

December 20, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Personal Restraint of

DENNIS D. CORBRAY,

Petitioner.

No. 58442-5-II

ORDER DISMISSING PETITION

Dennis D. Corbray seeks relief from personal restraint imposed following his convictions in Pierce County Superior Court cause number 01-1-04411-9. Corbray filed a CrR 7.8 motion for relief of judgment which was transferred to this court as a personal restraint petition (PRP). Corbray argues that the Department of Corrections (DOC) unlawfully modified his judgment and sentence when it recalculated his time served credit.

In March 2001, the Benton County Superior Court sentenced Corbray to a 12-months-plus-1-day sentence for third degree assault with credit for time served. Resp. Br. of DOC, Attachs. A,C. Corbray entered custody on April 4, 2001. *Id.*, Attach. C.

On September 25, while Corbray was serving his Benton County sentence, DOC transported him to the Pierce County jail where he awaited trial on this Pierce County cause number. *Id.*, Attach. D. During his time in Pierce County jail, Corbray reached his earned release date on the Benton County sentence. *Id.*, Attach. B.

In January 2002, Corbray pleaded guilty to first degree rape and second degree assault in the Pierce County matter. *Id.* The trial court sentenced Corbray to life without the possibility of release. *Id.* When Corbray returned to DOC custody, Pierce County jail

issued a jail certification stating Corbray served 133 days in their jail from September 25, 2001, to February 5, 2002. *Id.*, Attach. D. In June 2023, DOC sent Corbray a letter informing him that it had recalculated his time served credit for the Pierce County sentence and adjusted it from 133 to 46, but the letter noted that the change had no impact on his overall estimated release date. PRP at 8.

An inmate seeking judicial review of a decision through a personal restraint proceeding is required to demonstrate both that he is being restrained and that the restraint is unlawful. *In re Pers. Restraint of Costello*, 131 Wn. App. 828, 832, 129 P.3d 827 (2006); RAP 16.4(a). A petitioner must show that they were actually and substantially prejudiced as a result of constitutional error or a fundamental defect of a nonconstitutional nature that inherently resulted in a complete miscarriage of justice. *In re Pers. Restraint of Swagerty*, 186 Wn.2d 801, 807, 383 P.3d 454 (2016).

The statutory requirement codified in RCW 9.94A.505(6) that an offender receive credit for all detention time reflects a constitutional mandate. *Costello*, 131 Wn. App. at 832. “A defendant is entitled to credit for time served based on constitutional principles of due process and equal protection.” *State v. Lewis*, 185 Wn. App. 338, 342, 344 P.3d 1220 (2014), *aff’d in part, rev’d in part*, 184 Wn.2d 201, 355 P.3d 1148 (2015). Thus, a DOC action that wrongfully denies an inmate credit for time served could result in the unlawful restraint of the inmate. *Costello*, 131 Wn. App. at 832.

Notably here, Corbray does not challenge DOC’s calculation of his time served credit. Rather, he challenges DOC’s authority to “alter the precise terms of [] Corbray’s judgment and sentence.” Reply Br. of Pet’r at 1. His argument appears to be based on correspondence from DOC regarding the recalculation of his presentence jail credits.

Sentencing authority rests exclusively with the court, but a sentencing court does not have authority to credit an offender for more time served credit than he is entitled to by law. And DOC is prohibited from accepting jail certifications that are based on apparent or manifest errors of law. *Costello*, 131 Wn. App. at 834.

In this case, DOC correctly recognized that the jail certification included time Corbray served on other charges. RCW 9.94A.505(6) orders credit “for all confinement served before sentencing if that confinement was *solely* in regard to the offense for which the offender is being sentenced.” (Emphasis added.) Thus, DOC correctly concluded that the jail certification, if applied, would contravene the statute and therefore contained a manifest error of law. DOC’s correction of that error provided Corbray with all the credit he was entitled to by law and adhered to the terms of the judgment and sentence at issue.

Thus, Corbray fails to demonstrate unlawful detention. Moreover, Corbray cannot show any actual and substantial prejudice as the result of the alleged error. Corbray was sentenced to life in prison without the possibility of early release. So, although Corbray does not argue that DOC incorrectly calculated his time served credit, any such calculation has no impact on his potential release date, and he cannot meet his burden to prove prejudice in the personal restraint petition context. Because Corbray’s petition fails to present an arguable basis for relief in law or in fact, the petition is frivolous.

Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b). Corbray’s objection to the transfer of his CrR 7.8 motion is denied. Corbray’s motion for an order directing the State to admit or deny particular allegations under RAP 16.9 is also denied. To the extent Corbray seeks additional relief through other associated motions that were also transferred

to this court or filed in this court, those motions are also denied. *See* Motion Requesting Subpoenas; Motions Requesting Counsel; Motions to Transport; Motions to Compel Production; Motion Requesting Brady Order.



Glasgow, Chief Judge

cc: Dennis D. Corbray
Pierce County Clerk
County Cause No(s). 01-1-04411-9
Mary Robnett, Pierce County Prosecuting Attorney
Keith Hines