

No. 46370-9-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

In re the Personal Restraint Petition of
JAMES LEE WALTERS,

Petitioner.

BRIEF IN SUPPORT OF PERSONAL RESTRAINT PETITION

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I. ASSIGNMENTS OF ERROR IN SUPPORT OF PETITION

1. Petitioner's restraint is unlawful under RAP 16.4 because the Indeterminate Sentence Review Board violated Petitioner's right to due process and abused its discretion when it denied his release from confinement.
2. The Indeterminate Sentence Review Board abused its discretion when it denied Petitioner his release from confinement because it based its decision on speculation and conjecture.
3. The Indeterminate Sentence Review Board violated Petitioner's constitutional right to due process when it failed to review and decide his case in a neutral and detached manner.
4. The Indeterminate Sentence Review Board abused its discretion when it denied Petitioner his release from confinement because it acted without consideration of or in disregard of the facts.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Is Petitioner's restraint unlawful under RAP 16.4?
(Assignments of Error 1, 2, 3, & 4)
2. Did the Indeterminate Sentence Review Board abuse its discretion, and base its decision on speculation and

conjecture, when it denied Petitioner his release because he had not participated in sex offender treatment, without any facts establishing that lack of treatment made Petitioner more likely than not to commit sex offenses if released?
(Assignments of Error 1 & 2)

3. Did the Indeterminate Sentence Review Board violate Petitioner's constitutional right to due process by failing to review and decide his case in a neutral and detached manner, when it repeatedly asserted that it would not consider releasing any sex offender who had not yet participated in treatment? (Assignments of Error 1 & 3)
4. Did the Indeterminate Sentence Review Board abuse its discretion, and act without consideration of or in disregard of the facts, when it considered that Petitioner had been charged with a sex offense in 1983, but failed to consider that he had been acquitted and failed to consider any facts regarding why he was acquitted ? (Assignments of Error 1 & 4)

III. STATEMENT OF THE CASE

James Lee Walters was convicted in Pierce County Superior Court of first degree kidnapping and indecent liberties, alleged to have been committed on March 8, 2006. (CP 1-2, 9) Walters was

sentenced on October 24, 2008 to a minimum term of 68 months of confinement and a maximum term of life.¹ (CP 9, 13) Walters asserted his innocence and appealed the conviction and sentence. (CP 109, 123-34; RP 5)² This Court affirmed Walters' conviction and sentence in an unpublished opinion dated June 7, 2010. (CP 124-34) The Mandate was issued on May 13, 2011. (CP 123)

The sex offender treatment programs offered to incarcerated sex offenders require the offender to admit guilt and be willing to discuss his or her crimes. (RP 8; see Sex Offender Treatment Program Policy, Attachment 5 to ISRB Response) But Walters did not feel free to discuss the facts of his case while his appeal and PRP were still pending, for fear his statements could be used against him if he were ever retried. (RP 4, 5, 6-7, 18-19) Because of this, he was unable to participate in any sex offender treatment programs during his term of incarceration. (RP 4, 5, 18-19; see ISRB Decision at 4, 5)

Walters had an original earned release date of October 22, 2013. (RP 1) The Indeterminate Sentence Review Board (ISRB) held a hearing on July 10, 2013 to decide whether to release Walters

¹ Pursuant to RCW 9.94A.712.

² "RP" refers to the transcript of the Indeterminate Sentence Review Board hearing on July 10, 2013.

or to extend his term of incarceration. (RP 1; see ISRB written Decision and Reasons (attached in Appendix) at 1) The Board denied Walters' release, explaining in its written decision:

In today's hearing, Mr. Walters indicated he did not want to talk about the index offense as he denies that he committed the sex offense and is still appealing. He also described wanting to do sexual deviancy treatment in the community, rather than in prison. The Board explained to Mr. Walters that he is currently in for a very serious sex offense and at this time has not participated in programming to mitigate that risk, so it is unlikely the Board will find him releasable at this time.

The ESRC has classified Mr. Walters as a Level III for community notification. This was an aggravation from a Level 1 based on "past intervention did not deter sexual re-offending and documented information that increases risk for sexual re-offense." He was assessed as a low-moderate and low risk to sexually re-offend on two different actuarials. The ESRC also referred Mr. Walters's case to the Sexually Violent Predator sub-committee who recommended a Forensic Psychological Evaluation be completed to see if he meets the criteria under RCW 71.09 if he is found releasable by the Board.

