

FILED
Court of Appeals
Division II
State of Washington
1/16/2018 9:30 AM
No. 50055-8-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

In re the Personal Restraint Petition of
ANTHONY RYAN PUGH,

Petitioner.

SUPPLEMENTAL BRIEF OF PETITIONER

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TABLE OF CONTENTS

I. ASSIGNMENTS OF ERROR 1

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR.....1

III. STATEMENT OF THE CASE.....2

IV. ARGUMENT & AUTHORITIES9

 A. RCW 9.94A.730(3) CREATES A PRESUMPTION IN FAVOR OF RELEASE AND DOES NOT GIVE THE ISRB DISCRETION TO DELAY RELEASE OF AN OFFENDER WHO MEETS THE STATUTORY QUALIFICATIONS FOR RELEASE..... 10

 B. THE ISRB VIOLATED RCW 9.94A.730(3) AND ABUSED ITS DISCRETION WHEN IT FAILED TO RELEASE PUGH IN 2015 AND WHEN IT REVOKED HIS EARLY RELEASE DATE BASED ON FACTS THAT DO NOT ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT PUGH IS MORE LIKELY THAN NOT TO REOFFEND IF RELEASED. 13

V. CONCLUSION16

TABLE OF AUTHORITIES

CASES

<u>Burton v. Lehman</u> , 153 Wn.2d 416, 103 P.3d 1230 (2005).....	12
<u>Christensen v. Ellsworth</u> , 162 Wn.2d 365, 173 P.3d 228 (2007)	12
<u>City of Seattle v. Ballsmider</u> , 71 Wn. App. 159, 856 P.2d 1113 (1993).....	12-13
<u>In re Pers. Rest. of Cashaw</u> , 123 Wn.2d 138, 866 P.2d 8 (1994).....	9, 13, 15
<u>In re Pers. Rest. of Dyer</u> , 157 Wn.2d 358, 139 P.3d 320 (2006).....	13
<u>In re Pers. Rest. of McCarthy</u> , 161 Wn.2d 234, 164 P.3d 1283 (2007).....	11
<u>State v. Bartholomew</u> , 104 Wn.2d 844, 710 P.2d 196 (1985).....	12
<u>State v. Engel</u> , 166 Wn.2d 572, 210 P.3d 1007 (2009).....	12

OTHER AUTHORITIES

RAP 16.4	9
RCW 9.94A.728.....	10
RCW 9.94A.730.....	10
RCW 9.95.420	11

I. ASSIGNMENTS OF ERROR

1. Petitioner's restraint is unlawful under RAP 16.4 because it was obtained in violation of Washington state law.
2. The Indeterminate Sentence Review Board failed to follow the statutory provisions relating to the release of offenders who have served at least 20 years of a juvenile sentence.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Is Petitioner's restraint unlawful under RAP 16.4?
(Assignments of Error 1 & 2)
2. Does RCW 9.94A.730(3) create a presumption in favor of release where the statute states that an offender "shall be released" if they meet the statutory qualifications for release?
(Assignments of Error 1 & 2)
3. Does RCW 9.94A.730(3) give the Indeterminate Sentence Review Board the discretion to delay release of an offender who meets the statutory qualifications for release, where the statute specifically states that an offender "shall be released?"
(Assignments of Error 1 & 2)
4. Is Anthony Pugh's restraint unlawful, and did the Indeterminate Sentence Review Board fail to follow the statutory provisions relating to the release of offenders who

have served at least 20 years of a juvenile sentence, where Anthony Pugh met the statutory requirements for release but was ordered to serve an additional 12-18 months of confinement? (Assignments of Error 1 & 2)

5. Is Anthony Pugh's restraint unlawful, and did the Indeterminate Sentence Review Board fail to follow the statutory provisions relating to the release of offenders who have served at least 20 years of a juvenile sentence, where Anthony Pugh's early release date was revoked based on facts that do not establish that he is more likely than not to commit a criminal offense if he is released? (Assignments of Error 1 & 2)

III. STATEMENT OF THE CASE

In 1994, when Anthony Ryan Pugh was 16 years old, he and two other young men forced their way into a random victim's car, ordered the victim to drive to his bank and withdraw money for them, and threatened to kill the victim.¹ Pugh was charged, tried and convicted in adult court of conspiracy to commit kidnapping, conspiracy to commit robbery, conspiracy to commit murder, and the

¹ See 08/17/15 ISRB Decision at 2-3 (attached in Appendix A) and the unpublished opinion in the direct appeal of State v. Pugh, case number 19571-2-II, 87 Wn. App. 1053 (1997).

completed crimes of first degree kidnapping and first degree robbery with deadly weapon enhancements. (CP 1-4, 9-10)

Pugh was sentenced under the adult sentencing statute in May of 1995, shortly after his 17th birthday. (CP 9-16) The statute required the judge to impose concurrent sentences for the three conspiracy convictions, but consecutive sentences for the kidnapping and robbery convictions.² As a result, Pugh was sentenced to a term of confinement totaling 352.25 months (nearly 30 years). (CP 15)

In 2014, after the United States Supreme Court in Miller v. Alabama, banned mandatory life without parole sentences for juvenile homicide offenders, the Washington legislature enacted a statute requiring that juveniles previously sentenced to life without parole or early release be resentenced. Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012); Laws of 2014, ch. 130; RCW 10.95.030(3). The so-called “Miller-fix” statutes also provide that an offender who committed non-homicide crimes as a juvenile may petition the Indeterminate Sentence Review Board (ISRB or the Board) for early release after serving at least twenty

² See Former RCW 9.94A.400 (1995); see also 08/17/15 ISRB Decision at 2.

years of confinement. RCW 9.94A.730. To deny the petition, the ISRB must determine that the offender is more likely than not to reoffend if released. RCW 9.94A.730(3).

