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Court of Appeals
Division III
State of Washington

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Personal Restraint)	No. 35021-5-III
of:)	
)	
WALDO E. WALDRON-RAMSEY,)	ORDER DISMISSING PERSONAL
)	RESTRAINT PETITION
)	
Petitioner.)	

Waldo Emerson Waldron-Ramsey is currently in the custody of the Department of Corrections (DOC) serving a sentence for his 1989 Spokane County conviction of first degree murder. In this personal restraint petition, he claims he is under unlawful restraint because the DOC failed to give him earned time credit on three occasions over the last twenty-five years and failed to provide a hearing prior to revoking part of his earned time credit in 1994.

Following Mr. Waldron-Ramsey's conviction for first-degree murder, the trial court imposed a sentence of 575 months incarceration. Mr. Waldron-Ramsey began his sentence in 1989 and remains in the custody of the DOC. Pursuant to the SRA, Mr.

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Waldron-Ramsey is eligible to have his sentence reduced based on earned release time. RCW 9.94A.729(3).

Throughout his incarceration, Mr. Waldron-Ramsey has served multiple periods in segregation from the general population during which he did not receive credit for earned time. In this petition, he asserts that the DOC erroneously deprived him of earned time credit for his time in segregation in three instances, and failed to provide his requested hearing prior to revoking his earned time credit.

Since Mr. Waldron-Ramsey challenges a DOC decision from which he has had no alternate avenue for review, RAP 16.4(a) requires only that he show he is unlawfully restrained. RAP 16.4; *In re Pers. Restraint of Grantham*, 168 Wn.2d 204, 214, 227 P.3d 285 (2010). He is under the restraint of his prison sentence, but to obtain relief he must show either a constitutional violation or a violation of state law. *In re Pers. Restraint of Cashaw*, 123 Wn.2d 138, 148, 866 P.2d 8 (1994); RAP 16.4(c)(2), (6). An inmate has a constitutionally protected, though limited, liberty interest in earned early release credits, and thus a DOC action that wrongfully denies an inmate credit for time served or good-time earned would result in the unlawful restraint of the inmate. *In re Pers. Restraint of Costello*, 131 Wn. App. 828, 832, 129 P.3d 827 (2006). The DOC must provide at least a minimal level of due process prior to depriving an inmate of earned early release time. *In re Personal Restraint of Gronquist*, 138 Wn.2d 388, 408, 978 P.2d 1083 (1999).

Petitioners seeking relief from restraint must state the “facts upon which the claim

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of unlawful restraint of petitioner is based and the evidence available to support the factual allegations.” RAP 16.7(a)(2). Although the petitioner is not required to actually present evidence, he must at least identify the existence of material evidence and where it can be found. *In re Personal Restraint of Ruiz-Sanabria*, 184 Wn.2d 632, 641, 362 P.3d 758 (2015). Bald assertions and conclusory allegations are not sufficient. *Id.* If the evidence is based on knowledge in the possession of others, the petitioner must present their affidavits, with admissible statements, or other corroborative evidence. *Id.* Factual allegations must be based on more than mere speculation, conjecture, or inadmissible hearsay. *In re Personal Restraint of Yates*, 177 Wn.2d 1, 18, 296 P.3d 872 (2013).

The SRA contemplates that an offender may be released from total confinement before serving the full sentence imposed by the court. This is accomplished through “earned release time,” which may be granted “for good behavior and good performance” while the offender is in custody. RCW 9.94A.729(1)(a). Policies and procedures for earned release time are “developed and adopted by the correctional agency having jurisdiction in which the offender is confined.” *Id.* DOC Policy 350.100 divides earned release time into two categories —“earned time” and “good conduct time.” Only “earned time” is at issue in this case. Pursuant to DOC Policy 350.100, offenders who participate in approved programs are eligible for earned time each calendar month.

Mr. Waldron-Ramsey initially claims he is entitled to earned time for May 1992, as well as May and June 2000, even though he was in segregation during those months,

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because the DOC approved his release from segregation in May 1992 and again in May 2000. He asserts that under DOC Policy 350.100, he was eligible to begin earning earned time as soon as the DOC approved his release from segregation.

The exhibits provided by Mr. Waldron-Ramsey and the Offender Management Network Information (OMNI) Face Sheet provided by the State indicate that Mr. Waldron-Ramsey did not earn earned time from October 1, 1991, to June 1, 1992, or from December 1, 1999, to July 1, 2000, because he was in segregation. The record contains no evidence that the DOC approved his return to the general population in May 1992 or May 2000, but merely reflects that he resumed earning earned time in on June 1, 1992, and again on July 1, 2000. The only evidence provided by Mr. Waldron-Ramsey regarding when the DOC approved his release from segregation is his own conclusory statement. He has not provided any supporting affidavits nor has he identified where this information can be found.¹ This is not sufficient to demonstrate that the DOC has wrongfully denied earned time credit for May 1992 or May and June 2000.

Mr. Waldron-Ramsey next contends that he is entitled to earned time for the period from April 1, 1999, to July 20, 2000, because the DOC placed him in administrative segregation for an infraction the DOC subsequently threw out, and he was

¹ In his reply brief, Mr. Waldron-Ramsey contends that all information necessary to the resolution of his claims is located in the OMNI Face Sheet provided by the State. However, the OMNI Face Sheet contains no information regarding when the DOC approved his release from segregation.

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therefore eligible for earned time pursuant to DOC Policy 350.100.

The exhibits provided by Mr. Waldron-Ramsey and the OMNI Face Sheet demonstrate that Mr. Waldron-Ramsey did not receive earned time from April 1, 1999, to October 1, 1999, or from December 1, 1999, to July 1, 1999, because he was in segregation, but they do not indicate why Mr. Waldron-Ramsey was in segregation. The record contains no evidence that the DOC reversed an infraction determination underlying the segregation placement at issue. Mr. Waldron-Ramsey has failed to demonstrate he has competent, admissible evidence to establish that the DOC threw out the underlying infraction or that the DOC otherwise erroneously imposed segregation. He has therefore failed to provide sufficient evidence that he is entitled to earned time for this period.

Mr. Waldron-Ramsey's final claim is that the DOC violated its own policy by failing to provide a hearing in 1994 regarding its decision to "non-award" 45.50 days of his earned time for the period from October 1, 1993, to July 1, 1994, based on his failure to program. The record reflects that the DOC informed Mr. Waldron-Ramsey of the pending non-award and his right to request an Earned Time Hearing, and that Mr. Waldron-Ramsey indicated he was going to request a hearing. However, Mr. Waldron-Ramsey has presented no evidence beyond his bare assertion that he did in fact request a hearing and the hearing did not occur, nor has he demonstrated that he has competent, admissible evidence outside the existing record to prove that he requested the hearing and

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that it did not occur. This is insufficient to demonstrate that the DOC wrongfully denied Mr. Waldron-Ramsey a hearing regarding the pending loss of earned time.

Mr. Waldron-Ramsey has made no showing that he is under unlawful restraint. He fails his burden under RAP 16.4.

Accordingly, the petition is dismissed pursuant to RAP 16.11(b). The court also denies Mr. Waldron-Ramsey's request for appointed counsel. *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 390, 972 P.2d 1250 (1999); RCW 10.73.150(4).²


ROBERT LAWRENCE-BERREY
ACTING CHIEF JUDGE

² The court waives the filing fee for this petition based upon Mr. Waldron-Ramsey's indigence. RAP 16.8(a).