

FILED
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In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Personal Restraint)	No. 34182-8-III
of:)	
)	
BRANDON MICHAEL RICHARDSON,)	ORDER DISMISSING PERSONAL
)	RESTRAINT PETITION
)	
Petitioner.)	
)	
)	

Brandon Michael Richardson seeks relief from personal restraint resulting from his 2014 Spokane County convictions of first degree theft, third degree assault, and bail jumping, in superior court cause no. 12-1-02871-1. The court imposed concurrent sentences of 43 months for the theft, 51 months for the assault and 96 months for the bail jumping. The court ordered the overall 96-month sentence to run consecutively with a 24-month sentence for second degree malicious mischief in superior court cause no. 13-1-00570-1, but concurrently with a prison-based Drug Offender Sentencing Alternative (DOSA) sentence (12+ months each in confinement and community custody) for possession of a controlled substance in superior court cause no. 13-1-03020-0. All three cause numbers were sentenced on the same day—February 18, 2014.

As pertinent to the current petition, paragraph 4.1(c) of the judgment and sentence in cause no. 12-1-02871-1 states:

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Credit for Time Served. The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The Spokane County Detention Services shall compute time served.

Judgment and Sentence at 6.

Upon Mr. Richardson's transfer from county jail to the Department of Corrections (DOC) on February 27, 2014, the Spokane County Detention Services submitted written certification that he had served 161 days in county jail and received 80 days of jail good time credit on cause no. 12-1-02871-1. The 161 days includes the time periods from August 15-November 21, 2012 (98 days); February 14-March 1, 2013 (15 days); August 23-27, 2013 (4 days); and January 14-February 27, 2014 (44 days). (PRP Appendix A at 1) In light of the sentences in all three of the above-mentioned cause numbers, the DOC initially calculated an overall prison early release date (following completion of the consecutive malicious mischief sentence) of July 23, 2020. (PRP Appendix B)

But during a subsequent audit of Mr. Richardson's sentence, the DOC observed that he committed the bail jumping crime on August 9, 2013, and thus spent only 48 days in jail custody for that particular offense. The DOC then informed Mr. Richardson that it had reduced his county jail credit solely for the bail jumping from 161 days to 48 days (with 24 days of good time credit) and accordingly changed his overall prison early release date to November 12, 2020. (PRP Appendix B)

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Mr. Richardson then filed this petition in the superior court as a CrR 7.8 motion to amend or correct the judgment and sentence. He contended the DOC has unlawfully altered the judgment and sentence in cause no. 12-1-0287-1 (and hence has miscalculated his overall prison early release date) by taking away jail credits to which he is constitutionally entitled on the bail jumping charge. The superior court transferred the matter to this court for consideration as a personal restraint petition. CrR 7.8(c)(2).

Since Mr. Richardson is challenging a DOC decision for which he has had no prior opportunity for judicial review, he must show that he is under restraint and the restraint is unlawful. *In re Pers. Restraint of Cashaw*, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994); RAP 16.4(a), (c). He is under the restraint of his prison sentence, but to obtain relief he must show either a constitutional violation or a violation of state law. *Id.* at 148; RAP 16.4(c)(2), (6).

Washington law requires county jails to provide the DOC with documentation certifying the amount of time an inmate spent in custody at the facility prior to transport to the DOC, and the amount of early release time the inmate earned during that period. RCW 9.94A.729(1)(b). The DOC is entitled to give presumptive legal effect to this certification. *In re Williams*, 121 Wn.2d 655, 664, 853 P.2d 444 (1993). "The certification does not, however, have legal effect if it is based upon an apparent or manifest error of law." *Id.*

With respect to presentence time served, RCW 9.94A.506(6) provides:

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The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was *solely in regard to the offense for which the offender is being sentenced.*

(Italics added). The statute reflects a constitutional mandate that an offender receive credit for all pretrial detention time served. *See In re Pers. Restraint of Costello*, 131 Wn. App. 828, 832, 129 P.3d 827 (2006) (failure to allow such credit violates due process, denies equal protection, and offends the prohibition against multiple punishments). But credit is not allowed for time served on other charges. *Id.* at 833. This is true even when the sentence for the other charges is concurrent. *State v. Stewart*, 136 Wn. App. 162, 165, 167-68, 149 P.3d 391 (2006). In addition, the statute does not give the sentencing court authority to credit an offender for more pretrial detention time than he is entitled to by law. *Costello*, 131 Wn. App. at 833. The jail's calculation of credit for time served is not independently legally binding. *Id.* at 834. If the jail's calculation is correct, it has the force of law. *Id.* If it is erroneous, the law, not the certification, provides the correct result. *Id.*

As discussed, Mr. Richardson committed the bail jumping on August 9, 2013, and was not confined for that offense until he was apprehended on August 23, 2013. The jail certification was therefore erroneous to the extent it awarded 113 days of credit for time served prior to that date for the bail jumping offense. Based upon the above legal principles, the DOC properly reduced Mr. Richardson's county jail credit to 48 days served (plus 24 days of good time credit) towards the bail jumping sentence, and adjusted

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his overall early release date accordingly.¹ Contrary to Mr. Richardson's contention, the DOC has not altered the judgment and sentence or unlawfully deprived him of any county jail credit or good time credit. He fails his burden under RAP 16.4 and *Cashaw*.

Accordingly, the petition is dismissed as frivolous pursuant to RAP 16.11(b). The court also denies Mr. Richardson'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).


ROBERT LAWRENCE-BERREY
ACTING CHIEF JUDGE

¹ Mr. Richardson's sentence structure and prison release date is more specifically explained as follows. His prison start date for the sentences in cause numbers 12-1-02871-1 and 13-1-03020-0 was February 27, 2014. For the theft, assault, bail jumping, and 12-month confinement portion of the DOSA sentence, the DOC has structured his prison sentence to show internal "early release" dates from one concurrent sentence to the next (considering county jail time served and good time credits earned and the availability to earn prison early release time at a 33% rate), starting from the shortest sentence to the longest. (DOC Response, Exhibit 3, Attachment A) Thus, his early release dates are November 10, 2014 for the 12-month confinement portion of his DOSA sentence; April 13, 2016 for the first degree theft; and September 27, 2016 for the third degree assault. His projected early release date for the bail jumping is July 20, 2019. He will then start serving the consecutive second degree malicious mischief sentence in cause no. 13-1-00570-1, with a projected prison early release date of November 17, 2020. He will then serve the 12-month community custody portion of his DOSA sentence. (*Id.*) This court notes an unexplained 5-day discrepancy between the November 17, 2020 date and a November 12, 2020 early release date reflected in a separate OMNI Legal Face Sheet document submitted by the DOC. (DOC Response, Exhibit 2, Attachment A at 1) The DOC states in its response brief that November 12 is the correct date. This court need not resolve the discrepancy (favoring Mr. Richardson) at this time, as he may use appropriate prison channels to request clarification if he later feels aggrieved by the DOC's release date calculations.