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

IN THE MATTER OF THE PERSONAL RESTRAINT OF: JOHN RICE, Petitioner.	No. 83384-7-I ORDER OF DISMISSAL

John Rice filed this petition challenging the conditions of his confinement by the Department of Corrections (DOC). Because Rice fails to present an arguable basis for relief in law or fact given the constraints of a personal restraint petition, the petition must be dismissed.[1]

Rice is an inmate at Coyote Ridge Corrections Center (CRCC). Rice alleges,

[1] After Rice filed his initial petition and before this court requested a response from DOC, Rice filed a "Supplemental Information," dated December 15, 2021 (and initially filed with the Washington Supreme Court on December 17, 2021) (First Supplemental Info). On December 20, 2021, this court requested DOC to respond to Rice's initial petition and the First Supplemental Info, which has been considered.

This court is also in receipt of an additional "Supplemental Information," dated December 26, 2021 (and initially filed by Rice with the Washington Supreme Court on December 28, 2021), and another "additional information" document dated January 3, 2022 (and initially filed by Rice with the Washington Supreme Court on January 5, 2022). These additional filings have not been considered.

After DOC filed its response, Rice filed a "Motion for Leave to File Additional Supplement Info" with this court on February 3, 2022, and an "Addendum," dated February 5, 2022 (and initially filed by Rice with the Washington Supreme Court on February 9, 2022). These documents, which address DOC's response, have been treated together as Rice's reply brief and have been considered.

Any additional filings by Rice in this matter will be placed in this court's file without action.

and DOC concedes, that DOC is consolidating some of its partially occupied minimum security housing units with partially occupied medium security units. Rice asserts that this consolidation will result in minimum scoring offenders, like Rice, being transferred to medium units and housed with medium custody offenders. Rice argues that the impending transfer violates the Eighth Amendment to the United States Constitution. In support, Rice asserts that medium custody offenders are more violent and that when the transfer occurs, "the existing inmates [in the medium custody units] are going to go bananas." Rice also makes a number of predictions about violent assaults and associated consequences that Rice believes will occur as a result of the transfer.

But to show that conditions of confinement violate the Eighth Amendment, Rice must show both (1) a substantial risk of serious harm and (2) deliberate indifference to that risk. Colvin v. Inslee, 195 Wn.2d 879, 900, 467 P.3d 953 (2020) (citing Farmer v. Brennan, 511 U.S. 825, 832, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994)). Rice shows neither.

Rice does not allege that he himself will be transferred as a result of the consolidation of units. Nor does he dispute DOC's representation that Rice will not be transferred as a result of the consolidation, except with an assertion that "D.O.C. memos will disprove this claim," which assertion is insufficient to warrant relief. In re Pers. Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992) (unsupported assertions or vague allegations are not sufficient to warrant relief in a personal restraint petition; "petitioner must demonstrate that he has competent, admissible evidence to establish the facts that entitle him to relief"). Apparently, Rice was

transferred to a different housing unit as a result of an infraction for threatening his cellmate. But, in this petition, Rice does not challenge that infraction except with conclusory assertions that his cellmate's claims were unsubstantiated and the investigating officer lied. These assertions are, again, insufficient to warrant relief. Finally, while Rice predicts that other prisoners will assault him because of his status as a convicted sex offender, "speculative and generalized fears of harm at the hands of other prisoners do not rise to a sufficiently substantial risk of serious harm." Williams v. Wood, 223 Fed. App'x 670, 671 (9th Cir. 2007).

For the foregoing reasons, Rice does not show a substantial risk of serious harm, and thus, he does not establish an entitlement to relief based on the Eighth Amendment.

Equally fatal to his Eighth Amendment claim, Rice also does not establish deliberate indifference. "Under this constitutional standard, the record must evidence subjective recklessness or deliberate indifference; that is, the official must know of and disregard the risk." Colvin, 195 Wn.2d at 900 (emphasis added). Rice makes a number of vague and conclusory assertions, including that he has "consulted" with prison staff in preparing his petition, that "[i]t seems everyone knows what a terribly bad idea this wide-scale transfer is," and that deliberate indifference is "undeniable" given the push-back from inmates and "stark[ ] appar[ence]" of the associated risks. He also claims that a custody unit supervisor acted with deliberate indifference because Rice informed her of the threats he faced on the "medium side" but she "refused to consider these facts." And Rice asserts, with regard to another corrections officer, that Rice "truly believes that said Sergeant was trying to get [Rice]

over to the new unit as quickly as possible so that other inmates could assault him." Rice's self-serving assertions are insufficient to establish an arguable basis for relief.

In addition to his Eighth Amendment claim, Rice argues that the consolidation of minimum and medium custody units is unlawful because it constitutes a custody demotion without due process. Rice points out that minimum custody units have amenities that medium custody units do not, and "[b]ecause the two separate sections of CRCC are by no means or measure substantially similar, [Rice]'s im[m]inent transfer to [a medium custody unit] is in fact a demotion by any meaningful measure of the word, regardless what might appear in the department's records." Rice asserts that, as such, he is entitled to minimal due process, including notice and a hearing, before the transfer occurs. But "[t]he threshold question in every due process challenge is whether the challenger has been deprived of a protected interest in life, liberty, or property." In re Pers. Restraint of Pullman, 167 Wn.2d 205, 211-12, 218 P.3d 913 (2009). And it is well established that offenders do not have a protected liberty interest in a favorable custody classification. In re Pers. Restraint of Dowell, 100 Wn.2d 770, 674 P.2d 666 (1984); see also Meachum v. Fano, 427 U.S. 215, 225, 96 S. Ct. 2532, 49 L. Ed. 2d 451 (1976) (transfer from general population to maximum security is "within the normal limits or range of custody which the conviction has authorized the State to impose," even when the conditions in maximum security are "substantially more burdensome"). Rice relies on Schroeder v. McDonald, 41 F.3d 1272 (9th Cir. 1994), to assert that due process is implicated, but that decision was later withdrawn. See Schroeder v. McDonald, 50 F.3d 788 (9th Cir. 1995). In any event, the Schroeder court concluded that due process was

implicated because the inmate in that case was transferred in violation of mandatory prison regulations, Schroeder, 41 F.3d at 1280, and Rice points to no mandatory prison regulation that prohibits Rice's impending transfer.

Rice fails to present an arguable basis for collateral relief in law or fact given the constraints of a personal restraint petition. Accordingly, Rice's petition must be dismissed. RAP 16.11(b) (petition will be dismissed if the issues presented are frivolous); In re Pers. Restraint of Khan, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015) ("[A] personal restraint petition is frivolous where it fails to present an arguable basis for collateral relief either in law or fact, given the constraints of the personal restraint petition vehicle.").

Now, therefore, it is hereby

ORDERED that this personal restraint petition is dismissed under RAP 16.11(b).[2]

Andrus, A.C.J.
Acting Chief Judge

[2] Rice has also filed a motion for accelerated review. Inasmuch as Rice's petition has been considered and dismissed, the motion is moot.