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The Court of Appeals
of the
State of Washington
Division III

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April 7, 2025

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CASE # 406547
Personal Restraint Petition of Richard Charles Hebert
SPOKANE COUNTY SUPERIOR COURT No. 161029320

Dear Counsel and Mr. Hebert:

Enclosed is a copy of the Order Dismissing Personal Restraint Petition filed by this Court today in the above-referenced case.

In accordance with RAP 16.14(c) and RAP 13.5 A, review of this Order may be obtained only by filing a Motion for Discretionary Review in the Washington State Supreme Court within 30 days after the filing of this Order. A copy must be filed with the Court of Appeals.

The address for the Washington State Supreme Court is Temple of Justice, P. O. Box 40929, Olympia, WA 98504-0929.

Sincerely,

Tristen L. Worthen
Clerk/Administrator

TLW:bls
Enclosure

FILED
Apr 07, 2025
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Personal Restraint of: **RICHARD CHARLES HEBERT,** **Petitioner.**	**No. 40654-7-III** **ORDER DISMISSING PERSONAL RESTRAINT PETITION**

Richard C. Hebert petitions the court to (1) reverse a Department of Corrections' decision finding him guilty of absconding from community custody and ordering that he return to prison, and (2) order his immediate release from confinement. The petition is dismissed as frivolous. RAP 16.11(b).

Background Facts

Hebert was sentenced to prison and community custody for drug and firearm offenses. While serving his term of community custody, Hebert failed to report to his Community Custody Officer (CCO) as directed on or about November 6, 2023. He was arrested on a Department of Corrections (DOC) warrant 71 days later.

DOC notified Hebert that a hearing would be held on the allegation that he

violated his community custody conditions by absconding from supervision when he failed to report and failed to turn himself in to a DOC office within seven days after his arrest warrant issued. The notice further informed Hebert, "If you are found guilty at the hearing, the Department may . . . [p]lace you in total confinement in a jail or prison[.]" Amend. Pers. Restraint Pet. at 18 (Oct. 7, 2024) (emphasis omitted).

A revocation hearing was held the following week. The DOC hearing officer considered the CCO's report of alleged violation and heard Hebert's testimony. The CCO's report states Hebert was sentenced to community custody supervision. The conditions of his supervision included reporting to DOC as directed and not consuming controlled substances, and Hebert failed to report as directed and an arrest warrant issued on November 6, 2023. The CCO noted that Hebert "is classified as a High-Violent Property Drug (HPVD) Offender" and recommended that "Hebert be returned to prison to serve their remaining [Community Custody Prison] time for a period to be determined by DOC records." *Id.* at 22.

Hebert admitted he was guilty of absconding and offered mitigating circumstances in an effort to show that his violation did not warrant a return to prison. He testified he had been sick and had notified his CCO of his illness. His CCO had told him to check in "next week," but Hebert did not hear a date. *Id.* at 15. His CCO called Hebert the next Tuesday and asked where he was and why he had not reported on Monday. Hebert

explained to the hearing officer that he did not turned himself in after November 6 because he wanted to be with his children on their birthdays. He also admitted he would test positive for marijuana.

Based on the evidence received, the hearing officer found Hebert guilty and returned him to prison for absconding for 71 days, for consuming marijuana, and because he was classified as a High-Violent Property Drug (HPVD) Offender.

Hebert appealed the sanction. After the Appeals Panel reviewed Hebert's appeal request, discovery material, and the audio recording of the hearing, it affirmed the process and decision. The panel reasoned that evidence supported Hebert's guilty plea because, even if he misunderstood the specific day he was directed to report, he absconded for 71 days. It further found no reason why Hebert should not have been returned to prison when he chose to violate the most basic requirement of community supervision (i.e., reporting to his CCO), he did not attempt to remedy his situation, he had violated the conditions of community supervision three times since his last release from prison, and the hearing officer could not verify he was employed at the time of his arrest other than through a relative who also worked at his purported place of employment.

Analysis

To successfully challenge a DOC order returning an offender to prison, a petitioner must demonstrate unlawful restraint. *See also In re Pers. Restraint of Albritton*,

143 Wn. App. 584, 590-91, 180 P.3d 790 (2008); RAP 16.4(a)-(c). To do so, the petitioner must state "the facts upon which the claim of unlawful restraint of petitioner is based and the evidence available to support the factual allegations, and . . . why the petitioner's restraint is unlawful for one or more of the reasons specified in rule 16.4(c)." RAP 16.7(a)(2). A petitioner must state with particularity facts that, if proven, would entitle him to relief. *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992).

