

*The Court of Appeals
of the
State of Washington*

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
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CASE #: 73679-5-1
Personal Restraint Petition of Michael K Roberts

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

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enclosure

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

In the Matter of the Personal)	
Restraint of:)	No. 73679-5-1
)	
MICHAEL T. ROBERTS,)	
)	ORDER OF DISMISSAL
Petitioner.)	
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Michael Roberts filed a petition for a writ of mandamus in King County Superior Court challenging his confinement pursuant to a conviction and sentence imposed in King County Superior Court No. 94-C-03249-2 SEA. That court transferred the matter to this court for consideration as a personal restraint petition. CrR 7.8(c)(2).

Roberts challenges the transfer of his motion. But a writ of mandamus is only appropriate where the applicant has no plain, speedy, and adequate remedy in the ordinary course of law. RCW 7.16.170. What constitutes a plain, speedy, and adequate remedy depends on the particular facts of the case and rests within the sound discretion of the court in which the writ is sought. City of Olympia v. Thurston County Bd. of Comm'rs, 131 Wn. App. 85, 95, 125 P.3d 997 (2005). It was within the discretion of the superior court to conclude that Roberts had a plain, speedy and adequate remedy by means of a personal restraint petition to challenge the lawfulness of his confinement by the Department of Corrections (DOC). See RCW 7.16.040; RCW 7.16.170; Toliver v. Olsen, 109 Wn.2d 607, 746 P.2d 809 (1987); Dress v. Washington State Dept. of Corrections, 168 Wn. App. 319, 337-38, 279 P.3d 875 (2012) (question of whether there is an adequate remedy in the ordinary course of law is within the sound discretion of court within which the writ is sought); In re

Pers. Restraint of Liptrap, 127 Wn. App. 463, 111 P.3d 1227 (2005) (abrogated on other grounds by In re Pers. Restraint of Mattson, 166 Wn.2d 730, 740-41, 214, P.3d 141 (2009)) (where inmates filed petition for writ of mandamus seeking order directing the DOC to approve release or parole plans, Supreme Court converted the action to a personal restraint petition). The objection to the transfer is hereby denied

Roberts is serving a sentence of life imprisonment without the possibility of parole in Washington imposed upon his conviction for aggravated first degree murder.¹ The crime occurred in 1994. Before he committed the crime in Washington, Roberts was serving a life sentence imposed in 1984 by a Canadian court for murder and robbery. Roberts and another inmate, Timothy Cronin, escaped from a prison facility in British Columbia where Roberts was serving his Canadian sentence. After committing the murder in Washington, Roberts and Cronin travelled to Oregon and committed a robbery there. They were apprehended by Oregon authorities. In 1994, Roberts was convicted of robbery in the first degree in Oregon and the court imposed an indeterminate sentence with a maximum term of 25 years.

Following Roberts's conviction, the Governor of Washington submitted a demand for requisition to the Governor of Oregon, who issued a Governor's warrant of extradition. Roberts was extradited to Washington and in 1997, he was convicted of aggravated first degree murder. Roberts's judgment and sentence states that his life sentence "shall run consecutively to any previously imposed sentence in Oregon

¹ Roberts was originally sentenced to death, but his death sentence was vacated on appeal. See No. 665512-0.

No. 73679-5-1/3

and Canada not referred to in this order.” Based on this language, Roberts seeks an order directing the DOC to “obey the terms of the judgment and sentence” and to arrange for Canadian authorities to “take lawful custody” of him.

In 2005, Roberts sought a treaty transfer to Canada. The DOC sought input from the State Prosecutors’ Office and the trial judge, and ultimately denied the transfer. Canadian authorities have not sought Roberts’s extradition, but have requested notification from Washington authorities if there is a change in Roberts’s custodial status.

The Oregon Department of Corrections ran Roberts’s Oregon sentence concurrently with his Washington sentence and in 2015, notified Washington authorities that Roberts’s Oregon sentence was complete.

To obtain collateral relief by means of a personal restraint petition, Roberts must demonstrate that he is being unlawfully restrained. See In re Pers. Restraint of Cashaw, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994); RAP 16.4.

Nothing in the judgment and sentence requires the DOC to arrange for Roberts to be extradited to Canada. Although there is statutory authority granting discretion to allow extradition if it is sought, Roberts identifies no legal authority that requires or even allows Washington to extradite an inmate serving a Washington sentence without the request or consent of the receiving jurisdiction. See RCW 43.06.350(1); RCW 72.68.010(1); see also Chapter 10.88 RCW (Uniform Criminal Extradition Act).

Roberts's claim that the DOC is implementing his sentence in a manner that is contrary to the terms of the judgment and is also without merit. The court imposed a consecutive sentence on his Washington murder conviction. His Washington and Canadian sentences are running consecutively, as evidenced by the fact that Canadian authorities have indicated they will seek extradition if Roberts is ever released so that he may serve the remainder of his Canadian sentence. Nothing in the judgment and sentence conveys upon Roberts a right to serve his Canadian sentence before his Washington sentence.

Roberts does not identify any error or otherwise challenge the legality of his Washington conviction, his sentence, or his conditions of confinement. Under these circumstances, Roberts has not demonstrated unlawful restraint. And the only relief this court can grant in a personal restraint petition is removal of an allegedly unlawful restraint. See In re Sappenfield, 138 Wn.2d 588, 595, 980 P.2d 1271 (1999).

Because Roberts fails to identify grounds for any authorized relief, his petition must be dismissed.

Now, therefore, it is hereby

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

Done this 26th day of April, 2016.

Trickey, ACT
Acting Chief Judge

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