In June of 2014, after serving more than 20 years in confinement, Pugh petitioned the ISRB to request a review for early release pursuant to RCW 9.94A.730(3). The ISRB conducted a review hearing on July 14, 2015. (RP 4; 08/17/15 ISRB Decision at 1). Pugh's classification counselor explained that Pugh was a difficult inmate when she first met him in 2004, and had accumulated 37 infractions. (RP 8-9, 12) However, she noted that he was infraction-free since 2010, and that he is a "completely different person" now. (RP 9, 12) She spoke in glowing terms about Pugh's progress in recent years, and about all of the programs he has been involved in, including: reentry life skills, chemical dependency, nonviolent communication, stress and anger management, job skills training, and other "self-changing programs." (RP 9-13; 08/17/15 ISRB Decision at 4)

In addition to earning his GED, Pugh completed several job training programs and earned vocational certificates in information technology and machining technology from local community colleges. (RP 9-10; 08/17/15 ISRB Decision at 4) His counselor

could not think of any additional programs that Pugh could or should participate in before his release. (RP 47-48)

On his own initiative, Pugh created a personal release plan, prepared a written resume, contacted potential employers, and communicated with Bates Technical College about completing his associates degree. (RP 11, 35) Pugh also explained that he would have the support of his father and siblings upon his release, and that he had already made connections with several individuals who could help him find employment. (RP 34-37)

When asked about his crimes, Pugh took responsibility and expressed remorse. (RP 14-20) He explained that at first he did not want to admit that he had done anything wrong. (RP 20-21) But after a few years, and after reading the victim impact statement, he realized how many people were effected by his actions. (RP 21-22) That realization started him on a journey to change. (RP 22-23) He asked to participate in mental health treatment programs to work on his anxiety and anger issues, and became involved in all of the programs described above. (RP 23-24, 25-26)

The ISRB also considered Pugh's recent psychological evaluation. (08/17/15 ISRB Decision at 4) The psychologist found that Pugh would benefit from further cognitive behavioral treatment.

(08/17/15 ISRB Decision at 5) But the psychologist concluded that Pugh presented only a “low-moderate level risk to reoffend.”

(08/17/15 ISRB Decision at 5)

In its written decision issued on August 17, 2015, the ISRB states:

Based on the burden of proof set out in RCW 9.94A.730(3) and the totality of evidence and information provided to the Board, the Board does not find by a preponderance of the evidence that Mr. Pugh is more likely than not to commit any new criminal law violations if released on conditions. Consequently, the Board finds Mr. Pugh releasable in 18 months, upon his satisfactory completion of a transition through lower levels of custody that preferably includes a period of time in work release. The Board establishes a release date on or about February 28, 2017.

(08/17/15 ISRB Decision at 1)

On October 29, 2015, DOC issued its Authorization for Mutual Re-Entry Program (MRP), laying out the specific conditions of Pugh’s 18-month transition to release. (See Authorization for MRP, Attached as Appendix B) The conditions included transfer to Larch Corrections Center, development of an Offender Release Plan, successful participation in “available work, education and treatment programs,” and participation in programs “that address identified risks and needs.” (See Authorization for MRP)

Pugh initially struggled to adjust to the camp program at

Larch. According to his counselor, he was not properly prepared by DOC staff for what the new facility and program would be like or for what would be expected of him there. (RP 55, 56-57) Pugh was also frustrated by what he thought was a mistake made in calculating his early release credits, which lead to some tense exchanges with his counselor. (RP 55, 56-57, 76, 78)

Pugh did not fully participate in programs at Larch and, on a few occasions, Pugh was disrespectful or uncooperative with staff. Pugh also had two verbal altercations with staff members, which were investigated as infractions. (RP 71-73; see also OMNI Chronos, attached as Exh. 4 to DOC Response to PRP) DOC eventually cleared Pugh and found that he had not committed any infractions, but the ISRB was notified and suspended Pugh's MRP. (01/23/17 ISRB Decision at 4, attached in Appendix C) Pugh was also transferred from Larch back to the Washington Corrections Center. (01/23/17 ISRB Decision at 4)

The ISRB held another release hearing on January 11, 2017. Pugh's psychologist testified that she believed it was a mistake on DOC's part to send Pugh to the Larch facility and that he likely would have been fine in a different environment. (RP 81-82) She testified she observed tremendous growth in Pugh since 2010, and she has

never found him to be threatening or unreasonable. (RP 80-81) She believed Pugh was ready for a work-release setting. (RP 83)

Pugh's counselor testified that Pugh is doing well and is employed and participating in mental health treatment. (RP 59) He is excelling at his job as a porter and his supervisor is very happy with his performance. (RP 60)

Pugh explained that he was frustrated and stressed when he arrived at Larch, and had not been prepared for what it would be like. (RP 76, 78) He also testified that there was no mental health professionals available to talk to, but now that he has access to a psychiatrist and is doing morning meditation, he is again in control of his emotions. (RP 88-89)

The ISRB issued another written decision on January 23, 2017. This time, the ISRB found "by a preponderance of the evidence that Mr. Pugh is more likely than not to commit any new criminal law violations if released on conditions." (01/23/17 ISRB Decision at 1) The Board explained:

Since his last hearing with the Board, Mr. Pugh's behavior is concerning and appears to center around his ability to manage his emotions. Since his July of 2015 hearing with the Board, he has had incidents that indicate he may not yet be ready to reenter the community. The Board recommends Mr. Pugh continue to work with mental health to assist him in

regulating his emotions, participate in any offender change program that can also assist him in maintaining pro-social behavior, and remain infraction free until his release.