"If the petitioner's allegations are based on matters outside the existing record, the petitioner must demonstrate that he has competent, admissible evidence to establish the facts that entitle him to relief." *Id.* Bald assertions and conclusory allegations are not sufficient, nor are arguments made in only broad, general terms. *Id.*; *In re Pers. Restraint of Rhem*, 188 Wn.2d 321, 327, 394 P.3d 367 (2017). If the issues presented are frivolous, that is, if they "fail[] to present an arguable basis for relief in law or in fact," then the petition will be dismissed. *In re Pers. Restraint of Khan*, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015); RAP 16.11(b).

Hebert contends he is entitled to an impartial hearing officer but that his CCO, the DOC hearing officer, and the DOC appeals panel were partial and biased against him. Minimum requirements of due process at a revocation hearing include a "'neutral and detached' hearing body." *Morrissey v. Brewer*, 408 U.S. 471, 489, 92 S. Ct. 2593, 33 L.

Ed. 2d 484 (1972).

No arguable basis in law or fact supports Hebert's contention that his CCO's alleged bias against him entitles him to relief. While Hebert was entitled to an impartial "hearing body," he cites no legal authority that entitles him to an impartial and unbiased CCO, and this court is not aware of any such authority. *See id.* at 486 (requiring a neutral and detached hearing body in part because a supervising parole officer directly involved in making recommendations to revoke parole "cannot always have complete objectivity in evaluating them"). Further, Hebert's allegation of bias against his CCO is based on a bald assertion that the CCO made "slanderous and unproven" "statements/accusations" when they first met. Amend. Pers. Restraint Pet. at 3. Hebert does not provide the content of the alleged statements/accusations; he does not offer admissible evidence of any such statement or accusation; and he does not argue how these alleged statements and accusations demonstrate bias. Hebert's alleges his CCO was biased for asking Hebert why he did not report on a certain day when the CCO had told him to report "next week." *Id.* at 3. Again, Hebert does not argue how the CCO's question demonstrates bias.

No arguable factual basis for relief supports Hebert's contention that the hearing officer's alleged biased entitles him to relief either. Hebert asserts the hearing officer was biased because she "didn't seem to care" that he had full custody of his two sons, was training for a test with the Department of Natural Resources, and was working and

volunteering at Peer Spokane. *Id.* at 3. This asserted lack of care is speculative, and Hebert fails to support it with evidence. The assertion also overlooks a DOC hearing officer's authority and discretion to revoke the community custody of and return to prison an offender – like Hebert – who has been released from prison and violates any condition of community custody. RCW 9.94A.633(2)(a); WAC 137-30-080(2).

Finally, Hebert fails to present an arguable factual basis to support his claim that the appeals panel was biased. Hebert claims the appeals panel ignored his assertions that his CCO and the hearing officer mistreated him. He also claims it ignored the facts that his CCO did *not* recommend his return to prison and that the hearing officer did not call his employer to verify his employment. Hebert offers no evidence that he told the appeals panel he was mistreated. And the evidence he does produce defeats his remaining claims. The CCO's report of alleged violation shows, contrary to Hebert's assertion, that his CCO stated, "I recommend Mr. Hebert be returned to prison." Amend. Pers. Restraint Pet. at 22. Finally, the appeals panel decision states it listened to the audio recording of Hebert's revocation hearing and acknowledges that the hearing officer could not verify that Hebert was employed "other than through a family member who also worked at the same location." *Id.* at 25.

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Accordingly, IT IS ORDERED, Richard C. Hebert's request for counsel is denied, and his personal restraint petition is dismissed as frivolous. RAP 16.11(b).

Staab, J.

TRACY A. STAAB
ACTING CHIEF JUDGE

From: Hines, Keith (ATG)
To: ATG MI COR Oly CE Reader; ATG MI COR OLY LA EF
Subject: FW: 406547 Personal Restraint Petition of Richard Charles Hebert
Date: Monday, April 7, 2025 8:35:32 AM
Attachments: - - 406547 - Public - Order - Dismissing - 4 7 2025 - - - Staab, Tracy.pdf

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From: Spence, Barb <Barb.Spence@courts.wa.gov>
Sent: Monday, April 7, 2025 8:34:38 AM (UTC-08:00) Pacific Time (US & Canada)
To: Hines, Keith (ATG) <Keith.Hines@ATG.WA.GOV>; Samson, John J (ATG) <john.samson@atg.wa.gov>
Subject: 406547 Personal Restraint Petition of Richard Charles Hebert

[EXTERNAL]

Attached is a copy of a document in the above referenced case. Please consider this as the original for your files, a copy will not be sent by regular mail.

Any documents filed with this Court should be submitted via our E-filing Portal: https://ac.courts.wa.gov/

Please do not respond to this email. For any questions, please contact the court directly.