

Portenier, Marion (ATG)

From: ATG MI COR Oly CE Reader
Sent: Friday, December 09, 2016 11:12 AM
To: Portenier, Marion (ATG)
Subject: FW: D2 491681--IN RE THE PERSONAL RESTRAINT PETITION OF JAMES HOUSTON ROWE II--Order.
Attachments: Order Dismissing Petition- 49168-1.pdf
Importance: High

This goes to you; correct?

Tina . . .

From: Kostin, Alex (ATG)
Sent: Friday, December 09, 2016 10:49 AM
To: ATG MI COR Oly CE Reader; ATG MI COR OLY LA EF
Subject: FW: D2 491681--IN RE THE PERSONAL RESTRAINT PETITION OF JAMES HOUSTON ROWE II--Order
Importance: High

From: Piccoli, Amanda
Sent: Friday, December 09, 2016 10:48:10 AM (UTC-08:00) Pacific Time (US & Canada)
To: Kostin, Alex (ATG); ATG MI COR Oly CE Reader
Subject: D2 491681--IN RE THE PERSONAL RESTRAINT PETITION OF JAMES HOUSTON ROWE II--Order

To Counsel and Interested Parties:

Attached is an Order filed today, 12/9/2016.

This will be the only notice you will receive from the court.

The court requests that motions and other correspondence be sent to coa2filings@courts.wa.gov, or, if counsel has a JIS USERID (can access SCOMIS/ACORDS), please use the newly established attorney portal at <http://www.courts.wa.gov/coa2efiling>. If you have difficulty accessing or using either method, please contact this office. When filing electronically, please do NOT follow up with a paper copy.

Please contact the court at (253) 593-2970 if you have any questions or comments.

Thank you.

Amanda E. Piccoli
Case Manager

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of
JAMES HOUSTON ROWE II,
Petitioner.

No. 49168-1-II

ORDER DISMISSING PETITION

FILED
COURT OF APPEALS
DIVISION II
2016 DEC -9 AM 10:31
STATE OF WASHINGTON
BY DEPUTY

James Rowe II seeks relief from the sentence imposed following his 2003 conviction for first degree rape of a child. The trial court imposed an indeterminate sentence with a minimum term of confinement of 150 months and a maximum term of confinement for life. In January 2016, the Indeterminate Sentence Review Board found Rowe releasable, conditioned on Rowe's submission of an offender release plan and on the Department of Corrections' approval of that plan. Corrections' officials have since repeatedly attempted to locate a suitable release residence for Rowe, but have been unsuccessful thus far in part because of his Level 3 sex offender status.

First, Rowe argues that upon the completion of his minimum term of confinement, Corrections lost jurisdiction to continue his confinement. He is mistaken. He has no liberty interest in being released upon completion of his minimum term of confinement. *In re Personal Restraint of Cashaw*, 123 Wn.2d 138, 143, 866 P.2d 8 (1994): He is only entitled to be considered for parole. *Id.*

Second, Rowe argues that Corrections has "pre-approved/qualified" residences and that it should be ordered to use one for his release residence. But he neither demonstrates the existence of such residences nor, even if they exist, that he is entitled to have one used

as his release residence. Corrections' officials have investigated a number of possible release residences, but have not yet located one. It is ultimately Rowe's burden to present an acceptable parole plan, including a "suitable" residence. WAC 381-40-100. Until he satisfies that burden, he has no right to release.

Third, Rowe argues that Corrections' release notices, which give victims, witnesses and law enforcement 35 days' notice of impending releases of sex offenders, violates RCW 72.09.712(1), which provides for 30 days' notice. But under that statute, Corrections must give such notices "in no event later than 30 days before release." Corrections' policy of giving 35 days' notice is not contrary to the statute.

Finally, Rowe argues that Corrections has been improperly collecting costs of incarceration from him because they are discretionary legal financial obligations that require an individualized determination of his ability to pay them under *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015). But he does not show that costs of incarceration are legal financial obligations to which *Blazina* would apply. And *In re Personal Restraint of Pierce*, 173 Wn.2d 372, 384, 268 P.3d 907 (2011), holds that Corrections has the authority to deduct costs of incarceration from offenders.

Rowe does not demonstrate any grounds for relief from restraint. Accordingly, it is hereby

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

DATED this 9th day of DECEMBER, 2016.


Acting Chief Judge Pro Tempore

cc: James H. Rowe II
Alex Kostin