COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Personal Restraint of: **JERRY MEADOWS,** **Petitioner.**	**No. 38271-1-III** **ORDER DISMISSING PERSONAL RESTRAINT PETITION**

Petitioner Jerry Meadows seeks relief from a 2021 Indeterminate Sentence Review Board ("Board") decision. The Board's decision denied Mr. Meadows parole and added 48 months to the minimum term for his 2007 Asotin County conviction for child molestation in the first degree. The conviction was entered on Mr. Meadows's guilty plea. However, Mr. Meadow has denied that he committed the crime since 2012 based on a letter of recantation from the victim.

Inmates serving indeterminate sentences for sex offense convictions generally have no liberty interest in being released before serving the full maximum sentence – here, a life sentence. *In re Pers. Restraint of McCarthy*, 161 Wn.2d 234, 240, 164 P.3d 1283 (2007). The Board's decision whether to release an inmate to community custody

under RCW 9.95.420(3)(a) is discretionary. That discretion is limited by the presumption that the Board must release the inmate unless it determines by a preponderance of the evidence that he will likely commit a sex offense upon release. *In re Pers. Restraint of McCarthy*, 161 Wn.2d at 241. Thus, under RCW 9.95.420(3), an offender has a limited liberty expectation of release to community custody upon the expiration of his minimum sentence unless the Board finds the offender is likely to commit more sex offenses if released. *Id*. at 240-41.

Here, the Board found by a preponderance of the evidence that Mr. Meadows is more likely than not to commit a sex offense if released to community custody on conditions. This finding was based on actuarial assessments and Mr. Meadows's file relating to the gravity of his offense and prison behavior record. Those materials show: (1) he is a Level III, high risk sex offender with a sex offense history spanning from 1990 to 2007; (2) he was treated for a prior sex offense and still re-offended; (3) he has not participated in [Sex Offender Treatment and Assessment Program] SOTAP treatment because he denies his current offense; and (4) it is not likely that conditions of release would sufficiently reduce the risk of sexual re-offending or address community safety. The Board recommended that Mr. Meadows participate in "any available programming to address his sexual deviance and criminal thinking." Petition, Ex. 10 at 2.

An inmate is "subject entirely to the discretion of the [Board], *which may parole him now or never*" unless he proves the Board abused its discretion. *In re Pers. Restraint of Dyer*, 175 Wn.2d 186, 196-97, 283 P.3d 1103 (2012)(emphasis original). An abuse of

discretion may be found when the Board bases its release decision on speculation and conjecture only or if the Board fails to follow its own procedural rules. *Id*. at 196.

Mr. Meadows contends the Board abused its discretion because (1) he proved he should be released based on his completion of course materials for the SOTAP independently and his completion of several treatment programs other than the SOTAP, including "Moving Forward" (which he refers to as a "substitute" for SOTAP[1]); (2) Department of Corrections (DOC) policy 570.00 is unconstitutional as applied to those (like Mr. Meadows) who deny their guilt, by barring such individuals from enrolling in the SOTAP; and (3) the Board failed to set a clear pathway for Mr. Meadows to earn his parole where the Board's decision recommends that he should participate in any available programming to address his sexual deviance and criminal thinking.

Mr. Meadows's first contention, which lacks legal basis, invites this Court to reweigh (in his favor) the evidence the Board already considered. This Court does not reweigh evidence considered by the Board and substitute its discretion for the Board. *Dyer*, 175 Wn.2d at 196; *In re Pers. Restraint of Lain*, 179 Wn.2d 1, 22, 315 P.3d 455 (2013). Further, Mr. Meadows offers no factual basis to conclude that the Board abused its discretion by relying on the evidence that it did, rather than Mr. Meadows's evidence, to reach its conclusion. *See id*. at 198-200 (affirming parole denial based on offender's

[1]DOC 570.000(III)(D)(1) states: "Individuals who decline [a SOTAP referral] may be referred to alternative SOTAP programming. *Alternative programming* will be mandatory and *does not qualify as sex offense treatment.*" (Emphasis added.)

failure to complete sex offender treatment and psychological evaluation assessing high risk for reoffending).

Mr. Meadows's second contention that DOC policy 570.00 is unconstitutional as applied is merely conclusory. "Bare allegations unsupported by citation of authority, references to the record, or persuasive reasoning cannot sustain [a petitioner's] burden of proof." *State v. Brune*, 45 Wn. App. 354, 363, 725 P.2d 454 (1986). Mr. Meadows offers no legal analysis that his constitutional rights are violated because access to SOTAP is limited to individuals who are amenable to treatment by their voluntary engagement in ongoing conversation and exploration of their inappropriate or illegal sexual behaviors and by their agreement to attend sex offense treatment in prison and in the community and to follow treatment rules and expectations. Contrary to his conclusory constitutional argument, Washington courts have repeatedly endorsed the policy that an offender's recognition that he was at fault is the first step toward rehabilitation. *Dyer*, 175 Wn.2d at 198.

Finally, Mr. Meadows offers no legal or factual basis but merely a bare allegation without citation to authority that the Board abused its discretion by failing to provide him with a "clear pathway" for earning release to the community. RCW 9.95.420 – the statute setting forth end of sentence review procedures – includes no requirement that the Board provide such a pathway.

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Accordingly, IT IS ORDERED, Mr. Meadows's petition is denied as frivolous. RAP 16.11(b).

LAUREL SIDDOWAY
ACTING CHIEF JUDGE