

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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DIVISION II
2015 JUN 30 PM 3:23
STATE OF WASHINGTON
BY ~~DEPT~~

In re the
Personal Restraint Petition of

JOSEPH G. WOODSUM,

Petitioner.

No. 46669-4-II

ORDER DISMISSING PETITION¹

Joseph G. Woodsum seeks relief from personal restraint imposed following the Department of Corrections' revocation of his Drug Offender Sentencing Alternative (DOSA) sentence. Woodsum argues that the Department lacked authority to revoke his DOSA sentence.

To obtain relief through a personal restraint petition, Woodsum 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). Woodsum 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). Woodsum contends that the manner of his restraint is unlawful because the Department lacked authority to revoke his DOSA sentence. He is incorrect.

¹ Woodsum's request for the appointment of counsel at public expense is denied.

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The Department had authority under the DOSA statute, RCW 9.94A.662, to revoke Woodsum's DOSA sentence for failure to complete his required substance abuse treatment. That statute provides in relevant part:

(2) During incarceration in the state facility, offenders sentenced under this section shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections.

(3) If the department finds that conditions of community custody have been willfully violated the offender may be reclassified to serve the remaining balance of the original sentence. An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court.

These statutory provisions vest the Department with authority to find that an offender willfully violated community custody conditions, including mandatory conditions under RCW 9.94A.662(1)(b) requiring the offender to participate in an "appropriate substance abuse treatment" program. The provisions further provide that such willful violation or failure to complete a substance abuse treatment program operates to revoke the offender's DOSA sentence as a matter of law, without requiring a hearing before the sentencing court. The sentencing court's judgment and sentence order expressed the Department's authority to revoke Woodsum's DOSA sentence, stating in relevant part:

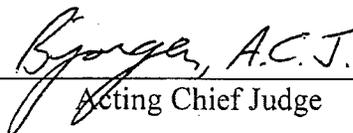
ADDITIONAL CONFINEMENT UPON VIOLATION OF DOSA SENTENCE CONDITIONS—*If DOC finds that the Defendant has willfully violated the conditions of the drug offender sentencing alternative program, DOC may reclassify the Defendant to serve the remaining balance of the original sentence.*

Judgment and Sentence at 4 (attached to Response Br. as Exhibit 2) (emphasis added).

Because RCW 9.94A.662 provides the Department with statutory authority to revoke Woodsum's DOSA sentence, he fails to demonstrate that manner of his restraint is unlawful.² 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

cc: Joseph G. Woodsum
Kitsap County Clerk
County Cause No(s). 13-1-00232-7
Timothy N. Lang, Department Of Corrections
Robert W. Ferguson, Attorney General
Mandy L. Rose, Assistant Attorney General, Corrections Division

² For the first time in his reply brief, Woodsum argues that the Department lacked sufficient evidence to find that he willfully violated his DOSA conditions. However, we do not consider issues raised for the first time in a reply brief and, thus, we do not further address this argument. *In re Pers. Restraint of Krier*, 108 Wn. App. 31, 37 n. 4 (2001).