

*The Court of Appeals  
of the  
State of Washington*

RICHARD D. JOHNSON,  
Court Administrator/Clerk

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CASE #: 74801-7-1  
Personal Restraint Petition of Cornelius Red Ritchie

Counsel:

Enclosed please find a copy of the Order Dismissing Personal Restraint Petition entered by this court in the above case today.

Pursuant to RAP 16.14(c), "the decision is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in Rule 13.5A."

This court's file in the above matter has been closed.

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

CMR

enclosure

16.11  
Sued  
Mr.  
8.21.16

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

IN THE MATTER OF THE	)	
PERSONAL RESTRAINT OF:	)	No. 74801-7-1
	)	
CORNELIUS RED RITCHIE,	)	ORDER DISMISSING PERSONAL
	)	RESTRAINT PETITION
_____ Petitioner.	)	

Cornelius Ritchie is currently confined by the Department of Corrections (DOC) pursuant to a 1997 conviction for first degree burglary, first degree robbery, second degree assault, indecent liberties and two counts of unlawful imprisonment. Ritchie contends that (1) DOC lacked authority to supervise him on the 1997 conviction at the time his community custody was revoked; and (2) that DOC exceeded its authority and denied him due process by revoking his community custody and remanding him to custody. To prevail here, Ritchie 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. Because Ritchie has not met his burden of showing that his current restraint is unlawful, this personal restraint petition is dismissed.

On May 29, 1998, Ritchie was sentenced to 228 months of confinement and 36 months of community custody on Snohomish County Superior Court Cause No. 97-1-02027-6. On March 19, 2013, Ritchie was released from confinement to community custody in lieu of earned early release, 1,341 days prior to his maximum release date.

On May 17, 2013, after less than two months on community custody, Ritchie was discovered to be in possession of seven different types of narcotics. He was subsequently charged with and convicted of five counts of possession with intent to

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deliver a controlled substance in Whatcom County Superior Court Cause No. 13-1-00630-1. DOC began tolling Ritchie's community custody on the 1997 conviction on June 3, 2013, the date of Ritchie's arrest.

On July 6, 2015, this court vacated Ritchie's 2013 convictions for insufficient evidence. Ritchie was released from confinement on August 12, 2015, after having served 800 days on the 2013 convictions, and the community custody portion of his 1997 convictions began to run again.

On September 8, 2015, less than a month after his release, Ritchie was arrested for violating the terms of his community custody. Specifically, Ritchie was alleged to have used Facebook in order to contact young women unknown to him. Following a hearing, DOC terminated Ritchie's early release and returned him to confinement to serve the remainder of his sentence.

Ritchie argues that the 800 days that he spent confined on the 2013 convictions must be applied to the community custody portion of his 1997 convictions. He argues that his term of community custody had therefore been completed by September 8, 2015 and DOC no longer had authority to supervise him. This claim is without merit. RCW 9.94A.171 provides that "[a]ny period of community custody shall be tolled during any period of time the offender is in confinement for any reason." The statute is clear. RCW 9.94A.171 prohibits any period of time an offender serves in confinement from being credited against the term of community custody.

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Ritchie points to DOC Policy 320.160(11)(B), which provides "When an offender has multiple causes, and time is tolled for confinement on a cause that is later vacated, the time tolled on the vacated cause will remain in effect for the other active causes." But this does not mean that Ritchie's sentence for the 1997 conviction shall be credited with time served on the 2013 conviction. Rather, it means that community custody shall remain tolled on any of Ritchie's other active causes until he was released and began serving his term of community custody.

Ritchie contends that, in the alternative, DOC lacked authority to revoke his community custody and return him to serve the remainder of his 1997 sentence. He points to his judgment and sentence, which states "[a]ny violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200." Former 9.94A.200(c), in effect at the time Ritchie committed the 1997 crimes, provided that if "the court finds that [any violation of a condition or requirement of a sentence] has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation." However, RCW 9.94A.205(1), also in effect at the time Ritchie committed the 1997 crimes, provides that "[i]f an inmate violates any condition or requirement of community custody, the department may transfer the inmate to a more restrictive confinement status to serve up to the remaining portion of the sentence." "RCW 9.94A.200 provides for noncompliance with conditions or requirements of sentences generally" but "[i]n contrast, the Legislature provided specifically for community custody violations in RCW 9.94A.205." In re Pers. Restraint of McNeal, 99 Wn. App. 617, 624, 994 P.2d 890

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(2000). Because Ritchie violated a community custody condition while on community custody in lieu of earned early release, RCW 9.94A.205(1) applies and DOC was entitled to revoke his community custody and return him to total confinement.

Ritchie contends that he was not prohibited from using Facebook at the time that DOC sanctioned him. But Ritchie's offender condition statement shows that DOC imposed the following condition on May 3, 2013: "[n]o access to social networking sites such as, but not limited to: Facebook, MySpace, etc." Ritchie signed this document on May 15, 2013. This condition was imposed as part of the sentence on Ritchie's 1997 conviction and was properly the subject of Ritchie's violation hearing.

Ritchie argues that DOC used evidence obtained in an unlawful search of his phone when it presented proof at the hearing that Ritchie had used the Facebook app on his phone to contact young women. But RCW 9.94A.631 states that a community corrections officer "may require an offender to submit to a search and seizure of the offender's person, residence, automobile, or other personal property" if there is reasonable cause to suspect an offender violated a condition. Ritchie admitted to his community corrections officer on September 8, 2015 that he "had been on Facebook and had been contacting multiple women." Ritchie's admission that he had violated a condition established reasonable cause for a search of Ritchie's backpack, which contained several lists of women and different information pertaining to them, including dates of birth, and Ritchie's phone, which contained multiple Facebook messages to young women unknown to Ritchie. Moreover, Ritchie

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admitted at the violation hearing that he had used Facebook in violation of his community custody conditions.

Because Ritchie has not shown that his current restraint is unlawful, the petition should be dismissed. Now, therefore, it is hereby

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

Done this 2<sup>nd</sup> day of AUGUST, 2016.

Trickey, ACJ  
Acting Chief Judge

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