(01/23/17 ISRB Decision at 6) As a result, Pugh will serve the entire original sentence imposed when he was 17 years old, and will be released no earlier than February 19, 2020. (01/23/17 ISRB Decision at 1; RP 53)

On March 6, 2017, Pugh filed a PRP challenging the ISRB's decision. By order dated August 30, 2017, this Court found that "the issues raised in [Pugh's] petition are not frivolous." The Court referred the petition to a panel of judges and ordered counsel to be appointed to provide this additional briefing.

IV. ARGUMENT & AUTHORITIES

A petitioner who challenges a decision from which he has had no previous or alternative avenue for obtaining state judicial review must show he is under restraint unlawfully under the provisions of RAP 16.4(c). In re Pers. Rest. of Cashaw, 123 Wn.2d 138, 149, 866 P.2d 8 (1994). Pugh may show either a constitutional or a state law violation to obtain relief. RAP 16.4(c)(2), (6). The facts, arguments and authorities in Pugh's PRP and Reply Brief, and the arguments and authorities below, will clearly show that Pugh's restraint is

unlawful because it violates state law.

A. RCW 9.94A.730(3) CREATES A PRESUMPTION IN FAVOR OF RELEASE AND DOES NOT GIVE THE ISRB DISCRETION TO DELAY RELEASE OF AN OFFENDER WHO MEETS THE STATUTORY QUALIFICATIONS FOR RELEASE.

RCW 9.94A.728(1)(j) provides that “[n]o person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except” that “[a]ny person convicted of one or more crimes committed prior to the person’s eighteenth birthday may be released from confinement pursuant to RCW 9.94A.730.” RCW 9.94A.730 provides, in relevant part:

(1) [A]ny person convicted of one or more crimes committed prior to the person’s eighteenth birthday may petition the indeterminate sentence review board for early release after serving no less than twenty years of total confinement ...

(3) No later than one hundred eighty days from receipt of the petition for early release, the department shall conduct, and the offender shall participate in, an examination of the person ... **The board shall order the person released under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released.**

(Emphasis added, full text of statute attached in Appendix D)

This standard for release is substantially similar to that described in RCW 9.95.420, which prescribes when the ISRB must order offenders convicted of certain sex offenses paroled from prison: “The board **shall order the defendant released**, under such affirmative and other conditions as the board determines appropriate, **unless the board determines by a preponderance of the evidence** that, despite such condition, **it is more likely than not that the offender will commit** sex offenses if released.” RCW 9.95.420(3)(a), (b) (emphasis added).

Courts interpreting the language of section .420(3) have found that it affirmatively places the burden of proving the need for further confinement on the ISRB. See In re Pers. Rest. of McCarthy, 161 Wn.2d 234, 241, 164 P.3d 1283 (2007). The statute “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.

RCW 9.94A.730’s identical language should likewise restrict the ISRB’s discretion when considering parole for an offender convicted of a crime committed as a juvenile. The statute creates a presumption in favor of release, limits the ISRB’s discretion, and

affirmatively places the burden of proving the need for further confinement on the ISRB.

This interpretation also comports with established rules of statutory construction. Interpretation of a statute is a question of law. State v. Engel, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009). A court's objective in construing a statute is to determine the legislature's intent. Christensen v. Ellsworth, 162 Wn.2d 365, 372, 173 P.3d 228 (2007). “[I]f the statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.” Christensen, 162 Wn.2d at 372-73 (quoting Dep’t of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)).

An undefined statutory term should be given its usual and ordinary meaning. Burton v. Lehman, 153 Wn.2d 416, 422-23, 103 P.3d 1230 (2005). The general rule is that the word “shall” is presumptively imperative and operates to create a duty rather than conferring discretion. State v. Bartholomew, 104 Wn.2d 844, 848, 710 P.2d 196 (1985) (citing Crown Cascade, Inc. v. O’Neal, 100 Wn.2d 256, 668 P.2d 585 (1983)). And the use of the phrase “[n]otwithstanding any other provision of this chapter” means that the Board must disregard any contrary provisions or restrictions in other sections of the statute. See City of Seattle v. Ballsmider, 71 Wn.

App. 159, 163, 856 P.2d 1113 (1993).

Accordingly, the plain and unambiguous language of RCW 9.94A.730(3) mandates release of an offender who has served 20 years of a juvenile sentence, unless a preponderance of the evidence establishes that they are more likely than not to reoffend if released. RCW 9.94A.730(3) does not give the ISRB the authority to set a lengthy transition with new conditions that must be met before the offender can be released to the community. Rather, RCW 9.94A.730 requires the ISRB to release the offender with whatever terms of community custody the ISRB deems appropriate.

B. THE ISRB VIOLATED RCW 9.94A.730(3) AND ABUSED ITS DISCRETION WHEN IT FAILED TO RELEASE PUGH IN 2015 AND WHEN IT REVOKED HIS EARLY RELEASE DATE BASED ON FACTS THAT DO NOT ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT PUGH IS MORE LIKELY THAN NOT TO REOFFEND IF RELEASED.

