

FILED
Feb 24, 2022
Court of Appeals
Division III
State of Washington

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Personal Restraint)	No. 38277-0-III
of:)	
)	
)	ORDER DISMISSING PERSONAL
ROBERT JACKSON OSBORNE,)	RESTRAINT PETITION
)	
Petitioner.)	

Robert Jackson Osborne seeks relief from claimed unlawful personal restraint after a Department of Corrections (DOC) hearing officer revoked his Drug Offender Sentencing Alternative (DOSA) sentence. Due to community custody condition violations, DOC sanctioned Mr. Osborne to serve the remainder of his community custody term in prison. This petition followed.

On February 22, 2018, Mr. Osborne was convicted upon plea of guilty to one count of violating a domestic violence court order. The court imposed a prison-based DOSA sentence totaling 60 months—30 months of incarceration and 30 months of

community custody. Mr. Osborne was subject to the following relevant community custody conditions: comply with all rules and regulations of DOC; do not use illegal controlled substances or marijuana; do not own, use, or possess firearms or ammunition; undergo urinalysis or other testing to monitor drug use; no criminal law violations; and report as directed to a Community Corrections Officer (CCO).

Following his prison term, the DOC released Mr. Osborne to community custody on June 24, 2019. Four days later, Mr. Osborne failed to report to his CCO. Mr. Osborne then continued to violate his community custody conditions, some violations resulting in jail sanctions, up until January 2021.

On January 25, 2021, DOC held a DOSA violation hearing. Its allegations were that Mr. Osborn had absconded from supervision, failed to make himself available for a urinalysis test, failed to enter substance abuse treatment, committed new criminal law violations, and used methamphetamine and marijuana. A DOC hearing officer found Mr. Osborne guilty of all violations and revoked Mr. Osborne's DOSA sentence.

Five months later, on June 14, Mr. Osborne requested relief under CrR 7.8 with the Spokane County Superior Court. The superior court returned Mr. Osborne's letter explaining that he needed to file the documentation as a Personal Restraint Petition with the Court of Appeals. Mr. Osborne filed his petition with this Court on June 23.

Since Mr. Osborne 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). A petitioner may obtain relief by showing a federal or state constitutional violation or violation of the laws of the State of Washington. RAP 16.4(c)(2). To avoid dismissal, a personal restraint petition must be supported by facts and not merely bald or conclusory allegations. *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 813-14, 792 P.2d 506 (1990). Mr. Osborne fails to make such a showing.

In his petition, Mr. Osborne lists three grounds for relief. First, he implies he should not have been sent back to prison and was given “excess” time above the 30 months incarceration imposed by the superior court. Mr. Osborn does not support this ground for relief with any authority or analysis. He also does not challenge the sufficiency of DOC’s evidence used to support the DOSA revocation. Under former RCW 9.94A.662(3),¹ DOC had the authority to reclassify Mr. Osborne and return him to prison to serve the remainder of his sentence. Additionally, the superior court imposed 60 months total confinement, which included 30 months’ community custody. Because Mr. Osborne violated the terms of his community custody conditions, DOC revoked Mr.

¹ Former RCW 9.94A.662(3) (Laws of 2009, ch. 389. §§ 1 & 3-5) (Effective August 1, 2009).

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Osborne's DOSA and reclassified him to prison. Thus, DOC did not violate the law when ordering Mr. Osborne to serve the unexpired term of his sentence. Former RCW 9.94A.662(3).


Second, Mr. Osborne claims he was denied the right to an attorney at the revocation hearing. He cites *State v. Farr-Lenzini*, 93 Wn. App. 453, 970 P.2d 313 (1999). *Farr-Lenzini* is inapplicable as it does not address the right to counsel. The court in *Farr-Lenzini* analyzed expert witness testimony and prosecutorial misconduct. Mr. Osborne cites no additional authority and provides no analysis. Furthermore, DOC points out that Mr. Osborne did not request an attorney at any of his violation hearings.

Lastly, Mr. Osborne asks this Court to reevaluate his DOSA sentence in light of the Washington Supreme Court's decision in *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021) without additional explanation. *Blake* is also inapplicable to Mr. Osborne's case. Mr. Osborne's criminal history does not include any convictions under former RCW 69.50.4013 as analyzed by *Blake*. Additionally, Mr. Osborne's conviction for which he is currently incarcerated is not a "drug case" as he states. DOSA sentences are not limited to convictions for drug offenses and may be imposed in many non-violent felonies if the offender qualifies. RCW 9.94A.660. *Blake* is inapplicable to Mr. Osborne's DOSA revocation.

Overall, Mr. Osborne makes conclusory, bald assertions and presents no claim in

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this petition that presents a debatable issue of fact or law. Accordingly, the petition is dismissed as frivolous pursuant to RAP 16.11(b). The court also denies Mr. Osborne'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).


LAUREL SIDDOWAY
ACTING CHIEF JUDGE