

No. 50785-4-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re the Personal Restraint of

PAUL BUFALINI,

Petitioner.

PETITIONER UNDER RESTRAINT OF A JUDGMENT OF THE
PIERCE COUNTY SUPERIOR COURT,
The Honorable Frank E. Cuthbertson

**SECOND DECLARATION OF JAMES E. LOBSENZ IN SUPPORT
OF PERSONAL RESTRAINT PETITION**

James E. Lobsenz WSBA #8787
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701 Fifth Avenue, Suite 3600
Seattle, Washington 98104-7010
Telephone: (206) 622-8020
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Attorneys for Petitioner

I, JAMES E. LOBSENZ, do hereby declare under penalty of perjury under the laws of the State of Washington that the following facts are true and correct:

1. I am counsel for Petitioner. I have personal knowledge of the facts set forth here.

2. On May 2, 2017 the Department of Corrections received the request for copies of audio hearing recordings pertaining to the Petitioner that took place on December 20, 2016, January 4, 2017, February 22, 2017 and March 1, 2017, from Petitioner's father, Mr. David Bufalini.

3. On July 14, 2017, David Bufalini notified my office that he received a CD from the Department of Corrections containing the recordings of the four requested hearings. On July 17, 2017, he forwarded an electronic copy of the CD that he received to my office so I could arrange for transcription of the hearings.

4. On July 17, 2017, my legal assistant arranged for transcription of the hearings with the court reporting firm of Reed, Jackson, Watkins, LLC.

5. On July 24, 2017 Reed, Jackson, Watkins, LLC sent to my office, transcripts of the requested hearings.

6. Attached as Appendix A is a true and correct copy of transcript of the Major Infraction Hearing that took place on December 20, 2017 before Hearing Examiner Sheryl Jackson.

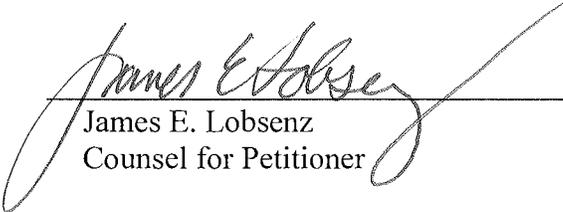
7. Attached as Appendix B is a true and correct copy of the

transcript of the First Drug Offender Sentencing Alternative Revocation Hearing that took place on January 4, 2017 before Hearing Examiner Jeffrey Kasler.

8. Attached as Appendix C is a true and correct copy of the transcript of the Hearing Regarding Remand and Appointment of Legal Counsel that took place on February 22, 2017 before Hearing Examiner Paul Ockerman.

9. Attached as Appendix D is a true and correct copy of the transcript of the Second Drug Offender Sentencing Alternative Revocation Hearing that took place on March 1, 2017 before Hearing Examiner Paul Ockerman.

Dated this 30th day of August, 2017.


James E. Lobsenz
Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

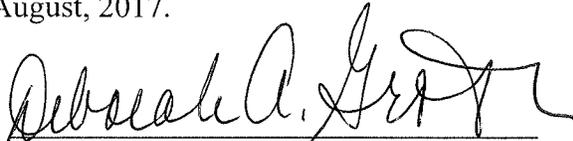
First-class United States mail, postage prepaid, to the following:

Petitioner

Mr. Paul Bufalini
DOC No. 306464
Washington Corrections Center
PO Box 900
Shelton WA 98584

Timothy Norman Lang
Office of the Attorney General
PO Box 40116
Olympia WA 98504-0116

DATED this 30th day of August, 2017.


Deborah A. Groth, Legal Assistant

APPENDIX A

WASHINGTON STATE DEPARTMENT OF CORRECTIONS

AT WASHINGTON CORRECTION CENTER

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In re the Discipline of:)

PAUL BUFALINI,)

306464,)

Inmate.)

MAJOR INFRACTION HEARING

December 20, 2016

Hearing Examiner Sheryl Jackson Presiding

TRANSCRIBED BY: Catherine Leschi Wilcox, CET-913
Reed Jackson Watkins, LLC
Court Certified Transcription
206.624.3005

A P P E A R A N C E S

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For the State of Washington Department of Corrections:

LOREN SHUMATE, Community Corrections Officer

Washington State Corrections Center

7345 Linderson Way Southwest

Tumwater, Washington 98501-6504

KELLY DEAN, Community Corrections Officer (Via Telephone)

Progress House Work Release

5601 Sixth Avenue

Tacoma, Washington 98406

For the Defendant:

PAUL BUFALINI

1 DECEMBER 20, 2016

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4 HEARING EXAMINER: Mr. Bufalini?

