IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

IN THE MATTER OF THE PERSONAL RESTRAINT OF:	No. 84357-5-I
TAVORRIS POWELL, Petitioner.	ORDER OF DISMISSAL

Tavorris Powell filed a personal restraint petition in connection with the judgment and sentence imposed upon his convictions of robbery in the first degree, attempt to elude, and unlawful possession of a firearm in the first degree in King County Superior Court Cause No. 10-1-00221-5 SEA. He alleges that the Department of Corrections unlawfully revoked his partial release to community custody prison (CCP) and returned him to prison as a sanction for violating conditions of release. Where, as here, a petitioner has had no prior or alternative means of obtaining state judicial review, he must demonstrate that he is being "'restrained under RAP 16.4(b) and that the restraint is unlawful under RAP 16.4(c).'" In re Pers. Restraint of Grantham, 168 Wn.2d 204, 212-13, 227 P.3d 285 (2010) (quoting In re Pers. Restraint of Isadore, 151 Wn.2d 294, 298-99, 88 P.3d 390 (2004)).

In 2018, Powell was transferred to CCP in lieu of early release. During the more than two-year period he was on partial release status, Powell was charged with violating conditions of community custody on numerous occasions. In August

2021, the Department charged Powell with several violations of conditions of release, including failure to comply with his reporting obligations to the Department, failure to submit to urinalysis and breathalyzer testing, and failure to make required payments toward his court-ordered legal financial obligations (LFOs) and supervision costs. Powell had been involved in six prior violation processes.

According to the notice of alleged violations, Powell reported to the Department on June 30, 2021 and admitted to ongoing drug usage. He signed a stipulation on that date, agreeing to daily reporting for ten days, starting on July 1, 2021. He then failed to report to the Department on July 1. Powell was later arrested in the context of a burglary investigation, was released from King County Jail on July 27, 2021 to electronic home detention (EHD). Although the Department was informed by the EHD case manager, that the EHD requirements would not prevent Powell from reporting to the Department, he failed to report the following day, on July 28, 2021. Powell also did not make himself available on that date for urinalysis and breathalyzer testing. And, the Department alleged that Powell had not made any of the required $10 monthly payments toward his LFOs or costs of supervision since his release in 2018.

Powell participated in a hearing before a Department hearing officer on August 9, 2021. After hearing the testimony of Powell and the community corrections officer (CCO) and considering documentary evidence, the hearing officer dismissed one alleged violation, but found him guilty of several other violations for failing to report to the Department, failing to submit to urinalysis and breathalyzer testing, and failing to make payments toward LFOs and costs of

supervision. In accordance with the CCO's recommendation, the hearing officer revoked Powell's partial release to CCP as a sanction. The haring officer based the sanction, in part, on Powell's prior violation history and evidence that he had absconded from supervision for approximately a month.

While not altogether clear, Powell appears to contend that he was deprived of his right to due process at the hearing, the Department lacked authority to revoke his release as a sanction, and the evidence was insufficient to support the findings of guilt. The law is well settled that individuals facing revocation or reclassification of their sentences are entitled to minimal due process protections as prescribed by Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L.Ed.2d 484 (1972). In re Price, 157 Wn. App. 889, 900, 240 P.3d 188 (2010). Those minimum due process requirements include:

> (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a "neutral and detached" hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.

Morrissey, 408 U.S. at 489.

Powell mentions that he was not represented by a lawyer at the violation hearing. This court has held that due process requires the Department to decide on a case-by-case basis whether representation is warranted at a revocation hearing. Grisby v. Herzog, 190 Wn. App. 786, 806, 362 P.3d 763 (2015); see also WAC 137-104-060(7) (counsel may be provided at community custody violation

hearing based on hearing officer's assessment of complexity and offender's ability). However, the record in this case indicates that Powell declined to be screened for an attorney. It does not appear that the violation hearing involved especially complex issues and there is nothing in the record to suggest that Powell was unable to represent himself. Powell does not otherwise explain how the process provided failed to satisfy the limited due process protections to which he is entitled. The record indicates that Powell had prior notice of the alleged violations, an opportunity to be heard and to present evidence, the right to attend the hearing before a neutral decision-maker, and a written statement explaining the basis for the decision.

Powell also mentions "swift and certain" guidelines, and appears to contend that the Department lacked authority under that structured process to revoke his partial release. But, when the legislature amended RCW 9.94A.737 and adopted the "swift and certain" violation process, it specifically retained the Department's authority to terminate early release and return an offender to confinement pursuant to RCW 9.94A.633(2)(a). See, e.g., In re Pers. Restraint of Price, 157 Wn. App. 889, 909, 240 P.3d 188 (2010) (legislature's mandate that the Department "develop hearing procedures and a structure of graduated sanctions" for community custody violations does not impede its power to revoke community custody entirely and return an offender to confinement). Where, as here, an offender was transferred to CCP in lieu of early release, the Department has express authority to return an offender to total confinement upon finding a violation of conditions of custody. See RCW 9.94A.633(2)(a) ("If the offender was transferred to community custody in lieu

of earned early release in accordance with RCW 9.94A.728, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.").

Finally, the extent that Powell challenges the sufficiency of the evidence to support the findings of guilt, the documentary evidence in the record supports the findings. And Powell provides no evidence to substantiate his factual claims regarding his ability to report and submit to testing on the dates in question and ability to pay LFOs and costs of supervision. A personal restraint petition must be supported by facts and not merely bald or conclusory allegations. In re Pers. Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992). A "petitioner must demonstrate that he has competent, admissible evidence to establish the facts that entitle him to relief." Id.

Based on the record before this court, Powell makes no showing that he was denied a fundamentally fair proceeding or that he was prejudiced by the process that he received.

Now, therefore, it is hereby

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

Chief Judge