

April 27, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Personal Restraint of:

DENNIS MONROE,

Petitioner.

No. 57579-5-II

ORDER DISMISSING PETITION

Dennis Monroe seeks relief from personal restraint imposed following the Indeterminate Sentencing Review Board's (ISRB) decision finding him not parolable and setting a new minimum term. Monroe also argues that, because his evaluations have opined that Monroe meets the definition of a sexually violent predator he should be released from prison and, instead, subject to civil commitment. Because Monroe's petition is clearly frivolous, it is dismissed.¹

FACTS

In 1979, Monroe was convicted of first degree rape of a child and sentenced to a maximum term of life. In May 2022, the ISRB held a hearing to determine parolability under RCW 9.95.100. Following the hearing, the ISRB found that that Monroe was not parolable based on the following reasons:

- He has a 2011 & 2018 Forensic Psychological Evaluation (FPE) indicating he meets the criteria as a sexually violent predator [(SVP)] under RCW 71.09.

¹ Monroe's motion to appoint counsel is denied.

- He is assessed as a Moderate/High Risk on the Static 99-R and a Level Three for community notification by the DOC End of Sentence Review Committee.
- He has a 2021 and 2014 DOC Psychological Evaluations that assesses Mr. Monroe as moderate-high risk to sexually reoffend.
- Mr. Monroe continues to struggle with deviant thoughts, though he reported in his most recent psychological evaluation an ability to manage those thoughts since approximately 2020.
- He has a broad range of sex offense victims. He has a history of both minor and adult victims, as well as both contact and noncontact sex offenses which is indicative of increased risk.
- Mr. Monroe presents too great a risk to be released at this time. He is clearly not a fully rehabilitated and fit subject for release, as indicated by the information in the preceding bullets.

Br. or Resp't, Ex. 2, at 63.

ANALYSIS

Monroe bears the burden of showing that he is under unlawful restraint. *In re Pers. Restraint of Dyer*, 175 Wn.2d 186, 195-96, 283 P.3d 1103 (2012); RAP 16.4(c). Monroe claims that the ISRB abused its discretion by finding he was not parolable. Monroe also claims that due process requires that he be civilly committed as an SVP.

I. ABUSE OF DISCRETION

An ISRB decision is reviewed for an abuse of discretion. *Dyer*, 175 Wn.2d at 196. ISRB decisions are entitled to substantial deference and ““the courts will not substitute their discretion for that of the [ISRB].”” *Id.* (alterations in original) (quoting *In re Pers. Restraint of Whitesel*, 111 Wn.2d 621, 628, 763 P.2d 199 (1988)). “An abuse of discretion may be found where the ISRB fails to follow its own procedural rules for parolability hearings or where the ISRB bases its decision on speculation and conjecture only.” *Id.*

There is no right to be paroled. *Id.* The ISRB may choose to never parole a prisoner, the decision is entirely within its discretion. *Id.* at 197. The ISRB is required to make public safety the primary concern when making parolability decisions. *Id.* “The

ISRB is also *prohibited* from releasing a prisoner prior to the expiration of his or her maximum term “unless in its opinion his or her *rehabilitation has been complete* and he or she is a fit subject for release.” *Id.* (alterations in original) (quoting RCW 9.95.100).

Monroe is serving a sentence for rape of child with a maximum term of life and has no right to be released prior to the expiration of the maximum term. Further, Monroe does not make any allegation that the ISRB failed to comply with its procedural rules in denying his parole and setting a new minimum term. Also, Monroe neither disputes any of the facts that the ISRB relied on in its decision nor alleges that the ISRB’s decision is based solely on speculation or conjecture.

Instead, Monroe essentially argues that the ISRB’s decision is continuing to punish him not for the crime that he committed, but for other crimes he was not convicted of committing, and for a determination that he meets the definition of an SVP. However, these facts demonstrate the risk that Monroe poses to public safety. And, although Monroe completed sex offender treatment on two occasions, his continued deviant thoughts show that Monroe is not likely completely rehabilitated and fit for release. Monroe has failed to show that the ISRB abused its discretion in finding him not parolable and setting a new minimum term.

II. DUE PROCESS

Monroe also argues that his right to due process has been violated because the ISRB found him not parolable rather than releasing him so that he can be subject to civil commitment proceedings as an SVP under chapter 71.09 RCW. As noted above, Monroe has no right to be released prior to the expiration of his maximum term (life). Further,

there is no right to be considered for civil commitment as an alternative to serving a lawful prison sentence. Monroe's claim lacks merit.

The ISRB did not abuse its discretion in finding Monroe was not parolable and Monroe does not have a due process right to be released and considered for civil commitment. Monroe's petition is clearly frivolous and is dismissed.

Accordingly, it is hereby

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

Acting Chief Judge, Pro Tem

cc: Dennis Monroe
Kelly Ann Fitzgerald