reader
Sent: Tuesday, July 28, 2015 3:13 PM
To: Kostin, Alex (ATG); ATG MI COR OLY LA EF
Cc: Hoyt, Trina (ATG)
Subject: FW: 330532 Longoria PRP Order
Importance: High

-----Original Message-----

From: DECISIONS, DIV3 [<mailto:DIV3.DECISIONS@courts.wa.gov>]
Sent: Tuesday, July 28, 2015 3:02 PM
To: ATG MI COR Oly CE Reader
Subject: 330532 Longoria PRP Order
Importance: High

Please see the attached decision entered by the court.

Courts of Appeals, Division III
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Spokane, WA 99201-1905
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Renee S. Townsley
Clerk/Administrator

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



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July 28, 2015

Fred Longoria
#293124
Coyote Ridge Correction Center
PO Box 769
Connell, WA 99326

E-mail:
Timothy Norman Lang
Alex A Kostin
Criminal Justice Division
PO Box 40116
Olympia, WA 98504-0116

CASE # 330532
Personal Restraint Petition of Fred Longoria
BENTON COUNTY SUPERIOR COURT No. 111006763

Dear Counsel and Mr. Longoria:

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

*Served
dr*

FILED
JULY 28, 2015
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)	33053-2-III
of:)	
)	
)	
FRED LONGORIA,)	ORDER DISMISSING PERSONAL
)	RESTRAINT PETITION
Petitioner.)	
)	

Fred Longoria is serving a sentence in the Washington Department of Corrections (DOC) for a 2012 Benton County conviction on a guilty plea of third degree rape. One of the conditions in Mr. Longoria's judgment and sentence was that his residence and living conditions were subject to DOC approval before he was released to community placement. He seeks relief from personal restraint imposed by DOC decisions to deny his requests for release into community custody on and after his early release date.

Because Mr. Longoria has had no alternate opportunity for judicial review of these DOC decisions, he need only show that he is unlawfully restrained. RAP 16.4; *In re Pers. Restraint of Grantham*, 168 Wn.2d 204, 214, 227 P.3d 285 (2010). To prove that the restraint is unlawful, he must show that the DOC action was unconstitutional or

violated state law. *In re Pers. Restraint of Liptrap*, 127 Wn. App. 463, 469, 111 P.3d 1227 (2005).

Mr. Longoria contends he is entitled to immediate release because he has reached his earned release date. He asserts the DOC rejected his release plans and proposed release residences in violation of the constitution, state statutes, and DOC policy.

Contrary to Mr. Longoria's assertion, he is not entitled to earned early release. Generally there is no constitutional right to be conditionally released before the end of a valid sentence. *In re Pers. Restraint of Mattson*, 166 Wn.2d 730, 737, 214 P.3d 141 (2009) (quoting *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7, 99 S. Ct. 2100, 60 L. Ed. 2d 668 (1979)). Under former RCW 9.94A.150(2) (1992)—the provision in effect when this crime was committed in 1993—a person convicted of a sex offense “*may become eligible*, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned early release time.” (Emphasis added) One of the terms for community placement of a sex offender is that the residence location and living arrangements are subject to prior approval by the DOC. Former RCW 9.94A.120(8)(b)(vi) (1992).

The permissive term in former RCW 9.94A.150(2) that a sex offender “may become eligible” for release to community custody in lieu of earned early release does not create an expectation of release and cannot establish a liberty interest. *Mattson*, 166

Wn.2d at 740 (citing a later version of the statute in RCW 9.94A.728). Thus, Mr. Longoria's rights are limited to ensuring that the DOC follows its own established policies for early release of sex offenders. *Id.* at 742.

DOC policy directive 350.200 applies to offender transition and release. The policy sets up a time frame for submitting a proposed release address before the offender's earned release date, investigation of the proposed address by the offender's community corrections officer (CCO), and approval or disapproval of the address. Policy 350.200(I)(C). *See also* former RCW 9.94A.120(8)(b) (sex offender's release address subject to prior approval of the DOC, and the released offender must report to and be available for contact with the assigned CCO). If the offender's release plan is denied, a DOC counselor will work with the offender and a housing specialist to develop an alternative release plan. Policy 350.200(I)(C). But if a plan cannot be developed, the offender will be released on the maximum expiration date. *Id.* at (II)(B).