Mr. Walter's has the right to appeal his case; unfortunately, this precludes him by his own choice of fully participating in the Board hearing or the Sex Offender Treatment Program (SOTP). Mr. Walters indicates he would like to do whatever is necessary to get back to his family and is willing to do treatment. However, it is unknown if he will be accepted into treatment if he remains in denial that he committed his sex offense. Mr. Walters is currently seen as too high of a risk to release to the community. He is encouraged to participate in any programming that may be available to him and SOTP once his appeal has been

settled.

(See ISRB Decision at 4-5) The ISRB ordered that he be held in confinement for an additional 36 months. (See ISRB Decision at 1)

Walters filed a Personal Restraint Petition (PRP) on May 30, 2014, asserting that his restraint is unlawful because (1) the ISRB improperly relied on incomplete information about a prior sex offense charge that resulted in acquittal; (2) the ISRB abused its discretion by denying release based on the fact that in 2012 he was found not amenable to sex offender treatment; and (3) the ISRB violated his due process rights because it did not conduct the hearing in a neutral and detached manner. (See Walters' PRP) By order dated February 25, 2015, this Court found that "the issues raised by [Walters'] petition are not frivolous." (CP 135) The Court referred the petition to a panel of judges and ordered counsel to be appointed at public expense. (CP 135-36)

IV. ARGUMENT & AUTHORITIES

Freedom from bodily restraint has always been at the core of the liberty interest protected by the due process clause of the fourteenth amendment to the United States Constitution. In re Det.

of Thorell, 149 Wn.2d 724, 731, 72 P.3d 708 (2003).³ Commitment for any reason constitutes a significant deprivation of liberty that requires due process protection. Thorell, 149 Wn.2d at 731 (citing Foucha v. Louisiana, 504 U.S. 71, 80, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992)); Jones v. United States, 463 U.S. 354, 361, 103 S. Ct. 3043, 77 L.Ed.2d 694 (1983).

A liberty interest may also arise “from an expectation or interest created by state laws or policies.” In re McCarthy, 161 Wn.2d 234, 240, 164 P.3d 1283 (2007) (quoting Wilkinson v. Austin, 545 U.S. 209, 221, 125 S. Ct. 2384, 162 L. Ed. 2d 174 (2005)). Where an individual establishes a liberty interest, some minimal due process protections apply. See Morrissey v. Brewer, 408 U.S. 471, 481-82, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

RCW 9.94A.507, which governs the sentencing of certain nonpersistent sex offenders, mandates that offenders receive an indeterminate sentence comprised of a minimum and maximum term. RCW 9.94A.507(3). Before the expiration of an offender’s minimum term, the Department of Corrections conducts an end of sentence review by evaluating the offender based on “methodologies

³ Both the Washington and the United States Constitutions mandate that no person may be deprived of life, liberty, or property without due process of law. U.S. Const. amends. V, XIV, § 1; Wash. Const. art. I, § 3.

. . . recognized by experts in the prediction of sexual dangerousness.” RCW 9.95.420(1)(a). The ISRB then conducts a hearing to determine whether the offender poses a risk of engaging in sex offenses if released to community custody. RCW 9.95.420(3).

Under RCW 9.95.420(3)(a) and (b), the ISRB “*shall* order the offender released” under appropriate conditions “*unless* the [ISRB] determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released.” (Emphasis added.) If the ISRB does not order the offender released, it must establish a new minimum term for the offender, which may not exceed two years and must fall within the maximum term. RCW 9.95.420(3)(a) and (b).

By its plain language, RCW 9.95.420(3) requires the Board to release the offender unless it finds the offender likely to commit sex offenses upon release. Thus, RCW 9.95.420(3) “creates a limited liberty interest by restricting the Board’s discretion and establishing a presumption that offenders will be released to community custody upon the expiration of their minimum sentence.” McCarthy, 161 Wn.2d at 241.

