FILED
May 12, 2023
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Personal Restraint of: **ROY HOWARD MURRY,** **Petitioner.**	**No. 39198-1-III** **ORDER DISMISSING PERSONAL RESTRAINT PETITION**

In an amended Judgment and Sentence, the Spokane County Superior Court sentenced Roy Murry to life in prison without the possibility of parole after a jury found him guilty of three counts of first degree murder with aggravating circumstances and one count of first degree arson.

On July 28, 2022, while serving his prison sentence, the Department of Corrections (DOC) issued Mr. Murry an infraction, alleging he violated WAC 137-25-030(1)(557)—refusing to accept a work assignment.[1] Mr. Murry filed a personal

[1] Under WAC 137-25-030(1)(557), it is a serious violation to refuse to participate in an available work, training, education, or other mandatory programming assignment.

restraint petition with this court on September 28, 2022. He challenges the DOC's disciplinary action against him. Generally, personal restraint petitions must be filed within one year after the underlying judgment and sentence becomes final. RCW 10.73.090. However, when a petitioner challenges a DOC disciplinary decision, the two-year catch-all civil statute of limitations applies. RCW 4.16.130; *In re Pers. Restraint of Heck*, 14 Wn. App. 2d 335, 340-40, 470 P.3d 539 (2020). Mr. Murry filed the instant petition within the two-year time limit.

Factual Background

On July 28, 2022, a DOC Sergeant informed Mr. Murry he was assigned to Food Service Worker 1. Mr. Murry refused the work assignment and told the Sergeant he would rather be assigned a part time job. Mr. Murry told the Sergeant he could not take a full time job assignment because it would conflict with the hours he was able to attend the law library and he had too much legal work to do. The Sergeant infracted Mr. Murry and stated Mr. Murry was in violation of "WAC 557," refusing to participate in an available work assignment.

The hours of work for the Food Service Worker 1 assignment were Tuesday through Saturday, 6:00 a.m. to 8:00 a.m., 11:00 a.m. to 1:00 p.m., and 5:00 p.m. to 7:00 p.m. And incarcerated individuals within Mr. Murry's unit had five blocks of time throughout the week that were designated for law library access. The following chart

compares what would have been Mr. Murry's assigned work hours with Mr. Murry's available law library access hours:

	6:00 a.m. to 8:00 a.m.	**8:00 a.m. to 11:00 a.m.**	**11:00 a.m. to 1:00 p.m.**	**1:00 p.m. to 3:15 p.m.**	**5:00 p.m. to 7:00 p.m.**	**6:00 p.m. to 8:00 p.m.**
Tuesday	Food Service Shift		Food Service Shift		Food Service Shift	Law Library
Wednesday	Food Service Shift	Law Library	Food Service Shift	Law Library	Food Service Shift	
Thursday	Food Service Shift		Food Service Shift		Food Service Shift	
Friday	Food Service Shift	Law Library	Food Service Shift	Law Library	Food Service Shift	
Saturday	Food Service Shift		Food Service Shift		Food Service Shift	

State's Response to Petition (Resp.), Ex. 3 & Ex. 4.[2] The only overlap (highlighted in gray) between Mr. Murry's work assignment and law library hours would have occurred on Tuesday evenings from 6:00 p.m. to 7:00 p.m. However, according to DOC records, Mr. Murry would be allowed to leave his job for any mandatory call outs such as mandatory law library call outs, which would include that portion of time on Tuesday evenings.[3] Resp. to Pet., Ex. 3.

[2] In his petition, Mr. Murry suggests Food Service Worker 1 requires more hours than the ones listed here. He contends that between the regular shifts, Food Service Workers are in the unit and "on call" for additional tasks such as warming food or refrigerating food.

[3] Murry takes issue with this evidence provided by the DOC, arguing it contradicts statements of the custody staff who actually control his movements.

Mr. Murry also alleges that an incarcerated individual leaving a job for mandatory law library callouts creates an environment where other workers are forced to pick up the slack. He contends this dynamic would subject the worker to "intimidation, threats, harassment[,] and violence" and would undermine the facility's safety and security.

The DOC held a hearing on Mr. Murry's infraction on August 15, 2022. Mr. Murry made the following statement at the hearing:

> I need to be able to access in court, um, I explained to them I've got two active cases, two more I'm about to start managing over a dozen [public] disclosure requests and I haven't even reviewed the production from that. So uh I can't work full time. Um, about two months before this, I talked to Sergeant Mullins, he asked me if I wanted a job, I say hey I'm not opposed to it but I can't work full-time. He said he would look to put me on something that was part time or on call or giving me an area to clean and that was the end of it I heard about until Sergeant Hammond showed up and told me to drop what I was doing and stop going to Law Library and start working in the pantry.

