

**M IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON**

January 2, 2018

DIVISION II

In re the Personal Restraint Petition of
ANTHONY CORNELIUS ROWE,
Petitioner.

No. 51137-1-II

ORDER DISMISSING PETITION

Anthony Rowe seeks relief from the decision of the Indeterminate Sentence Review Board (ISRB) to revoke his community custody and return him to total confinement.

In 2005, Rowe pleaded guilty to first degree rape of a child, second degree rape of a child and possession of depictions of minors engaged in sexually explicit conduct. The trial court sentenced him under former RCW 9.94A.712 (2005) (now RCW 9.94A.507) to a minimum term of confinement of 147 months, a maximum term of confinement of life imprisonment and a life term of community custody. On March 9, 2016, the ISRB approved Rowe's release from total confinement to community custody. Rowe acknowledged that he had read and received a copy of the conditions imposed as part of his community custody and was released to community custody on April 14, 2016.

During a home visit on November 29, 2016, Rowe's cell phone and computer were searched. On December 6, 2016, the ISRB ordered Rowe's arrest and detention for violations of his conditions of community custody. The ISRB charged Rowe with 13 violations. At an ISRB hearing on January 12, 2017, at which he was represented by

*1/31/18 In LM Exh. notebook
TAP*

counsel, Rowe pleaded guilty to eight of the violations,¹ asserting that he was not aware of the conditions. The ISRB found him guilty of the eight violations to which he pleaded guilty, found him not guilty of the other five violations, found his explanation not credible, revoked his community custody, and ordered him returned to total confinement.

First, Rowe argues that the ISRB violated former RCW 9.94A.435(4)(c) (2001) when it did not conduct his revocation hearing within five working days of his being arrested. But that provision was amended in 2003 to allow the ISRB 30 working days to conduct a revocation hearing. 2003 Laws of Washington ch. 18, § 1. The ISRB conducted Rowe's revocation hearing within that 30-day window. Rowe's argument that the 2001 version should apply because that was when he committed his crime, is not well taken because RCW 9.94A.435(4)(c) is a procedural rule, not a substantive rule. *State v. Hylton*, 154 Wn. App. 945, 955-56, 226 P.3d 246, *rev. denied*, 169 Wn.2d 1025 (2010). Thus, the ISRB did not violate RCW 9.94A.435(4)(c).

Second, Rowe argues that the ISRB abused its discretion by finding him guilty for based on "unconfirmed and unverified" allegations. Petition at 2. But he pleaded guilty to the violations the ISRB found him guilty of.

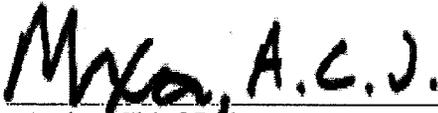
Third, Rowe argues that the ISRB abused its discretion when it ordered him returned to total confinement rather than imposing a graduated sanction. This court reviews decisions of the ISRB for abuse of discretion. *In re Pers. Restraint of Whitesel*,

¹ They were for (1) accessing the internet without child blocks in place, (2) using internet chat applications without CCO or sexual deviancy provider approval, (3) viewing sexually explicit material, (4) possessing sexually explicit material, (5) forming friendships/relationships with families with minor children and (6)-(8) failing to comply with his sex offender treatment program by engaging in (3), (4) and (5).

111 Wn.2d 621, 628, 763 P.2d 199 (1988). Given the nature of his crimes and the nature of his violations, Rowe does not demonstrate that the ISRB abused its discretion in ordering him returned to total confinement.

Rowe does not show any grounds for relief from restraint, making his petition frivolous. Accordingly, it is hereby

ORDERED that Rowe's petition is dismissed under RAP 16.11(b).



Acting Chief Judge

cc: Anthony C. Rowe
Mindy L. Rose