An appellate court reviews parole eligibility decisions to ensure the ISRB properly exercised its discretion. In re Dyer, 157

Wn.2d 358, 363, 139 P.3d 320 (2006) (Dyer I). The ISRB abuses its discretion when it fails to follow its own rules, or acts without consideration of or in disregard of the facts, or where the Board bases its decision on speculation and conjecture only. Dyer I 157 Wn.2d at 363 (citing In re Addleman, 151 Wn.2d 769, 776-77, 92 P.3d 221 (2004)); In re Dyer, 175 Wn.2d 186, 196, 283 P. 3d 1103 (2012) (Dyer III) (citing In re Dyer, 164 Wn.2d 274, 286, 189 P. 3d 759 (2008) (Dyer II)).

This Court may grant relief to an individual who is under unlawful restraint. RAP 16.4(a). A personal restraint petition is the proper vehicle for challenging ISRB decisions. Addleman, 151 Wn.2d at 774 (citing In re Cashaw, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994)). Restraint is unlawful if, among other reasons, the restraint violates either the state or federal constitution or any state law, RAP 16.4(c)(2), or “[o]ther grounds exist to challenge the legality of the restraint of petitioner.” RAP 16.4(c)(7).

The facts, arguments and authorities in Walters’ PRP and Reply Brief, and the arguments and authorities below, will clearly show that Walters’ restraint is unlawful. The ISRB’s decision to deny release violated Walters’ right to due process and was an abuse of discretion because the ISRB did not follow its own rules, acted

without consideration of and in disregard of the facts, and based its decision on speculation and conjecture.

A. THE ISRB'S DECISION TO DENY RELEASE BECAUSE WALTERS HAD NOT PARTICIPATED IN SEX OFFENDER TREATMENT WAS AN ABUSE OF DISCRETION.

The ISRB is **required** to release a non-persistent sex offender unless it finds that "it is more likely than not that the offender will commit sex offenses if released." RCW 9.95.420(3). A decision to extend a previously convicted offender's minimum term must be based on a preponderance of the evidence presented at the hearing. RCW 9.95.420(3)(a). Where the Board bases its decision on speculation and conjecture only, the board has failed to follow its own rules and has abused its discretion. Dyer III, 175 Wn.2d at 196.

At the hearing, ISRB members repeatedly expressed concern that Walters had not admitted guilt and had not yet participated in a sex offender treatment program. (RP 7, 12, 18, 20) In its written decision, the ISRB also notes its concern that Walters has not participated in sex offender treatment. (Decision at 4) The primary reason given by the ISRB to support its decision to deny release is that Walters has not participated in treatment. (Decision at 4-5) But the ISRB does not find, nor does it cite to any evidence in the record, that this lack of treatment means Walters is more likely to commit sex

offenses if released.⁴

In its Response to Walters' PRP, the State cites Dyer III for the proposition that the lack of treatment alone is sufficient ground on which to deny release. (Reply at 15-16) However, Dyer was denied parole under a different statute, one with a presumption **against** release unless the offender has undergone a full and complete rehabilitation.⁵ Dyer III, 175 Wn.2d at 197. Walters, on the other hand, does not have to be fully rehabilitated in order to earn his release from confinement. Rather, he **must** be released **unless** there is a preponderance of evidence showing that he is highly likely to reoffend. RCW 9.95.420(3).

Furthermore, the Dyer III court repeatedly states that lack of treatment is **a** factor that the ISRB can consider, but never says that factor **alone** supports a decision to deny release. For example, the Dyer III Court states: "the ISRB may base its decision to deny parole, **in part**, upon the fact that the offender refuses treatment that

⁴ For example, in In re Haynes, the court upheld the ISRB's decision to deny release when the record contained a psychological report that "stated that Haynes' risk for reoffense was 'high' due to his existing track record and his lack of structured and formalized sexual deviancy treatment." 100 Wn. App. 366, 372, 996 P.2d 637 (2000). No such report exists in this case.

⁵ Under RCW 9.95.100, the statute that applied to Dyer, the ISRB is **prohibited** from releasing a prisoner prior to the expiration of his or her maximum term "unless in its opinion his or her **rehabilitation has been complete** and he or she is a fit subject for release." (Emphasis added.)

requires him or her to take responsibility for criminal behavior.” Dyer III, 175 Wn.2d at 198 (quoting Dyer II, 164 Wn.2d at 288) (emphasis added).⁶

Furthermore, the ISRB in the Dyer III case did not deny parole because of lack of treatment alone. Rather,

the ISRB carefully considered a myriad of evidence and based its denial on several factors, including: Dyer’s failure to complete sex offender treatment, the most recent psychological evaluation assessing him as a high risk to reoffend; the trial court’s and prosecuting attorney’s recommendations; Dyer’s in-person statement; and the underlying facts leading to his rape convictions.