An inmate filing a PRP may be entitled to relief merely by showing that the ISRB failed to follow its own procedural regulations. Cashaw, 123 Wn.2d at 147-48; see also In re Pers. Rest. of Dyer, 157 Wn.2d 358, 363, 139 P.3d 320 (2006) (“The ISRB abuses its discretion when it fails to follow its own procedural rules for parolability hearings or acts without consideration of and in disregard of the facts”). The ISRB failed to follow its own regulations and

abused its discretion when it found that Pugh met the statutory requirements for release, but then imposed an additional 12-18 months of confinement.

RCW 9.94A.730(3) does not give the ISRB the authority to set a lengthy transition with new conditions that must be met before the offender can be released to the community. Instead, RCW 9.94A.730 requires that the ISRB release the offender with whatever terms of community custody the ISRB deems appropriate. Pugh should have been released in 2015, and the ISRB violated state law when it instead ordered an 18 month transition, including at least 12 additional months of confinement in a DOC facility. (See 08/17/15 ISRB Decision at 1; Authorization for MRP)

To make matters worse, the ISRB then revoked the MRP on facts that do not establish, by a preponderance of the evidence, that Pugh was now more likely than not to reoffend if released. The ISRB was concerned about a few incidents where Pugh was verbally combative and disrespectful. (01/23/17 ISRB Decision at 4; RP 55, 57, 58-59, 75-76) But his actions did not escalate to physical altercations, and did not even rise to the level of a minor infraction. (01/11/17 ISRB Decision at 4; RP 55, 57, 58-59, 73, 75-76)

The ISRB was concerned with Pugh's "ability to manage his

emotions.” (01/23/17 ISRB Decision at 6) But the ISRB did not establish how this made Pugh more likely than not to commit a crime if he was released with conditions, which could have included continued mental health treatment. The need for additional treatment is not the same as the need for additional confinement.

Essentially, the ISRB felt Pugh did not exhibit an appropriate amount of restraint when dealing with frustrating situations, so it revoked his early release date. This is not allowed under RCW 9.94A.730(3). (RP 67, 91-93) Pugh’s behavior, while perhaps not perfect, did not indicate by a preponderance of the evidence that he was more likely than not to commit a criminal act if released with conditions.

Pugh’s restraint is unlawful “because it was accomplished in violation of the Board’s regulations.” Cashaw, 123 Wn.2d at 149 (citing RAP 16.4(c)(2), (6)). RCW 9.94A.730(3) creates a presumption in favor of release, unless the ISRB affirmatively establishes the need for further confinement. The ISRB failed to follow its statutory directive when it ordered additional confinement in 2015 even though Pugh met the standard for release. And the ISRB did not affirmatively show in 2017, by a preponderance of the evidence, that Pugh is more likely than not to reoffend and requires

further confinement.

Pugh has served more than 20 years of confinement for crimes committed when he was just 16 years old. In that time, Pugh participated in numerous personal growth, educational and job-readiness programs. Pugh has demonstrated that he is ready to be a law-abiding and productive member of the community. The ISRB initially agreed. Because Pugh's actions since that first review hearing do not establish that he is now more likely than not to reoffend, Pugh must be released.

V. CONCLUSION

Pugh has demonstrated, in the arguments above and in his pro se PRP and Reply Brief, that his restraint is unlawful under RAP 16.4. This Court should grant Pugh relief from restraint, and direct the ISRB to immediately order his release from incarceration with any reasonable terms of community custody the Board deems appropriate.

DATED: January 16, 2018



STEPHANIE C. CUNNINGHAM

WSBA #26436

Attorney for Petitioner Anthony R. Pugh

CERTIFICATE OF MAILING

I certify that on 01/16/2018, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Anthony Ryan Pugh #733807, Coyote Ridge Corrections Center, P.O. Box 769, Connell, WA 99326-0769.

Stephanie Cunningham

STEPHANIE C. CUNNINGHAM, WSBA #26436

APPENDIX A
AUGUST 17, 2015 ISRB 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:	PUGH, Anthony
DOC #:	733807
FACILITY:	Stafford Creek Corrections Center (SCCC)
TYPE OF HEARING:	LTJUVBRD Release Hearing
HEARING DATE:	July 14, 2015
PANEL MEMBERS:	LRG & KR
FINAL DECISION DATE:	August 17, 2015

This matter came before Lori Ramsdell-Gilkey and Kecia Rongen, 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 9.94A.730. Mr. Pugh appeared in person. Testimony was provided by Department of Corrections (DOC) Classification Counselor (CC) Lisa Ross and Mr. Pugh.

BOARD DECISION:

This was a Deferred Decision. Based on the burden of proof set out in RCW 9.94A.730(3) and the totality of evidence and information provided to the Board, the Board does not find by a preponderance of the evidence that Mr. Pugh is more likely than not to commit any new criminal law violations if released on conditions. Consequently, the Board finds Mr. Pugh releasable in 18 months, upon his satisfactory completion of a transition through lower levels of custody that preferably includes a period of time in work release. The Board establishes a release date on or about February 28, 2017. The actual release date is contingent upon the approval of the Offender Release Plan and any mandatory Law Enforcement Notification.

NEXT ACTION:

Submit an Offender Release Plan (ORP) for consideration in November of 2016.