5 MR. BUFALINI: Yes, ma'am.

6 HEARING EXAMINER: My name is Sheryl Jackson. I'm the
7 hearing officer --

8 MR. BUFALINI: Hi.

9 HEARING EXAMINER: -- here with the Department of
10 Corrections to address this major infraction.

11 MR. BUFALINI: Yes, ma'am.

12 HEARING EXAMINER: The name I have is Paul S. Bufalini.

13 MR. BUFALINI: Yes, ma'am.

14 HEARING EXAMINER: Where does that name come from?

15 MR. BUFALINI: Italian.

16 HEARING EXAMINER: Italian?

17 MR. BUFALINI: Yes.

18 HEARING EXAMINER: All right. Can you cook?

19 MR. BUFALINI: Yes, I enjoy cooking. Yes, I do.

20 Definitely.

21 HEARING EXAMINER: DOC Number 306464 and birth date 1/5 of
22 the year '79. Is this accurate?

23 MR. BUFALINI: Yes, Ms. Jackson.

24 HEARING EXAMINER: As you can see, this session is being
25 tape recorded and the tape will be saved for approximately

1 five years.

2 MR. BUFALINI: Okay.

3 HEARING EXAMINER: If you are ever truly interested in
4 ordering a copy of the tape, you can use that particular
5 document that's been placed in front of you in order for you
6 to do so.

7 MR. BUFALINI: Okay.

8 HEARING EXAMINER: Sending a request to the address that's
9 listed at the bottom of that page would provide you a copy
10 free of charge.

11 MR. BUFALINI: Okay.

12 HEARING EXAMINER: Now, sir, that same exact document can
13 also be used for filing an appeal. In the event you disagree
14 with my decision today you will have seven calendar days from
15 today's date in order to file for the appeal.

16 MR. BUFALINI: Okay.

17 HEARING EXAMINER: Today is officially the 20th of December
18 of the year 2016. The time I have is 9:13. And this
19 particular negotiated -- no, this administrative major
20 infraction work release hearing is taking place here at the
21 Washington State Corrections Center.

22 Now the two parties who are present, will you both verbally
23 acknowledge your names for the record?

24 MR. BUFALINI: Paul Bufalini.

25 MR. SHUMATE: CCO Loren Shumate.

1 HEARING EXAMINER: Now what I'm going to do is conduct this
2 hearing in phases. The first of these particular phases will
3 determine whether you were properly served notification of
4 this hearing process.

5 Now according to the actual hearings rights and waiver
6 document that I have, it would have been yesterday's date,
7 the 19th of December at approximately 8:45, does that sound
8 accurate?

9 MR. BUFALINI: Yes, Ms. Jackson.

10 HEARING EXAMINER: And I do know, Mr. Bufalini, that here
11 at Washington State Corrections Center people aren't allowed
12 to maintain their discovery packets, like, back in their
13 cells.

14 MR. BUFALINI: Yes.

15 HEARING EXAMINER: So you were brought up, showed the
16 allegation to include any of the supporting evidence --

17 MR. BUFALINI: -- Yes, ma'am.

18 HEARING EXAMINER: -- and do you feel adequately prepared
19 to move forward at this time?

20 MR. BUFALINI: Yes, I do.

21 HEARING EXAMINER: Okay.

22 MR. BUFALINI: I have one question.

23 HEARING EXAMINER: Okay. Can you hold it?

24 MR. BUFALINI: Yes, ma'am.

25 HEARING EXAMINER: If you hold it --

1 MR. BUFALINI: Yes.

2 HEARING EXAMINER: -- let me finish this little piece.

3 MR. BUFALINI: Okay.

4 HEARING EXAMINER: Now next phase what I'm going to do is
5 take into consideration this one particular allegation.
6 We're going to be contacting.

7 MR. SHUMATE: CCO Dean.

8 HEARING EXAMINER: Okay. Officer Dean is going to be the
9 one presenting this case.

10 MR. BUFALINI: Okay.

11 HEARING EXAMINER: We'll give her a call and she's going to
12 actually read the specific allegation since she's the one
13 who's bringing it.

14 MR. BUFALINI: Yes, ma'am.

15 HEARING EXAMINER: After she's read the specific
16 allegation, then you're going to offer a plea. After you've
17 offered your plea, I'll hear testimony and evidence regarding
18 this particular allegation. And at that time you can ask
19 questions, cross-examine, or present any kind of supporting
20 evidence that you might have.

21 MR. BUFALINI: Yes, ma'am.

22 HEARING EXAMINER: Okay? Now is there a need for me to
23 call a witness on your behalf?

24 MR. BUFALINI: I was thinking my father would have been a
25 good witness, I think. He was with me at all times --

1 HEARING EXAMINER: -- Hold on. Hold on. It's limited
2 information that I can receive from you.

3 MR. BUFALINI: Such as?

4 HEARING EXAMINER: Until, until I'm able to swear you in.

5 MR. BUFALINI: Okay.

6 HEARING EXAMINER: Okay? So when I ask if you need a
7 witness --

8 MR. BUFALINI: Yes or no?

9 HEARING EXAMINER: -- the only thing I need is the name and
10 the phone number. If that's what you want.

11 MR. BUFALINI: Okay. David Bufalini.

12 HEARING EXAMINER: Phone number?

13 MR. BUFALINI: 272-2100.

14 HEARING EXAMINER: Now is that a 360?

15 MR. BUFALINI: Oh, 253, I'm sorry. And if he's not there
16 it'd be 208-2056. But that's his office number, the first
17 one.