Supplement to the Record (Supp.), Ex. 1 at 3-4. A finding was not made at the August 15 hearing. Because Mr. Murry had proposed questions to additional DOC employees, the answers to which had not yet been received by the hearing officer, the hearing was continued to August 26, 2022.

At the August 26 hearing, Mr. Murry asked to continue again. He stated he wanted to submit evidence of law library and legal mail logs to show his level of activity and to demonstrate where he was spending his time. The hearing officer told Mr. Murry: "you can discuss whatever you've been spending your time on and again whether you

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Personal Restraint Petition (Pet.) at 40. Seemingly, this argument suggests that despite his ability to leave his assignment to go to the law library, Mr. Murry would not feel as though he could do so because of possible retaliation from other incarcerated individuals, which is another reason he declined this work assignment. Mr. Murry's contentions on this score are not supported by this record.

agree to work or not . . . it has no bearing uh to get proof of where you've been spending your time or how much legal work you have. I'm not going to continue this hearing." Supp., Ex. 2 at 3. Again, Mr. Murry stated: "I don't have an issue working, I just can't work full-time right now and this job is constant interruption all day long . . . 5 days a week. There's just no way to get any work done. Legal, legal work done." Supp., Ex. 2 at 6.

The hearing officer found Mr. Murry guilty of the infraction and sanctioned Mr. Murry with (1) loss of 15 days good time; (2) loss of earned time for July 2022; and (3) 30 days loss of dayroom and unit yard. Mr. Murry appealed the hearing officer's decision, and it was upheld on appeal.

Shortly after receiving the infraction, Mr. Murry also received a notice of "Assigned to Cell for Failure to Program." This "Assigned to Cell" status required Mr. Murry to be in his cell Monday through Friday from 8:00 a.m. to 4:30 p.m. Mr. Murry appealed the decision to the prison's Superintendent. On October 17, 2022, the Assistant Superintendent sent Mr. Murry a memorandum, explaining:

> The Program Review Committee's decision to assign you to the program of "Assigned to cell" is considered a Program Assignment under the policy and the WSP Jobs Plan and is not a Permanent Sanction or punishment as you suggest. The Program Review Committee informed you that the Assignment to Cell Program ends when you begin programming in another program such as school or work. Your appeal is denied.

Petitioner's Motion to Supplement PRP Record (Mot. to Supp.), Att. 7. Mr. Murry was

not restricted to his cell on holidays, while attending meals, while attending mandatory call outs, or while attending weekly religious services.

Mr. Murry then filed the instant petition. The DOC responded and argues Mr. Murry's petition should be dismissed.

Analysis

Since Mr. Murry is challenging a DOC decision for which he has had "no previous or alternative avenue for obtaining state judicial review," he must show that he is under restraint and that the restraint is unlawful. *See In re Pers. Restraint of Dalluge*, 162 Wn.2d 814, 817, 177 P.3d 675 (2008); RAP 16.4(a)-(c). He need not make any threshold showing of prejudice. *In re Pers. Restraint of Stuhr*, 186 Wn.2d 49, 52, 375 P.3d 1031 (2016). Here, there is no question Mr. Murry is under DOC restraint. Thus, the issue is whether his restraint is unlawful.

To demonstrate that his restraint is unlawful, a "petitioner must show the conditions or manner of restraint violate state law or the constitution." *In re Pers. Restraint of Williams*, 198 Wn.2d 342, 353, 496 P.3d 289 (2021); RAP 16.4(c)(2). He must do so by a preponderance of the evidence. *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 813-14, 792 P.2d 506 (1990). "Factual evidence, rather than conclusory allegations, must be offered in support of a PRP." *Williams*, 198 Wn.2d at 353; RAP 16.7(a)(2).

In his petition, Mr. Murry makes three arguments. First, he challenges the DOC's guilty finding, alleging it was issued in retaliation for asserting his asserted right to use the law library. Second, Mr. Murry argues Washington law and DOC policies that relate to incarcerated individuals' participation in education and work programs are unconstitutional. And third, Mr. Murry contends he was subjected to cruel and unusual punishment when he was forced to choose between two constitutional rights—his right to access to the law library and the courts and his right to exercise and use the phone. Each claim is addressed in turn.