JURISDICTION:

Anthony Pugh is under the jurisdiction of the Board on a May 3, 1995 conviction of Count I: Conspiracy to Commit Kidnapping on the First Degree, Count II: Conspiracy to Commit Robbery in the First Degree, Count III: Conspiracy to Commit Murder in the First Degree, Count IV: Kidnapping in the First Degree and Count V: Robbery in the First Degree (WAWDW) in Pierce County Cause #94-1-03753-8. The Court ordered that Counts I-III run concurrently, but consecutive to Counts IV and V. His time start on Counts I-III is May 9, 1995. His minimum term was set at 72 months on Count I; 51 months on Count II; and 260.25 months on Count III from a Sentencing Reform Act (SRA) range of 54-72 months on Count I; 38.25 -51 months on Count II; and 195.75 – 260.25 months on Count III. He completed serving time on Counts I-III on September 18, 2014. Thus his time start on Counts IV and V is September 18, 2014. The Court set a minimum term of 92 months on each of these counts from an SRA range of 75 to 92 months. The total maximum term is 352.25 months. Mr. Pugh has served approximately 242 months plus 244 days of jail time credit.

NATURE OF INDEX OFFENSE(S):

According to file material, in August of 1994, Anthony Pugh, age 15, and two other boys living together in a group home in Tacoma, conspired to steal a particular vehicle from a downtown parking lot and abduct the owner. Mr. Pugh was responsible for obtaining a knife to use as he worked in the group home kitchen. One of the boys apparently suggested they give the proposed victim a “human necktie”, which involves cutting the throat then pulling the victim’s tongue through it.

On August 6, the day of the offense, the boys went to the parking lot and were chased away from the area of the car they were interested in and subsequently accosted a different man who was parking his car. Mr. Pugh approached the victim indicating he had a gun and directed him get

back in the car. The three boys got in as well. They first made the victim drive to the bank and withdraw \$1500 cash. Next they made the victim drive to the store so they could purchase duct tape and then used it to bind his wrists and ankles and cover his eyes, nose and mouth before placing him in the trunk of his own car. The boys drove him to a secluded area and while in the trunk the victim heard them discussing how they should kill him. The victim was able to free his hands and legs and get the tape off his eyes and face. When the trunk was accidentally opened by one of the boys, the victim leaped out and made his escape. The two other juveniles returned to the group home where they were overheard talking about the offense and Mr. Pugh was apprehended later that same day.

PRIOR CRIMINAL CONDUCT:

Mr. Pugh has a substantial juvenile history to include convictions for: two Residential Burglaries; three Theft Third Degree; one Malicious Mischief in the Third Degree; one Criminal Trespass in the First Degree and one Theft of a Motor Vehicle.

In addition, Mr. Pugh was arrested in early 1994 for two counts of Child Molestation in the First Degree. While Mr. Pugh was in a hospital being treated for a conduct disorder he disclosed that at age 13, he had touched the bare vagina of his 18 month little sister and her same age friend when he changed their diapers. He was arrested and charged when he was released from the hospital several months later but the charges were ultimately dismissed, apparently because the victims were too young to testify.

HISTORY/COMMENTS:

In June of 2014 Mr. Pugh petitioned the Board to request a review for possible early release pursuant to RCW 9.94A.730(3). This is Mr. Pugh's first hearing before the Board. Since his incarceration in 1995, he has received 37 major/serious infractions and 5 minor infractions. He has not had a major infraction since 2010. He has completed numerous classes/programs to include: GED 1996; Stress Reduction 1999; Anger Management 1999; Basic Custodial Service 2000; Information Technology 2007; Non-Violent Communication 2008; Moral Reconation

Therapy (MRT) 2010; CNC Machining 2013; Job Seeking Skills 2014; and Redemption Re-entry in 2015 among others.

EVIDENCE CONSIDERED:

In preparation for Mr. Pugh's 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. The Board also considered 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; and a Psychological Evaluation completed by Deborah Wentworth, PhD dated April 7, 2015. The Board also considered the testimony of the witnesses listed above.

REASONS:

Mr. Pugh's counselor indicated he has taken nearly every class offered and available to him at his current location. He is doing very well on the unit and is currently employed as an Office Clerk in Correctional Industries. The counselor had many positive things to say about the changes she has seen him make over the years, from the angry young man she met in 2004 to the hard-working man she sees today.

Mr. Pugh disclosed his offense in good detail and talked about what was going on in his life at the time of the offense. He indicated it was not until he read the "victim impact" statement in 2007 that he came to realize the offense traumatized not only the victim but his entire family and the community as well. He acknowledged his social anxiety and fear led him to act like a "bad ass" and got him in trouble both in the community and in prison. He states he is very involved in the activities on the Veteran's Pod (though he is not a veteran he has great respect for them) and the Diversity Committee. He has plans to further his education and make use of the training he received while incarcerated. He had already begun investigating possible job opportunities in the community.

Regarding the 1994 Child Molestation arrest, he indicated he was approximately 13 years of age when it occurred. He was scared of girls his own age and curious so when changing his 18 month old sister's diaper he touched her bare vagina on approximately three occasions. He did the same thing to her 18 month old friend/neighbor girl. He indicated he does not have an attraction to children and believes the therapy he received while hospitalized as a juvenile was adequate to address the behavior.

A psychological evaluation completed by Deborah Wentworth PhD in April 7, 2015, utilized three risk assessment instruments, the VRAG; SORAG; and SAPROF. He scored an 18.9 on the PCL-R which placed him in the moderate range and ruled out psychopathy. According to the report, his "score indicates that he has traits of antisocial behavior which will probably continue to influence his behavior choices without mindful and deliberate alternative thinking. He would benefit from further cognitive behavioral treatment such as thinking for a change." The report continues and states, "Combining scores for risk to reoffend with risk mitigating factors results in a balanced risk picture of low-moderate level of risk to reoffend."

