

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the
Personal Restraint Petition of

TYRONE B. R. VORSBURGH,

Petitioner.

No. 47052-7-II

ORDER DISMISSING PETITION

FILED
COURT OF APPEALS
DIVISION II
2015 JUN 30 PM 3:24
STATE OF WASHINGTON
BY  DERBY

Tyrone Vorsburgh seeks relief from personal restraint based on the Department of Corrections' calculation of his projected earned early release credits. Vorsburgh asserts that the Department is improperly calculating his projected earned early release credits at a maximum rate of 10 percent of his sentence when it is required by statute to calculate his projected earned early release credits at a maximum rate of 33 percent of his sentence.

To obtain relief through a personal restraint petition, Vorsburgh must show that he is under restraint and that the restraint is unlawful; otherwise there is no relief available. RAP 16.4; *In re Pers. Restraint of Grantham*, 168 Wn.2d 204, 212-13 (2010). Vorsburgh can demonstrate that he is unlawfully restrained by showing that the manner of his restraint is "in violation of the Constitution of the United States or the Constitution or laws of the State of Washington." RAP 16.4(c)(6). Vorsburgh contends that the manner of his restraint is unlawful because the Department is improperly calculating his projected earned early release credits, contrary to RCW 9.94A.729.

RCW 9.94A.729(3) provides in relevant part:

Served
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An offender may earn early release time as follows:

....
(c) In the case of an offender convicted of a *serious violent offense*, or a sex crime offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned early release time may not exceed ten percent of the sentence.

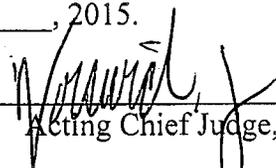
(Emphasis added). Vorsburgh contends that attempted first degree assault, the crime to which he had pleaded guilty, does not fall under RCW 9.94A.729(3)(c)'s earned release time provision and, thus, the Department was required to calculate his earned early release time at a maximum of 33 percent of his sentence under RCW 9.94.729(3)(e).¹

RCW 9.94A.030(45)(v) designates the crime of first degree assault as a "serious violent offense." And RCW 9.94.030(45)(ix) provides that an attempt to commit a crime designated as a serious violent offense is also considered a serious violent offense.

Because attempted first degree assault is a serious violent offense, the Department is correctly calculating Vorsburgh's projected earned early release credits at a maximum rate of 10 percent of his sentence under RCW 9.94A.729(3)(c). Thus, Vorsburgh cannot show that the manner of his restraint is unlawful. Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b).

DATED this 30th day of June, 2015.



Acting Chief Judge, Pro Tem

cc: Tyrone B. R. Vorsburgh
Pierce County Clerk
County Cause No(s). 12-1-02536-5
Timothy N. Lang, Department Of Corrections
Robert W. Ferguson, Attorney General
Alex A. Kostin, Assistant Attorney General, Corrections Division

¹ RCW 9.94.729(3)(e) provides, "In no other case shall the aggregate earned release time exceed one-third of the total sentence."