

FILED
Nov 28, 2023
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Personal Restraint)	No. 39669-0-III
of:)	
)	
MARK LARUE,)	ORDER DISMISSING PERSONAL
)	RESTRAINT PETITION
Petitioner.)	

Mark LaRue seeks relief from personal restraint by the Indeterminate Sentencing Review Board (ISRB). Mr. LaRue is one of Washington’s few remaining inmates incarcerated under the sentencing scheme in effect prior to enactment of the Sentencing Reform Act. Mr. LaRue was sentenced to serve a maximum of 30 years in prison for a 1979 assault on a guard at the Washington State Penitentiary. In 2012, prior to expiration of his sentence, Mr. LaRue was released to federal custody. The federal government released Mr. LaRue to supervision in 2018. Mr. LaRue absconded from all supervision in 2019 and was apprehended in 2022. The relief Mr. LaRue seeks is release from prison. For the reasons stated below, the law requires dismissal of Mr. LaRue’s petition.

Because he is challenging an ISRB decision for which he has had “no previous or alternative avenue for obtaining state judicial review,” Mr. LaRue must show that he is under restraint and that the restraint is unlawful. *See In re Pers. Restraint of Cashaw,*

123 Wn.2d 138, 148-49, 866 P.2d 8 (1994); RAP 16.4(a)-(c). In such instances, “the petitioner need not make the threshold showing of actual prejudice or complete miscarriage of justice.” *In re Pierce*, 173 Wn.2d 372, 377, 268 P.3d 907, 909 (2011) (quoting *In re Pers. Restraint of Gentry*, 170 Wn.2d 711, 714-15, 245 P.3d 766 (2010)). “It is enough if the petitioner can demonstrate unlawful restraint under RAP 16.4.” *Id.* A petitioner can meet that burden by showing a federal or state constitutional violation or violation of the laws of the State of Washington. RAP 16.4(c)(2). A petition will be dismissed as frivolous if it “fails to present an arguable basis for relief in law or in fact, given the constraints of the personal restraint petition vehicle.” *In re Pers. Restraint of Khan*, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015).

Mr. LaRue’s sole ground for relief claims that the Board unlawfully extended his 30-year sentence. Mr. LaRue specifically assigns error to the Board’s recalculation of his maximum release date to 2029, when previously it had been in 2027. As explained by the Board, this recalculation was required to account for the time Mr. LaRue absconded from supervision between September 26, 2019, and May 20, 2022. RCW 9.95.130¹ authorizes the Board to deny credit for any time during which an offender is a fugitive from justice.

¹ The version of this statute in effect when Mr. LaRue committed his crimes was LAWS OF 1955, c 133 § 14. The court refers the current version because it does not materially differ from the prior version.

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Contrary to petitioner's contention, the Board did not extend his sentence beyond the maximum set by the judgment and sentence; the Board merely refused to grant credit during a period for which the petitioner was not serving his sentence. Mr. LaRue thus fails his burden under RAP 16.4 and *Cashaw*. The court therefore dismisses the petition as frivolous pursuant to RAP 16.11(b). The motion for appointment of counsel is denied. *See In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 390, 972 P.2d 1250 (1999); RCW 10.73.150(4).



ROBERT E. LAWRENCE-BERREY
ACTING CHIEF JUDGE