Mr. Pugh's institutional behavior has improved and his involvement in programming is commendable. He has the support of his father and siblings and others in the community. Transition through lower levels of custody with the last six months of his incarceration in a work release setting would be optimal. He should complete Thinking for a Change while incarcerated if possible and if not, then while on supervision.

LRG: ch

July 30, 2015

cc: SCCC
Anthony Pugh
File

APPENDIX B
DOC AUTHORIZATION FOR MUTUAL RE-ENTRY PROGRAM



STATE OF WASHINGTON
 DEPARTMENT OF CORRECTIONS
 P.O. Box 41100 - Olympia, Washington 98504-1100

Date: October 29, 2015
 Re: Authorization for Mutual Re-Entry Program
 From: Mutual Re-Entry Program (MRP) Committee, HCSC Chair-Classification Unit
 To: Dan Pacholke, Secretary/designee
 Subject: PUGH, ANTHONY #733807
 ERD: 2/28/17 ISRB, contingent upon ORP and LEN

The attached file represents a LTJUVBRD offender who is ready to begin the last step of his transition into the community. The Headquarters' MRP Staffing Committee reviewed his individual MRP. The Department of Corrections Policy Mutual Re-Entry Program (MRP) 350.300 states that the MRP will be approved by the Secretary/designee.

Please AUTHORIZE the proposed inmate custody, placement and condition as follows:

- Assign: MI2
- Transfer: LCC
- Work Release: Olympia
- Conditions: Promote to MI2, transfer to LCC and while at LCC he will enroll and complete T4C. Promote to MII on 8/28/16 and transfer to Olympia Work Release. Concur with Progress House Work Release denial. Release to community on 2/28/17 pending approved ORP and mandatory LEN. He will abide by imposed standard MRP programming and behavior expectations: 1. Incur no major/minor infractions. Any infractions will be immediately reported to HCSC/ISRB. 2. Follow the direction and recommendation of your classification counselor, Community Corrections Officer and/or Facility Risk Management Team to include: A) Successfully participate in available work, education and treatment program(s); B) Submit to random urinalysis or breathalyzer testing; C) Seek and maintain full-time work assignment/employment; D) Work with assigned staff to develop an Offender Release Plan; E) Participate in available programs that address identified risks and needs.

Authorization Signature:

<i>Annmarie Aylward</i> Community Corrections Division Assistant Secretary/Designee (Please Print)		10/30/15 Date
<i>Scott Kinnell</i> Prisons Division Assistant Secretary/Designee (Please Print)		10/29/15 Date
<i>John Campbell for Tom Johnson</i> Offender Change Assistant Secretary/Designee (Please Print)		10-29-15 Date
<i>John Campbell</i> Indeterminate Sentence Review Board Chair/Designee (Please Print)		10-30-15 Date

APPENDIX C
JANUARY 23, 2017 ISRB 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:	PUGH, Anthony
DOC #:	733807
FACILITY:	Washington Corrections Center (WCC)
TYPE OF HEARING:	LTJUVBRD Release Hearing
HEARING DATE:	January 11, 2017
PANEL MEMBERS:	JP & KR
FINAL DECISION DATE:	January 23, 2017

This matter came before Jeff Patnode and Kecia Rongen, 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 9.94A.730. Mr. Pugh appeared in person. Testimony was provided by Department of Corrections (DOC) Classification Counselor (CC) Margaret Hobbs, DOC Psychologist 4 Ph.D Donna Smith, and Mr. Pugh.

BOARD DECISION:

This was a Deferred Decision. Based on the burden of proof set out in RCW 9.94A.730(3) and the totality of evidence and information provided to the Board, the Board does find by a preponderance of the evidence that Mr. Pugh is more likely than not to commit any new criminal law violations if released on conditions. Consequently, the Board finds Mr. Pugh not releasable.

NEXT ACTION:

Mr. Pugh will release on his ERD. The Board will not authorize an earlier release date, therefore he will not be under the jurisdiction of the ISRB upon his release. He will be on community placement as ordered by his Judgment and Sentence.

JURISDICTION:

Anthony Pugh is under the jurisdiction of the Board on a May 3, 1995 conviction of Count I: Conspiracy to Commit Kidnapping on the First Degree, Count II: Conspiracy to Commit Robbery in the First Degree, Count III: Conspiracy to Commit Murder in the First Degree, Count IV: Kidnapping in the First Degree and Count V: Robbery in the First Degree (WAWDW) in Pierce County Cause #94-1-03753-8. The Court ordered that Counts I-III run concurrently, but consecutive to Counts IV and V. His time start on Counts I-III was May 9, 1995. His minimum term was set at 72 months on Count I; 51 months on Count II; and 260.25 months on Count III from a Sentencing Reform Act (SRA) range of 54-72 months on Count I; 38.25 -51 months on Count II; and 195.75 – 260.25 months on Count III. He completed serving time on Counts I-III on September 18, 2014. Thus, his time start on Counts IV and V was September 18, 2014. The Court set a minimum term of 92 months on each of these counts from an SRA range of 75 to 92 months. The total judge set term is 352.25 months. Mr. Pugh has served approximately 260 months plus 244 days of jail time credit.

NATURE OF INDEX OFFENSE(S):

According to file material, in August of 1994, Anthony Pugh, age 15, and two other boys living together in a group home in Tacoma, conspired to steal a particular vehicle from a downtown parking lot and abduct the owner. Mr. Pugh was responsible for obtaining a knife to use as he worked in the group home kitchen. One of the boys apparently suggested they give the proposed victim a “human necktie”, which involves cutting the throat then pulling the victim’s tongue through it.

