

December 3, 2019

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

In the Matter of the Personal Restraint of:

GRAHAM KENDRICK SHERRILL,

Petitioner.

No. 53298-1-II

ORDER DISMISSING PETITION

Graham Sherrill seeks relief from personal restraint imposed following his 2004 plea of guilty to first degree burglary, first degree rape, second degree assault and third degree assault. In this, his fourth petition, he claims that (1) the Department of Corrections is improperly prohibiting visits from his former step-daughter and former step-son, (2) the officer in the third degree assault charge injured himself, (3) his trial lawyer did not file an appeal as he promised to do, (4) the State's closing argument was improper, (5) the trial court erred in refusing to give a jury instruction regarding hearsay evidence, (6) his trial lawyer was ineffective in not calling witnesses regarding his marital status and (7) the burglary, rape and second degree assault were parts of the same criminal conduct.

RCW 10.73.090(1) provides:

No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

Sherrill's judgment and sentence became final on December 10, 2004, when the trial court entered it. RCW 10.73.090(3)(a). He did not file his petition until February 28, 2019, more than one year later.<sup>1</sup> Unless he shows that one of the exceptions in RCW 10.73.100 applies or shows that his judgment and sentence is facially invalid, his petition is time-barred. *In re Pers. Restraint of Hemenway*, 147 Wn.2d 529, 532-33, 55 P.3d 615 (2002).

Sherrill does not demonstrate that his judgment and sentence is facially invalid. Nor does Sherrill argue or demonstrate that any of the exceptions in RCW 10.73.100 applies to his petition. The Department had valid penological interests in not allowing unrestricted visitation between Sherrill and his former step-daughter, who was the daughter of the victim of his rape, because she wanted to discuss the crimes with him in an open visitation setting. *Turner v. Safley*, 482 U.S. 78, 87, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987). There is no evidence that Sherrill's former step-son has requested visitation. And to the extent Sherrill is arguing that his crimes were parts of the same criminal conduct, that claim was rejected in his first petition. Accordingly, his fourth petition is time-barred and it is hereby

---

<sup>1</sup> Sherrill filed a motion for discretionary review and a motion to modify his sentence with the trial court. That court transferred both motions to us under CrR 7.8(c) to be considered as a personal restraint petition.

ORDERED that Sherrill's petition is dismissed under RAP 16.11(b).<sup>2</sup> His request for appointment of counsel is denied.

  
\_\_\_\_\_  
Acting Chief Judge Pro Tempore

cc: Graham K. Sherrill  
Aaron Williams  
Pierce County Clerk  
County Cause No. 04-1-02696-4

---

<sup>2</sup> Although Sherrill's petition is successive, we dismiss it rather than transfer it to our Supreme Court because it is also untimely. *In re Pers. Restraint of Turay*, 150 Wn.2d 71, 86-87, 74 P.3d 1194 (2003).