Dyer III, 175 Wn.2d at 205.

Thus, an offender’s lack of treatment can be considered by the ISRB in deciding whether to grant release. But there is no authority for the proposition that lack of treatment alone will support the decision to deny release, without any evidence of how the lack of treatment impacts a particular offender’s risk to reoffend. And this Court should reject that proposition as well.

⁶ Our State Supreme Court has also noted, “we do not believe that it would have been appropriate for the Board to base an exceptional minimum term solely on [the offender’s] refusal to admit that he was guilty of the offense which led to his sentence to prison, [but] it is justified in considering his denial of guilt as a fact bearing on the question of whether he had been rehabilitated and presents a threat to community safety.” In re Ecklund, 139 Wn.2d 166, 176, 985 P.2d 342 (1999).

Because RCW 9.95.420(3)(b) **requires** release unless the evidence shows that an offender is more likely than not to reoffend, the ISRB should not be allowed to rely alone on the mere fact that an offender has not participated in treatment when denying release. There must be some evidence to show that the specific offender's lack of treatment makes him or her more likely to reoffend.⁷

The ISRB denied Walters release because he had not admitted guilt and therefore could not participate in sex offender treatment. But the ISRB's opinion that Walters was a high risk to reoffend because he has not participated in sex offender treatment was based on speculation and conjecture. There was no evidence in the record to support the conclusion that Walters was more likely than not to reoffend because he had not participated in treatment, or that treatment would reduce Walters' risk of reoffending. The ISRB therefore abused its discretion, and did not meet the requirements of the statute, when it denied Walters' release.

⁷ In fact, a 2006 study conducted by the Washington State Institute for Public Policy concluded that sex offender treatment does not significantly reduce recidivism or re-offense rates of its participants, as compared to offenders who, like Walters, are willing to participate in treatment but do not. (See Appendix E to Walters' PRP; the full report can also be found at http://www.wsipp.wa.gov/ReportFile/942/Wsipp_Does-the-Prison-Treatment-Program-Reduce-Recidivism_Full-Report.pdf.)

- B. WALTERS WAS DENIED HIS RIGHT TO A NEUTRAL AND DETACHED HEARING BODY, AND HIS RIGHT TO HAVE THE HEARING BODY CONSIDER ALL RELEVANT EVIDENCE, BECAUSE THE ISRB REFUSES TO CONSIDER RELEASING ANY OFFENDER WHO HAS NOT PARTICIPATED IN SEX OFFENDER TREATMENT.

The ISRB's decision is arbitrary and capricious, constituting an abuse of discretion, when it is made without consideration of or in disregard of the facts. See In re Addleman, 151 Wn.2d at 777 (citing Ben-Neth v. Indeterminate Sentencing Review Bd., 49 Wn. App. 39, 42, 740 P.2d 855 (1987)). Furthermore, because RCW 9.95.420(3) creates a limited liberty interest, an offender is afforded at least minimal due process at his or her release hearing. See McCarthy, 161 Wn.2d at 240. This includes a "neutral and detached" hearing body. See City of Seattle v. Lea, 56 Wn. App. 859, 860-61, 786 P.2d 798 (1990); McCarthy, 161 Wn.2d at 240.

At the hearing in this case, the ISRB members repeatedly informed Walters that they would not grant release to a sex offender who had not participated in treatment, stating:

- there's no way that this one member would even think about letting you out without having gone through treatment. (RP 7)
- I'm just letting you know as -- as one Board member, um, I would like to see you do treatment. (RP 12)
- in my history with the Board, I don't think we've ever released anybody with a -- a crime this serious to

do treatment in the community. . . We want the treatment done before. We've released – End of Sentence Review said you were a level three, um, for community notification. We've released level three offenders, but not with this serious offense with no treatment. (RP 12)

- We want you to do treatment, we're not gonna release you to do treatment [on] the street at this point. (RP 18)
- Most of the offenders that we release have gone through the treatment program. (RP 20)

Then, in its written decision, the ISRB states:

The Board explained to Mr. Walters that he is currently in for a very serious sex offense and at this time has not participated in programming to mitigate that risk, so it is unlikely the Board will find him releasable at this time.