On August 6, the day of the offense, the boys went to the parking lot and were chased away from the area of the car they were interested in and subsequently accosted a different man who was parking his car. Mr. Pugh approached the victim indicating he had a gun and directed him get back in the car. The three boys got in as well. They first made the victim drive to the bank and withdraw \$1500 cash. Next they made the victim drive to the store so they could purchase duct

tape and then used it to bind his wrists and ankles and cover his eyes, nose and mouth before placing him in the trunk of his own car. The boys drove him to a secluded area and while in the trunk the victim heard them discussing how they should kill him. The victim was able to free his hands and legs and get the tape off his eyes and face. When the trunk was accidentally opened by one of the boys, the victim leaped out and made his escape. The two other juveniles returned to the group home where they were overheard talking about the offense, and Mr. Pugh was apprehended later that same day.

PRIOR CRIMINAL CONDUCT:

Mr. Pugh has a substantial juvenile history to include convictions for: two Residential Burglaries; three Theft Third Degree; one Malicious Mischief in the Third Degree; one Criminal Trespass in the First Degree; and one Theft of a Motor Vehicle.

In addition, Mr. Pugh was arrested in early 1994 for two counts of Child Molestation in the First Degree. While Mr. Pugh was in a hospital being treated for conduct disorder he disclosed that at age 13, he had touched the bare vagina of his 18 month little sister and her same age friend when he changed their diapers. He was arrested and charged when he was released from the hospital several months later but the charges were ultimately dismissed, apparently because the victims were too young to testify.

HISTORY/COMMENTS:

In June of 2014 Mr. Pugh petitioned the Board to request a review for possible early release pursuant to RCW 9.94A.730 (3). This was Mr. Pugh's first hearing before the Board in July of 2015. He was found releasable in 18 months, upon his satisfactory completion of a transition through lower levels of custody. The Board also suggested that Mr. Pugh complete the Thinking for a Change Program if possible and established a release date on or about February 28, 2017.

Information noted in the July 2015 Decision and Reasons: Since his incarceration in 1995, he has received 37 major/serious infractions and 5 minor infractions. He has not had a major infraction since 2010. He has completed numerous classes/programs to include: GED 1996; Stress Reduction 1999; Anger Management 1999; Basic Custodial Service 2000; Information Technology 2007; Non-Violent Communication 2008; Moral Reconciliation Therapy (MRT) 2010; CNC Machining 2013; Job Seeking Skills 2014; and Redemption Re-entry in 2015, among others.

In June of 2016, the Board received notification that Mr. Pugh had committed two new infractions (Strong-arming/Intimidation and Discriminatory Harassment*), and had been moved from the Camp at Larch Correction Center (LCC) to the WCC Hospital in order to conduct a mental health evaluation. The ISRB was notified that Mr. Pugh's MRP had been suspended pending the disciplinary hearing for the infractions. Though the infractions were dropped, the Board reviewed the information and made a decision to reverse the prior decision and schedule a new release hearing.

CC Margaret Hobbs provided a summary of programming (see above), behavior and other relevant plans for Mr. Pugh. She stated that Mr. Pugh had a "rough start" when returning to WCC. She stated he recently had "good time" restored which has changed his Earned Release Date (ERD). CC Hobbs stated that Mr. Pugh was very frustrated regarding the "good conduct time" restoration process. She stated they discussed his difficulty in camp and Mr. Pugh had expressed that he had no idea what to expect and that he found dorm living to be very stressful. She stated he also felt it was unfair that he was returned to WCC, despite the fact that his infraction was dismissed. CC Hobbs also stated that Mr. Pugh declined to participate in the case management component of the newly implemented Advanced Corrections. She stated he was declining as he had told her he has an active appeal on his index offense and so he did not want to discuss the offense. CC Hobbs stated that Mr. Pugh is working and receives excellent reviews from his supervisor.

Mr. Pugh was asked why he is stating he did not commit his index offense and he stated one of

the conspiracy to commit murder convictions is problematic to him. Mr. Pugh was evasive when asked questions regarding what he is calling a “pending appeal”. At the end of this portion of the hearing, Mr. Pugh admitted he had been involved in conspiring to commit murder against the owner of the car that they did not steal and he was being obstinate as he was angry he was returned to WCC. Mr. Pugh then provided an explanation of his incident he had at his last job in the kitchen at LCC. He reiterated that he was found “Not Guilty” of the infraction and that it was essentially a misunderstanding and lack of understanding of the nature of the relationship he had with his work supervisor.

Mr. Pugh stated he still believes he is appropriate and ready for transition to lower levels of custody. He stated he felt he was unprepared for the camp situation he encountered at LCC. He stated he would like to be in a camp situation that allows for higher levels of access to the community and also has mental health services available to him. He stated he was feeling very stressed in the camp situation he was in, and that contributed to some of his behavior. He stated he believes it has been helpful to work with Ph. D. Smith again and he now feels better prepared for the kind of environment he will encounter in a camp situation.

Ph.D. Donna Smith stated she has been working with Mr. Pugh for many years and has seen tremendous growth in him since she first encountered him. She stated he has made significant improvement in his ability to manage his emotions during stressful situations, though he is still challenged to some degree in the area. Ph. D. Smith stated that she believes that Mr. Pugh is still appropriate for transition through lower levels of custody if he has access to appropriate mental health services.

