

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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DIVISION II
2016 MAY 18 AM 9:18
STATE OF WASHINGTON
BY DEPUTY

In re the
Personal Restraint Petition of

TIMOTHY R. RICHARDSON,

Petitioner.

No. 48174-0-II

ORDER DISMISSING PETITION

Timothy R. Richardson seeks relief from personal restraint imposed following his two 2014 convictions of second degree child molestation. He does not challenge these convictions here but rather challenges the Department of Corrections' decision to prohibit petitioner from having visitation rights with his wife and their two children. He claims that the Department violated his right of due process by allowing visitation and then revoking that visitation without a hearing, findings of fact, or notice, and he claims that the Department has wrongly concluded that his wife was a past victim of his domestic violence. Finally, he argues that the Department's restriction violated RCW 9.94A.704(6), which states that the Department cannot impose conditions that contravene those ordered by the sentencing court.¹ He asks for injunctive relief, costs, an evidentiary hearing as an alternative, and any other relief deemed fair and just.

¹ Petitioner's judgment and sentence incorporates the conditions in a pre-sentence investigative report prohibiting contact with minors with the notation "except YMR (1-2-2009) and TRR Jr (8-18-2013). It also prohibits having a relationship with women with minor children with the notation "except Stephani Richardson." Petition at 14, Resp. Ex. 2, Attach. A at 5. But this notation does not prohibit the Department from applying its own policies in deciding whether to allow visitation. The trial court's notation simply states that the sentencing court will not prohibit visitation.

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The Department responds that petitioner may not challenge the Department's decision to revoke his visitation privileges because he has another adequate remedy of law in that he could pursue a federal claim for this exact relief under 42 U.S.C. § 1983.

RAP 16.4(d) provides: "The appellate court will only grant relief by a personal restraint petition if other remedies which may be available to petitioner are inadequate under the circumstances and if such relief may be granted under RCW 10.73.090, or .100" [i.e., that they are timely or qualify as an exception to the one-year time limit].

Petitioner argues that we should apply *In re Pers. Restraint of Arseneau*, 98 Wn. App. 368, 371-74, 989 P.2d 1197 (1999), and address his claims because of the fundamental constitutional rights at stake. The record shows that petitioner was initially allowed visitation with his wife and children but that the Department revoked that privilege after further reviewing his background, criminal history, and the similarities between his children's situation and those of his victim. Thus, the record does not explicitly show or implicate fundamental constitutional rights. See *In re Pers. Restraint of Dyer*, 143 Wn.2d 384, 20 P.3d 907 (2001) (no liberty interest in extended family visitation).

Further, petitioner has an adequate remedy in federal court, which is a more appropriate forum for his federal constitutional claims and where he will be able to use the discovery process to obtain evidentiary support for his claims. As presented here, his alternative request for a reference hearing is based on speculation and conjecture and, as such, is an inappropriate remedy. *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086, *cert. denied*, 506 U.S. 958 (1992).

The Department's motion to dismiss is granted. Accordingly, it is hereby
ORDERED that this petition is dismissed under RAP 16.11(b).

DATED this 18th day of May, 2016

Acting Chief Judge, Pro Tem

cc: Timothy R. Richardson
Dept. of Corrections
Kitsap County Cause No(s). 14-1-00289-9
Timothy J. Feulner