(ISRB Decision at 4)

The ISRB made it quite clear that it would not consider releasing Walters unless and until he participated in treatment, and that it had formed this opinion before the hearing even began. The ISRB showed it was not approaching Walters' case with any sort of neutrality, and that it did not intend to consider any of the individual facts of his case other than his lack of treatment.

The ISRB failed to consider that Walters' had been a model prisoner during his term of incarceration, that he was working within the facility and had above-average performance reports, that he had completed a number of prison-sponsored programs, that he behaved

in a respectful and quiet manner towards staff and other inmates, that he had no major infractions while incarcerated, and that he had involved and supportive family members waiting for him upon his release. (RP 2-3) The ISRB also failed to consider the fact that Walters had been found to have a low-moderate and low risk to reoffend on two different actuarials. (ISRB Decision at 4; see also Appendix A to Walters' PRP)

The Board only considered the fact that Walters had not participated in treatment, a fact that in their minds precludes release of any sex offender. And the ISRB disregarded every other fact that showed Walters was a low risk to reoffend. By doing so, the ISRB violated Walters' due process right to a fair hearing by a neutral body, and acted in an arbitrary and capricious manner.

C. THE ISRB'S CONSIDERATION OF THE FACTS OF A PRIOR SEX OFFENSE CHARGE AGAINST WALTERS, WHILE NOT CONSIDERING FACTS SHOWING HOW AND WHY HE WAS ACQUITTED OF THAT CHARGE, WAS AN ABUSE OF DISCRETION.

Two actuarial instruments scored Walters as having a low risk to reoffend, which correlated to the lowest notification level (level one) if released. (See Appendix A to Walters' PRP.) But the End of Sentence Review Committee (ESRC) raised his notification level to a three based on the fact that Walters was charged with a sex

offense in 1983, even though he was found not guilty of that charge. (See Appendix B to Walters' PRP.) The committee states: "The [ESRC] has determined this offender's risk classification should be AGGRAVATED to RISK LEVEL III (Due to: Past intervention did not deter sexual re-offending[.])" (See Attachment B to Walters' PRP.)

The ISRB noted this fact in its reasons for denying release. (See ISRB Decision at 4.) And at the hearing, the ISRB members repeatedly discussed the existence of this prior charge and its relevance to the board members' decision making. (RP 9-10, 12-18) To the extent that the ISRB relied on this information and the level 3 classification to find Walters was more likely than not to reoffend, such reliance was in error.

The ISRB abuses its discretion when it fails to follow its own rules, or acts without consideration of or in disregard of the facts. Addleman, 151 Wn.2d at 777; Dyer I 157 Wn.2d at 363. While it may be true that the ISRB can consider evidence of uncharged crimes, or evidence of crimes of which an offender was acquitted (see e.g. In re Haynes, 100 Wn. App. 366, 371, 996 P.2d 637 (2000)), the ISRB should not disregard the equally relevant facts that the offender was acquitted of a charge and why he was acquitted. See Addleman, 151 Wn.2d at 777 (rejecting argument that ISRB acted "without

consideration of and in disregard of the facts” where “there was ample evidence supporting the ISRB’s conclusion . . . and **evidence to the contrary was duly considered**” (emphasis added)).

The ISRB looked at the few similarities between the 1983 crime and the current crime, and the fact that Walters was charged with that 1983 crime, and assumed Walters was guilty. The ISRB did not duly consider any evidence contrary to this assumption. The ISRB therefore abused its discretion once again because it acted without consideration of or in disregard of all the relevant facts.

V. CONCLUSION

Under the plain language of RCW 9.95.420(3), the ISRB must release an offender unless, by a preponderance of the evidence, it finds that the offender is more likely than not to reoffend if released. While lack of sex offender treatment may be relevant in determining whether an offender is likely to reoffend, it cannot alone be grounds for denying release. There must be some evidence in the record that the lack of treatment contributes to the specific offender’s risk to reoffend. There was no such evidence in this case, and the ISRB abused its discretion and failed to follow its own rules when it denied Walters release because he had not participated in sex offender treatment.

