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

IN THE MATTER OF THE PERSONAL RESTRAINT OF: CHARLES VINCENT REED, Petitioner.	No. 84546-2-I ORDER OF DISMISSAL

Charles Reed challenges the Department of Corrections' (DOC) application of a requirement that he be released into his "county of origin" and obtain an approved release plan before he can be released on his earned release date (ERD) on March 13, 2023. For the reasons set forth below, Reed's petition must be dismissed.

In October 1996, the Snohomish County Superior Court sentenced Reed to 388 months in prison for three counts of first degree rape of a child, offenses which he committed in December 1991 and June 1992. At sentencing, the trial court imposed a term of community placement "for the period of time provided by law" and ordered that the "residence location and living arrangements are subject to the prior approval of the Department of Corrections while in community placement."

In May 2022, the DOC informed Reed that upon his release, he would be released to his county of origin, which is the location of his first felony conviction in Washington. Reed was first convicted for possession of marijuana in King County in 1989. A release plan hearing was held in September 2022. There, Reed

claimed that, because his crimes were committed in 1991 and 1992, the DOC could not use a 2007 law[1] to require his release into his county of origin. Doing so, Reed claimed, violated the prohibition against ex post facto laws. He also claimed that the DOC improperly used his first conviction to determine his county of origin because the Washington Supreme Court had invalidated simple possession convictions.[2] The DOC disagreed with Reed's claims.

In October 2022, Reed filed this personal restraint petition, asserting the same claims that he raised in the administrative proceeding below.[3] DOC has filed a response and Reed has filed a reply. In order to obtain relief in this setting, Reed must show that he is being unlawfully restrained under RAP 16.4. In re Pers. Restraint of Isadore, 151 Wn.2d 294, 299, 88 P.3d 390 (2004).

Retroactivity and Ex Post Facto

In 2007, the legislature enacted a law requiring the DOC to place offenders in their county of origin for their community placement, codified at RCW 72.09.270(8). Reed contends the 2007 statute is not retroactive, does not apply to his term of community placement because he was convicted of crimes he committed in 1991 and 1992, and DOC is violating the prohibition against ex post facto laws by applying the "county of origin" to him. This contention was raised and rejected in State v. Schenck, 169 Wn. App. 633, 281 P.3d 321 (2012).

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[1] See RCW 72.09.270(8).

[2] In State v. Blake, 197 Wn.2d 170, 481 P.3d 521 (2021), the Washington Supreme Court held the statute criminalizing simple drug possession, former RCW 69.50.4013(1), was unconstitutional.

[3] Initially, Reed also challenged the length of his community placement period but he has since conceded the length of his community placement is two years.

In Schenck, the petitioner argued that county of origin provision did not apply retroactively to his term of community placement because he was convicted of a crime committed in 2000 and violated the prohibition on ex post facto laws. Id. at 645, 649. In rejecting these arguments, the court explained that the statute prospectively applied to Schenck because "the precipitating event triggering application of the 2007 statute is the offender's release from prison to community placement" which, in Schenck's case, "was his release from prison in May 2010." Id. at 646-47. It also concluded that "applying the 2007 statue's 'county of origin' requirement to Schenck did not increase the quantum of punishment to which he was subject and did not violate the prohibition against ex post facto laws." Id. at 651.

Here, like the petitioner in Schenck, the precipitating event triggering the county of origin provision is Reed's pending release to community placement. Additionally, application of this provision does not increase Reed's punishment. Therefore, Reed fails to show that application of the county of origin provision constitutes an unlawful restraint.

Simple Possession Conviction

Next, Reed asserts that DOC cannot use his 1989 conviction for marijuana possession because Blake invalidated such convictions. Although Blake did render such convictions void, the sentencing court has authority to vacate such convictions. The DOC does not have such authority. See Dress v. Dep't of Corrections, 168 Wn. App. 319, 337, 279 P.3d 875 (2012) (holding that the DOC is prohibited from correcting or ignoring terms of a trial court's judgment and

sentence, even if it believes the judgment and sentence is erroneous). Here, Reed's judgment and sentence lists the 1989 possession conviction. He has not yet obtained an amended judgment and sentence removing that conviction. According, because the DOC cannot ignore the terms of his judgment and sentence, which currently identifies the 1989 offense as his first conviction, Reed fails to demonstrate that he is subject to unlawful restraint on this ground.

Earned Early Release

Finally, Reed asserts that the DOC is violating his equal protection rights by holding him beyond his ERD on March 13, 2023 due to his failure to submit an approved release plan. Although some inmates may be entitled to general release on their ERD, that is not the case for Reed, who, as a felony sex offender, only becomes eligible for transfer to community placement status, subject to DOC's approval of a release plan. See In re Pers. Restraint of Crowder, 97 Wn. App. 598, 600, 985 P.2d 944 (1999); In re Pers. Restraint of Gronquist, 192 Wn.2d 309, 315, 429 P.3d 904 (2018); RCW 9.94A.703(2); RCW 9.94A.729(5). And "[w]ithout an approved release plan, the offender must serve his or her ERT in total confinement." Gronquist, 192 Wn.2d at 315-16 ("the date when all that remains on a term of confinement is ERT"). Reed acknowledges that he has not obtained an approved release plan. Thus, until he does so, the DOC is authorized to confine him until his maximum release date of January 13, 2028.

Because Reed fails to demonstrate any basis for relief given the constraints of the personal restraint petition process, his petition must be dismissed as frivolous. In re Pers. Restraint of Khan, 184 Wn.2d 679, 686-87, 363 P.3d 577

(2015).

Now, therefore, it is hereby

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

Chief Judge