INFORMATION CONSIDERED:

In preparation for Mr. Pugh’s hearing and its decision in this case, the Board completed a review of his ISRB file. The Board considered all information contained in those files. The Board also considered 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; and a Psychological Evaluation completed by Deborah Wentworth, PhD dated April 7, 2015. The Board also considered the testimony of the witnesses listed above.

REASONS:

This was a deferred decision following a full Board discussion using a structured decision-making framework that takes into consideration; the statistical estimate of risk, criminal history, parole/release history, ability to control behavior, responsiveness to programming, demonstrated offender change, release planning, discordant information, and other case specific factors. Based on the requirements of RCW 9.94A.730 (3) the Board does find that Pugh is more likely than not to commit a new crime if released on conditions.

Since his last hearing with the Board, Mr. Pugh's behavior is concerning and appears to center around his ability to manage his emotions. Since his July of 2015 hearing with the Board, he has had incidents that indicate he may not yet be ready to reenter the community. The Board recommends Mr. Pugh continue to work with mental health to assist him in regulating his emotions, participate in any offender change program that can also assist him in maintaining pro-social behavior, and remain infraction free until his release.

JP: is

January 11, 2017

January 26, 2017

cc: WCC
Anthony Pugh
File



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

DATE: January 23, 2017

TO: Full Board

FROM: JP & KR (Irene)

RE: PUGH, Anthony, #733807

Panel recommends: NOT Releasable.

Next action: Release on current ERD and he will not be under the jurisdiction of the ISRB.

Agree	Disagree
Jeff Patnode 1-23-2017 Tom Sahlberg 1-23-2017 Lori Ramsdell-Gilkey 1-23-2017 Kecia Rongen 1-23-17	

APPENDIX D
RCW 9.94A.730

West's Revised Code of Washington Annotated
Title 9. Crimes and Punishments (Refs & Annos)
Chapter 9.94A. Sentencing Reform Act of 1981 (Refs & Annos)
Supervision of Offenders in the Community

West's RCWA 9.94A.730

9.94A.730. Early release for persons convicted of one or more crimes committed prior to eighteenth birthday--Petition to indeterminate sentence review board--Conditions--Assessment, programming, and services--Examination--Hearing--Supervision--Denial of petition

Effective: April 29, 2015
Currentness

- (1) Notwithstanding any other provision of this chapter, any person convicted of one or more crimes committed prior to the person's eighteenth birthday may petition the indeterminate sentence review board for early release after serving no less than twenty years of total confinement, provided the person has not been convicted for any crime committed subsequent to the person's eighteenth birthday, the person has not committed a disqualifying serious infraction as defined by the department in the twelve months prior to filing the petition for early release, and the current sentence was not imposed under RCW 10.95.030 or 9.94A.507.
- (2) No later than five years prior to the date the offender will be eligible to petition for release, the department shall conduct an assessment of the offender and identify programming and services that would be appropriate to prepare the offender for return to the community. To the extent possible, the department shall make programming available as identified by the assessment.
- (3) No later than one hundred eighty days from receipt of the petition for early release, the department shall conduct, and the offender shall participate in, an examination of the person, incorporating methodologies that are recognized by experts in the prediction of dangerousness, and including a prediction of the probability that the person will engage in future criminal behavior if released on conditions to be set by the board. The board may consider a person's failure to participate in an evaluation under this subsection in determining whether to release the person. The board shall order the person released under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released. The board shall give public safety considerations the highest priority when making all discretionary decisions regarding the ability for release and conditions of release.
- (4) In a hearing conducted under subsection (3) of this section, the board shall provide opportunities for victims and survivors of victims of any crimes for which the offender has been convicted to present statements as set forth in RCW 7.69.032. The procedures for victim and survivor of victim input shall be provided by rule. To facilitate victim and survivor of victim involvement, county prosecutor's offices shall ensure that any victim impact statements and known contact information for victims of record and survivors of victims are forwarded as part of the judgment and sentence.
- (5) An offender released by the board is subject to the supervision of the department for a period of time to be determined by the board, up to the length of the court-imposed term of incarceration. The department shall monitor the offender's compliance with conditions of community custody imposed by the court or board and promptly report any violations

to the board. Any violation of conditions of community custody established or modified by the board are subject to the provisions of RCW 9.95.425 through 9.95.440.

(6) An offender whose petition for release is denied may file a new petition for release five years from the date of denial or at an earlier date as may be set by the board.

(7) An offender released under the provisions of this section may be returned to the institution at the discretion of the board if the offender is found to have violated a condition of community custody. The offender is entitled to a hearing pursuant to RCW 9.95.435. If the board finds that the offender has committed a new violation, the board may return the offender to the institution for up to the remainder of the court-imposed term of incarceration. The offender may file a new petition for release five years from the date of return to the institution or at an earlier date as may be set by the board.

Credits

[2015 c 134 § 6, eff. April 29, 2015; 2014 c 130 § 10, eff. June 1, 2014.]

Notes of Decisions (3)

West's RCWA 9.94A.730, WA ST 9.94A.730

The statutes are current through the 2017 Third Special Session of the Washington legislature.

January 16, 2018 - 9:30 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50055-8
Appellate Court Case Title: Personal Restraint Petition of Anthony Ryan Pugh
Superior Court Case Number: 94-1-03753-8

The following documents have been uploaded:

- 500558_Briefs_20180116092850D2817077_2120.pdf
This File Contains:
Briefs - Petitioners - Modifier: Supplemental
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