1) Retaliation

"The right of access to the courts is rooted in the petition clause of the First Amendment to the United States Constitution." *In re Pers. Restraint of Addleman*, 139 Wn.2d 751, 753-54, 991 P.2d 1123 (2000); *see also* WASH. CONST. art. 1, § 10. A prisoner has a right to access to the courts. *State v. Dougherty*, 33 Wn. App. 466, 470, 655 P.2d 1187 (1982); *see also* DOC Policy 590-500. Due process of law requires that a prisoner have meaningful access to the courts, and meaningful access requires an adequate law library. *Id.* The right to access the courts is constitutionally protected conduct. *See Addleman*, 139 Wn.2d at 754.

Mr. Murry makes extensive claims that DOC entered a finding of guilty on the infraction and imposed sanctions in an effort to retaliate against him for exercising his

right to access the courts. To prevail on a retaliation claim, a petitioner must prove (1) he engaged in protected conduct; (2) an adverse action was taken; and (3) there is at least a partial causal relation between the protected conduct and the action. *In re Pers. Restraint of Addleman*, 139 Wn.2d 751, 754, 991 P.2d 1123 (2000).

Here, there is no question Mr. Murry engaged in protected conduct—accessing the law library. There is also no question that an adverse action was taken against Mr. Murry—he was infracted and sanctioned. However, Mr. Murry's retaliation claim fails on the third element because there is no causal relationship between Mr. Murry's protected conduct and the adverse actions taken against him. Although Mr. Murry argues various state actors have taken compounding adverse action against him solely because he refused to give up his right to attend the law library and his right to access to the courts, the DOC did not sanction Mr. Murry *because* he was exercising his due process right to access the courts (protected conduct). Rather, Mr. Murry was infracted *becaus*e he refused a work assignment (not protected conduct).

Furthermore, the evidence presented shows that Mr. Murry was not directly or indirectly asked to give up his right to access the courts and the law library. Mr. Murry contends that accepting the Food Service Worker 1 job would have interfered with every law library session, which would have amounted to forcing him to give up his right to access the law library and the courts. However, as shown in the chart above, the record

reflects Mr. Murry's access to the law library would have been limited only by one hour per week if he had worked his assigned job. The evidence also demonstrates that Mr. Murry could have left his work assignment to attend the law library during the designated time if he so chose. Accordingly, Mr. Murry is unable to show that his restraint is unlawful and he is not entitled to relief on his retaliation claim.

2) Constitutionality

Next, Mr. Murry argues DOC Policy 700.000 and RCW 72.09.460(2) and (7), and RCW 72.09.100(3)(d) are unconstitutional. RCW 72.09.460 provides:

> (2) The legislature intends that all incarcerated individuals be required to participate in department-approved education programs, work programs, or both, unless exempted . . . . Eligible incarcerated individuals who refuse to participate in available education or work programs . . . shall lose privileges . . .
>
> . . . .
>
> (7) Eligible incarcerated individuals who refuse to participate in available education or work programs . . . shall lose privileges . . .

RCW 72.09.460 (2), (7). And RCW 72.09.100(3)(d) states: "[a]ll able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class."

Mr. Murry argues these statutes are unconstitutional because they violate his Fourteenth Amendment right to due process and infringe upon his right to access the courts. As the State points out, Mr. Murry's allegations regarding the constitutionality of

the above-listed statutes and DOC policy are bald and conclusory, which is insufficient to obtain relief. However, even if this court were to consider Mr. Murry's constitutional arguments, they are without merit.

Due process is protected by the Fourteenth Amendment to the United States Constitution and article I, section 3 of the Washington Constitution. *State v. Clinkenbeard*, 130 Wn. App. 552, 564, 123 P.3d 872 (2005). "The substantive component of the Fourteenth Amendment's due process clause forbids the government to infringe on fundamental liberty interests unless the infringement is narrowly tailored to serve a compelling state interest." *Id.* The challenged state action need only be rationally related to a legitimate government interest when there is no alleged violation of a fundamental right. *Id.* "[A]ccess to the courts itself is not a fundamental right." *Id.* T

Thus, the rational basis approach applies here and the question is whether the statutes authorizing DOC to implement job and education programing for incarcerated individuals rationally serve a legitimate state goal. *Id.*; *In re Marriage of Giordano*, 57 Wn. App. 74, 77, 787 P.2d 51 (1990)). They do. The Legislature's intent in requiring all DOC incarcerated individuals to participate in both education and work programs is found in RCW § 72.09.450. It states:

> The legislature finds the increasing number of inmates incarcerated in state correctional institutions, and the expenses associated with their incarceration, require expanded efforts to contain corrections costs. Cost

> containment requires improved planning and oversight, and increased accountability and responsibility on the part of inmates and the department.
>
> The legislature further finds motivating inmates to participate in meaningful education and work programs in order to learn transferable skills and earn basic privileges is an effective and efficient way to meet the penological objectives of the corrections system.
>
> The purpose of this act is to assure that the department fulfills its mission to reduce offender recidivism, to mirror the values of the community by clearly linking inmate behavior to receipt of privileges, and to prudently manage the resources it receives through tax dollars.