The maximum release date for Mr. Longoria is September 23, 2015 and his earned release date was November 2, 2014. After an investigation in August 2014, Mr. Longoria's CCO, Dave Garcia, initially approved a release address at the home of Christine Sharp, Mr. Longoria's fiancé.¹ On October 15, 2014, Ms. Sharp made multiple

¹ Ms. Sharp is the mother of Mr. Longoria's rape victim. Apparently the victim died of unrelated causes before Ms. Sharp's home was proposed as the release address.

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telephone calls and voicemail messages to CCO Garcia's telephone. These rambling, angry messages included threats against Mr. Garcia, his family, and various members of the Benton County prosecutor's office and law enforcement. Ms. Sharp told CCO Garcia never to come to her house without an invitation, warned him that Mr. Longoria might use her staple gun to harm him, stated that she wanted to spit Ebola on him and his family, and warned that "You're the only one who's gonna get raped, Davey....Nobody's gonna help you." (Respondent's exhibit 3, attachment A at 7-8, 10) CCO Garcia then withdrew approval of Ms. Sharp's residence as Mr. Longoria's release address, and the DOC denied the release address on October 22, 2014.

Mr. Longoria could not provide another release address, so while he appealed the denial of his proposed release address, the DOC counselor began looking for an alternative address in December 2014. The department also assisted Mr. Longoria in his attempts to get a housing voucher. *See* Respondent's brief, exhibit 1, attachment B. An apartment manager declined to serve as Mr. Longoria's release address sponsor after reviewing Mr. Longoria's case records. *Id.* at entry dated 2/11/15.

On May 8, 2015, Mr. Longoria and a DOC housing specialist filled out a worksheet for a housing voucher. Mr. Longoria checked the "yes" boxes on most of the questions concerning requirements for his eligibility in the program. But he checked the "no" box for the following question: "Is the offender willing to participate in additional

transitional support programming and sign this form documenting his/her willingness to comply with wraparound services?" (Supplemental response, exhibit 1) Below the question boxes, the form states that the offender "must answer YES to all questions to qualify for benefits." *Id.* Despite the fact that he answered "no" to one of the questions, Mr. Longoria signed a statement at the bottom of the form that declared that he would "comply with all conditions of supervision" and participate in all recommended programs. *Id.* When warned that he would not get a housing voucher if he answered "no" to any of the worksheet conditions, Mr. Longoria adamantly refused to change his "no" answer. The housing specialist therefore found that he did not qualify and denied his request on June 4, 2015. (Supplemental response, exhibit 2)

The DOC has broad discretion in making its decisions regarding release plans for sex offenders. *See Mattson*, 166 Wn.2d at 741-42. The only limit on this discretion is that the reasons for denying a release plan must be legitimate. *Id.* at 742. As demonstrated by the record here, the DOC followed its policies contained in DOC policy directive 350.200 when it denied Mr. Longoria's release to the initial proposed address as well as his May 2015 application for a housing voucher. CCO Garcia must investigate Mr. Longoria's living circumstances while in community custody. Consequently, CCO Garcia legitimately disapproved a release address where he would be threatened with physical harm. The DOC documented multiple attempts to find alternate housing and to

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PRP of Longoria

help Mr. Longoria qualify for a housing voucher. None of these reasonable, good faith efforts were successful.

As the record shows, the DOC's decisions to deny Mr. Longoria's release plans complied with DOC policy and were based on legitimate reasons. Mr. Longoria fails to show an abuse of discretion or violations of constitutional protections, state statutes, or DOC policy. Because he does not show that his restraint is unlawful, the petition is dismissed. RAP 16.4. His motion for an order directing the DOC to release him to an approved release address is also denied.

Dismissed. RAP 16.11(b).

DATED: July 28, 2015


LAUREL H. SIDDOWNAY
CHIEF JUDGE