The ISRB also showed that it was not neutral and detached, and showed it was not considering the facts of Walter's case, when it informed Walters that it would not consider releasing a sex offender who had not participated in treatment. And finally, the ISRB failed to consider any facts surrounding his acquittal in the 1983 case, and thereby acted without consideration of and in disregard of the facts.

Walters has therefore demonstrated, in the arguments above and in his pro se PRP and Reply Brief, that the ISRB abused its discretion and violated his right to due process when it denied his release and instead ordered that he be held in confinement for an additional 36 months. Walters' restraint is unlawful under RAP 16.4, and this Court should grant him relief from restraint, and reverse the ISRB's order extending his term of confinement.

DATED: April 30, 2015



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CERTIFICATE OF MAILING

I certify that on 04/30/2015, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: James L. Walters, DOC# 755724, Monroe Correctional Complex, PO Box 777, Monroe, WA 98272.



STEPHANIE C. CUNNINGHAM, WSBA #26436

APPENDIX
ISRB WRITTEN DECISION AND REASONS



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
INDETERMINATE SENTENCE REVIEW BOARD
P.O. BOX 40907, OLYMPIA, WA 98504-0907

DECISION AND REASONS

NAME: WALTERS, James
DOC #: 755724
FACILITY: Stafford Creek Corrections Center (SCCC)
TYPE OF HEARING: .420 Hearing
HEARING DATE: July 10, 2013
PANEL MEMBERS: KR & LD
FINAL DECISION DATE: August 1, 2013

This matter came before Kecia Rongen and Lynne Delano, who are members of the Indeterminate Sentence Review Board (ISRB or the Board) on the above date for a release hearing in accordance with the provisions of RCW 9.95.420. Mr. Walters appeared in person. Testimony was provided by Department of Corrections (DOC) Classification Counselor (CC) Susan Smith and Mr. Walters.

BOARD DECISION:

This was a Deferred Decision. Based on the burden of proof set out in RCW 9.95.420 and the totality of evidence and information provided to the Board, the Board does find by a preponderance of the evidence that Mr. Walters is more likely than not to commit a sex offense if released on conditions. Consequently, the Board finds Mr. Walters not releasable and adds 36 months to his minimum term.

NEXT ACTION:

Schedule a .420 hearing approximately 120 days prior to his ERD.

JURISDICTION:

James Walters is under the jurisdiction of the Board on an October 24, 2008 conviction of Kidnapping in the First Degree Count I and Indecent Liberties with Forcible Compulsion Count II in Pierce County Cause # 06-1-01320-6. His time start is October 30, 2008. His minimum term was set at 68 months concurrent for both counts from a Sentencing Reform Act (SRA) range of 51 to 68 months. His maximum term is Life. He has served approximately 56 months plus 45 days of jail time credit.

NATURE OF INDEX OFFENSE(S):

File materials indicate that on March 8, 2006, Mr. Walters, age 40 abducted a 12 year old known female, touching her bottom and kissing her cheek. The victim had gotten off of her school bus when she heard a noise turned around and saw a man standing by the road wearing a camouflage ski mask, a red jacket and brown boots. She thought the man was Mr. Walters by the way he was dressed and she told him to quit scaring her. Mr. Walters then walked behind the victim; put a white towel over the victim's head, securing it with duct tape. He then picked the victim up and walked into the woods with her. He eventually put her down and tied her hands in the front with duct tape and made her walk in front of him. After walking for a period of time, he put her hands behind her back and re-applied the duct tape. He then made her lie down and got on top of her straddling her stomach. He kissed her near her mouth and cheek and then rolled her over and rubbed her bottom. Mr. Walters's cell phone rang and the victim recognized his ring tone as well as the fact he had a flip phone. He opened the phone and then left. The victim was able to escape and run home to tell her father. Mr. Walters didn't say a word throughout the ordeal. The victim's mother indicated she had called Mr. Walters about the same time his phone rang as she was worried about the victim. The victim was best friends with Mr. Walters's daughter.

Mr. Walters's first trial resulted in a hung jury and mistrial. He was found guilty in the second trial. He appealed the decision and the Appellate court upheld the sentence. Mr. Walters indicates his sentence is currently still under appeal with the Supreme Court.