RCW § 72.09.450 (quoting Findings--Purpose); *see also Thomas v. Lehman*, 138 Wn. App. 618, 624, 158 P.3d 86 (2007).

Given this stated purpose, the statutes authorizing the DOC to provide work and education programs for incarcerated individuals are rationally related to legitimate state goals, such as: defraying the cost of confinement, helping incarcerated individuals learn transferable skills, meeting penological objectives, and reducing recidivism. The statutes satisfy the rational basis test and are constitutional. Mr. Murry's constitutionality arguments are without merit and he is not entitled to relief.

3) Cruel and unusual punishment

Lastly, Mr. Murry argues that the DOC subjected him to cruel and unusual punishment. Mr. Murry claims that because of the 30 days loss of dayroom and unit yard sanction, along with his assigned to cell status, he was denied all phone access and was

prevented from exercising. He contends that he is forced to choose between his right to access the law library and his right to use the phones and exercise. Mr. Murry also claims the assigned to cell status prevents him from going out in the day room to get hot water for coffee, get ice, access the intra-facility mail system, or go outside to get fresh air during his lunch break.[4] Many of the facts Mr. Murry uses to support his claims are unsubstantiated by the record.

The Eighth Amendment to the United States Constitution and article I, section 14 of the Washington Constitution prohibit cruel and unusual conditions of confinement on prisoners. *In re Pers. Restraint of Williams*, 198 Wn.2d 342, 354, 368, 496 P.3d 289 (2021). Washington's cruel punishment clause provides greater protections than the Eight Amendment in the context of prison conditions, which includes prisoners' health

[4] In a motion for injunctive relief, Mr. Murry makes further unsupported allegations. For example, because of his assigned to cell status, Mr. Murry argues he is barred from attending the "Table Top Roleplaying Games," which he claims is an honor program for good behavior.

Mr. Murry also filed a motion for accelerated review. In that motion, he asserts the assigned to cell status is a "permanent de facto disciplinary sanction." Petitioner's Motion for Accelerated Review at 4. He asserts this sanction is not governed by any Policy or WAC and prohibits him from attending the law library for more than two hours per week. As the analysis below demonstrates, Mr. Murry's allegations are factually incorrect. He also contends the sanctions have continued past the 30-day time limit, but provides no information to support this allegation.

and welfare. *Id.* at 362. To prevail on this type of claim, "a petitioner must demonstrate that (1) those conditions create an objectively significant risk of serious harm or otherwise deprive them of the basic necessities of human dignity and (2) those conditions are not reasonably necessary to accomplish any legitimate penological goal." *Id.* at 368.

Mr. Murry's denial of phone privileges argument fails to support a cruel and unusual punishment claim because it did not create an objectively risk of serious harm, nor did it deprive him of a necessity of basic human dignity. *See Mahon v. Prunty*, 1996 WL 337163, at *1 (9th Cir. 1996) (concluding that the temporary loss of phone privileges did not "present a dramatic departure from the basic conditions" of prison life). Moreover, Mr. Murry's restrictions on phone use was not a complete denial of privileges. The State provided evidence that Mr. Murry had access to telephones for legal calls while he was on assigned to cell status. He could also access the dayroom and use the telephone for non-legal calls after 4:30 p.m. on weekdays and on weekends.

In the same vein, Mr. Murry is unable to show a violation due to deprivation of exercise. "Exercise is a basic human necessity protected by the eighth amendment and a long-term deprivation of outdoor exercise for inmates is unconstitutional." *State v. Braae*, noted at 143 Wn. App. 1006, 2008 WL 391315, at *3. Five hours of exercise per week has been found to be constitutionally sufficient. *See e.g.*, *Davenport v. DeRobertis*, 844 F.2d 1310 (7th Cir. 1988); *Spain v. Procunier*, 600 F.2d 189 (9th Cir. 1979); *see also*

Wishon v. Gammon, 978 F.2d 446, 448-49 (8th Cir. 1992) (concluding that 45 minutes per week for exercise did not violate the Eight Amendment because the inmate did not suffer any injury or decline in health).

