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



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May 23, 2017

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Cruz D. Mejia
#364112
C/O Spokane County Violators Facility
1100 W. Mallon
Spokane, WA 99260

CASE # 349136
Personal Restraint Petition of Cruz D. Mejia
SPOKANE COUNTY SUPERIOR COURT No. 121040363

Dear Counsel and Mr. Mejia:

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:pb
Enclosure

OR LM# 10726823

FILED
MAY 23, 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)	34913-6-III
of:)	
)	
)	
CRUZ D. MEJIA,)	ORDER DISMISSING PERSONAL
)	RESTRAINT PETITION
Petitioner.)	
)	
)	

Cruz D. Mejia is serving a sentence with the Washington Department of Corrections (DOC) related to his 2013 Spokane County convictions on a guilty plea of two counts of second degree assault. He seeks relief from personal restraint due to the DOC's alleged failure to credit him with time spent in jail on new charges and sanction time related to the current convictions.

Because Mr. Mejia has had no alternate opportunity for judicial review of the DOC's action, 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). He is currently under restraint due to his incarceration. That restraint is unlawful if the DOC's actions are unconstitutional or violate state law. *In re Pers. Restraint of Liptrap*, 127 Wn. App. 463,

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469, 111 P.3d 1227 (2005). Mr. Mejia must not rely on conclusory allegations, but must show with a preponderance of the evidence that the unlawful action caused him prejudice. *In re Pers. Restraint of Lord*, 152 Wn.2d 182, 188, 94 P.3d 952 (2004).

Under RCW 9.94A.505(6), an offender must receive credit for all pretrial detention time that is served solely for the sentenced offense. Credit is not allowed for any time served on other charges. *In re Pers. Restraint of Phelan*, 97 Wn.2d 590, 597, 647 P.2d 1026 (1982). Generally, when a person who is under a sentence for conviction of a felony commits another felony and receives a new sentence, the latter sentence does not begin until all prior sentence terms have expired. RCW 9.94A.589(2)(a).

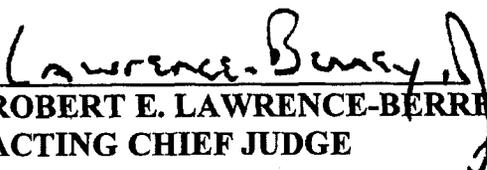
Here, Mr. Mejia's challenge of the credit for time served is not yet ripe. In September 2015, he was released from confinement imposed in the 2013 judgment and sentence and began serving his 18-month community custody term. He was sanctioned several times for community custody violations and ultimately was arrested on May 31, 2016 for allegedly committing new crimes. In June 2016, the DOC sanctioned Mr. Mejia with return to incarceration for the remaining 309 days of his sentence. From May 31, 2016 on, however, Mr. Mejia has been held in jail on the new charges. Until the new charges have resulted in a final disposition, the number of days served cannot be determined. If Mr. Mejia is convicted of the new charges, the time spent in jail presumably will be credited to his new sentence, which will be served after completion of

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the 2013 sentence. If he is not convicted of the new charges, the time spent in jail and in the Benton County violator facility will likely be credited to his community custody return confinement for the 2013 judgment and sentence.

Until the new charges are resolved, the DOC cannot determine how to credit the time spent in jail since May 31, 2016. Once this determination is made, Mr. Mejia can challenge the DOC's calculation of credit for time served if he disagrees. At this point, however, his challenge is not ripe.

Accordingly, the petition is dismissed as frivolous. RAP 16.11(b). The court also denies Mr. Mejia's 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-BERRY
ACTING CHIEF JUDGE