PRIOR CRIMINAL CONDUCT:

File materials indicate that in 1983, Mr. Walters, age 17 was accused of Burglary in the First Degree and Rape in the First Degree against a known 13 year old female. Mr. Walters arrived at his friend's home on March 10, 1983 to take him to school. The 15 year old victim overheard her brother tell Mr. Walters that she was staying home sick from school that day. Later, the victim heard movement on her bed. She saw a white male, nude, with a white cloth tied around his head, sitting on her bed. A struggle ensued and the male attempted to choke the victim with a piece of a broken ax handle. He also choked her with his hands and tried to smother her with a pillow. The victim had numerous scratches and abrasions on her neck. The victim described pleading with her attacker to leave her alone. The victim felt the attacker was going to kill her if she did not submit so she stopped fighting, he then vaginally raped her. The assailant did not say anything during the entire incident, placed a blanket over her head and after disconnecting the phone in her room, fled wearing a large blanket over his head. Mr. Walters was acquitted of these charges on August 22, 1983.

Mr. Walters has a felony from 1996 for Controlled Substance Violation-Marijuana Delivery and in 1997 for Unlawful Possession of a Firearm. He has several misdemeanors for driving violations to include, Suspended Operators License, No Valid License, Consuming Liquor in Public, License Nontransferable over Bag Limit Big Game and Assault in the Fourth Degree-Domestic Violence.

HISTORY/COMMENTS:

This is Mr. Walters's first hearing with the Board.

EVIDENCE CONSIDERED:

In preparation for Mr. Walters hearing and its decision in this case, the Board completed a review of his Department of Corrections (DOC) and ISRB files. The Board considered all information contained in those files, including but not limited to: the End of Sentence Review Committee's Report(s) (ESRC); the most recent DOC facility plan; information regarding

institutional behavior and programming; any letters of support and/or concerns sent to the Board; the Pre-Sentence Investigation report, a letter from The Supreme Court of WA, dated May 10, 2013 regarding the Personal Restraint Petition of James L. Walters Court of Appeals No. 43185-8-II and a letter from Nikki Walters, wife of James Walters dated July 2013. The Board also considered the testimony of the witnesses listed above.

REASONS:

Mr. Walters is currently in the Bookkeeping program and is working within the prison. He has not received any infractions and his behavior is fine within the unit. He receives extensive family support and visits.

In today's hearing, Mr. Walters indicated he did not want to talk about the index offense as he denies that he committed the sex offense and is still appealing. He also described wanting to do sexual deviancy treatment in the community, rather than in prison. The Board explained to Mr. Walters that he is currently in for a very serious sex offense and at this time has not participated in programming to mitigate that risk, so it is unlikely the Board will find him releasable at this time.

The ESRC has classified Mr. Walters as a Level III for community notification. This was an aggravation from a Level I based on "past intervention did not deter sexual re-offending and documented information that increases risk for sexual re-offense." He was assessed as a low-moderate and low risk to sexually re-offend on two different actuarials. The ESRC also referred Mr. Walters's case to the Sexually Violent Predator sub-committee who recommended a Forensic Psychological Evaluation be completed to see if he meets the criteria under RCW 71.09 if he is found releasable by the Board.

Mr. Walter's has the right to appeal his case; unfortunately, this precludes him by his own choice of fully participating in the Board hearing or the Sex Offender Treatment Program (SOTP). Mr. Walters indicates he would like to do whatever is necessary to get back to his

WALTERS, James – DOC # 755724

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family and is willing to do treatment. However, it is unknown if he will be accepted into treatment if he remains in denial that he committed his sex offense. Mr. Walters is currently seen as too high of a risk to release to the community. He is encouraged to participate in any programming that may be available to him and SOTP once his appeal has been settled.

KR: ch

July 19, 2013

cc: Institution
James Walters
File

CUNNINGHAM LAW OFFICE

April 30, 2015 - 11:25 AM

Transmittal Letter

Document Uploaded: 7-prp2-463709-Other Brief.pdf

Case Name: In re PRP of James L. Walters

Court of Appeals Case Number: 46370-9

Is this a Personal Restraint Petition? Yes No

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Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

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Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

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Petition for Review (PRV)

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Comments:

Brief in Support of PRP

Sender Name: S C Cunningham - Email: sccattorney@yahoo.com

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