Here, the State presented evidence that incarcerated individuals in Mr. Murry's unit have access to the yard for four-and-a-half hours per day. While Mr. Murry was on assigned to cell status, he had access to the unit yard for one hour and 15 minutes each weekday. He also had access to the yard for four-and-a-half hours on each weekend day. Thus, Mr. Murry had access to the yard to exercise for a total of 15 hours and 15 minutes each week. In his reply, Mr. Murry also contends he has suffered medical effects from lack of exercise, including: loss of "hard earned" muscle mass, nosebleeds, headaches, cracked/dry skin, rashes/bedsores, depression, weight gain, and higher blood pressure. But Mr. Murry provides no factual evidence to support these conclusory allegations, which is insufficient obtain relief. See *Williams*, 198 Wn.2d at 353; RAP 16.7(a)(2). Accordingly, Mr. Murry has not made a showing that he was subjected to cruel punishment by being deprived of his right to exercise.

Lastly, the evidence supplied by the State belies Mr. Murry's assertion that he is forced to choose between his right to access the law library and his right to exercise and use the phones. While on assigned to cell status (ATC), Mr. Murry's access to the yard for exercise and his call outs for law library were as follows:

	7:30 a.m. to 8:45 a.m. OR 8:45 a.m. to 10 a.m.	**8:00 a.m. to 11:00 a.m.**	**11:00 a.m. to 1:00 p.m.**	**11:30 a.m. to 1:30 p.m. OR 1:30 p.m. to 3:30 p.m.**	**1:00 p.m. to 3:15 p.m.**	**6:00 p.m. to 7:15 p.m. OR 7:15 p.m. to 8:30 p.m.**	**6:00 p.m. to 8:00 p.m.**
Monday	ATC	ATC	ATC	ATC	ATC	Yard Time	
Tuesday	ATC	ATC	ATC	ATC	ATC	Yard Time	Law Library
Wednesday	ATC	Law Library	ATC	ATC	Law Library	Yard Time	
Thursday	ATC	ATC	ATC	ATC	ATC	Yard Time	
Friday	ATC	Law Library	ATC	ATC	Law Library	Yard Time	
Saturday	Yard Time			Yard Time		Yard Time	
Sunday	Yard Time			Yard Time		Yard Time	

Resp., Ex. 3, Ex., 4, Ex. 6.

As the foregoing chart demonstrates, the only conflict between Mr. Murry's available yard time and his law library access occurred in the evenings on Tuesdays. Even then, Mr. Murry would have been able to use the yard for 45 minutes on those evenings either before or after he accessed the law library. The evidence also demonstrates that Mr. Murry did, in fact, frequently access the law library while on assigned to cell status. Between July 29, 2022 and November 15, 2022,[5] Mr. Murry attended 35 law library sessions. Consequently, Mr. Murry's contention that his assigned to cell status forced him to choose between access the law library and his right to exercise

[5] During this time frame, the law library was closed between September 7 and September 14, 2022, due to quarantine for all incarcerated individuals. On September 21, 2022 the law library computers were down and unavailable. Between October 17 and November 3, 2022, Mr. Murry was furloughed for a funeral and had to quarantine upon his return; thus, he was unable to access the law library during that period.

is without merit. Mr. Murry is not entitled to relief on any of his Eighth Amendment claims.

Because Mr. Murry has not shown that he is entitled to relief on any of his claims, his petition is dismissed as frivolous. RAP 16.11(b). The court waives the filing fee based on Mr. Murry's indigence. RAP 16.8(a). The court also denies Mr. Murry's request for appointed counsel. *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 390, 972 P.2d 1250 (1999); RCW 10.73.150(4).[6]

The court denies the State's motion to supplement the record with additional evidence. The additional evidence is not required to decide Mr. Murry's petition. RAP 9.10. The court denies Mr. Murry's motion for a temporary restraining order and injunctive relief because he has not shown he is entitled to relief. RAP 8.3. Lastly, the court denies Mr. Murry's motion for accelerated review. RAP 18.12; *see also In re Pers.*

[6] On January 25, 2023, Mr. Murry filed several documents with this court. Two sets of documents appear to be the production from Public Records Act requests and other legal correspondence related to his criminal appeal. Presumably, Mr. Murry is submitting this evidence as proof of his extensive legal work. However, because they are not relevant to the issues raised in his PRP, we do not consider them.

Murry also filed a declaration that raises several more grievances against DOC, which he argues are further consequences of the DOC's imposed sanctions against him. Because these additional grievances were made after the State had an opportunity to respond, and because they are not supported by any law or legal analysis, we do not consider them.

Restraint of Pauley, 13 Wn. App. 2d 292, 466 P.3d 245 (2020) ("Generally, requests for accelerated disposition in our court are not granted unless the issue presented on appeal would be mooted by the normal time periods for appeals.").

Lawrence-Berrey, A.C.J.

ROBERT E. LAWRENCE-BERREY
ACTING CHIEF JUDGE