18 HEARING EXAMINER: Hold on. Hold on. Because, you know,
19 those numbers --

20 MR. BUFALINI: Two five three.

21 HEARING EXAMINER: Two five three.

22 MR. BUFALINI: Two zero eight.

23 HEARING EXAMINER: Two zero eight.

24 MR. BUFALINI: Two zero five six.

25 HEARING EXAMINER: Two zero five six.

1 MR. BUFALINI: Yes, ma'am.

2 HEARING EXAMINER: Okay. How about for the State? Is
3 there any need for witness testimony outside?

4 MR. SHUMATE: Not that I'm aware of.

5 HEARING EXAMINER: Okay. We'll ask the other CCO.

6 Now, Mr. Bufalini, my decision today is going to be based
7 on a preponderance evidence standard. And what that actually
8 means is is that the evidence that's going to be presented
9 will, by Officer Dean, will need to meet a standard of 51
10 percent, which is more evidence than not. Does that make
11 sense?

12 MR. BUFALINI: Yes, ma'am.

13 HEARING EXAMINER: Hearsay evidence is admissible; however,
14 no decision is going to be based on hearsay alone. And you
15 do know that hearsay is that which a person has no direct
16 experience or witness to.

17 Now again, I can consider hearsay, but it would have to
18 substantiated in some way.

19 MR. BUFALINI: Okay.

20 HEARING EXAMINER: All right? In the event you're found
21 guilty of this one particular allegation, we'll then take a
22 look at how well things have gone for you since you were
23 placed there at the work release. And then recommendations
24 are going to be made directly thereafter.

25 MR. BUFALINI: Okay.

1 HEARING EXAMINER: Okay? So, Mr. Bufalini, that's the
2 process and how this hearing is going to be conducted. Any
3 clarification on the process?

4 MR. BUFALINI: No, ma'am.

5 HEARING EXAMINER: Now you had a question, sir?

6 MR. BUFALINI: Never mind. I'm just going to want to move
7 on. I just, I, well, yesterday when we went over the
8 allegations, it had stated that I had a dirty UA. But it
9 didn't state what it was dirty for.

10 MR. SHUMATE: May I interject here?

11 HEARING EXAMINER: Sure.

12 MR. SHUMATE: I would recommend that when we talk to the
13 State's witness --

14 MR. BUFALINI: Okay.

15 MR. SHUMATE: -- CCO Dean, you question her about that and
16 you can ask her.

17 MR. BUFALINI: Okay.

18 HEARING EXAMINER: Okay.

19 MR. BUFALINI: I just was under the impression that it
20 possibly should have been on the paperwork stating what I was
21 actually dirty -- I have yet to be informed what my UA was
22 dirty for. So it's hard for me to sit here and, you know,
23 make a plea on it.

24 HEARING EXAMINER: Okay. So when we, when we give a phone
25 call to her we'll get clarification.

1 MR. BUFALINI: Okay.

2 HEARING EXAMINER: You would have some idea of what they're
3 talking about when they say, "Controlled substances?"

4 MR. BUFALINI: Oh, yeah, absolutely. But it's --

5 HEARING EXAMINER: -- Okay. As long as you, as long as you
6 know that --

7 MR. BUFALINI: -- Yeah.

8 HEARING EXAMINER: -- then we'll hear from her.

9 MR. BUFALINI: Okay.

10 HEARING EXAMINER: Because again, at this point, I don't
11 even know what's going on.

12 MR. BUFALINI: Okay.

13 MR. SHUMATE: And if I can interject one other thing, on
14 the major infraction report, it does refer to it, which
15 tested positive for M.O.P..

16 MR. BUFALINI: Oh. What's M.O.P.?

17 MR. SHUMATE: You can ask your CCO that.

18 MR. BUFALINI: Okay.

19 MR. SHUMATE: To explain that.

20 MR. BUFALINI: Okay.

21 MR. SHUMATE: I just wanted to say it's on there.

22 MR. BUFALINI: All right. I just was --

23 MR. SHUMATE: -- Good question.

24 MR. BUFALINI: Yeah.

25 MR. SHUMATE: We'll get it answered.

1 MR. BUFALINI: Okay.

2 HEARING EXAMINER: Okay. Okay. So in order for me to
3 establish jurisdiction, Mr. Bufalini, I'm going to
4 acknowledge some information that I'm aware of in reference
5 to your conviction.

6 I note you were convicted out of the Superior Court, County
7 of Pierce. I have a cause 13-1-01924-0 where you were
8 convicted of Identity Theft in the First Degree, second
9 count, Identity Theft in the Second Degree. And also
10 Possession of a Controlled Substance.

11 MR. BUFALINI: Yes, ma'am.

12 HEARING EXAMINER: Now at the time you were convicted, the
13 judge sentenced you to serve a certain length of time in an
14 institution; is that fair to say?

15 MR. BUFALINI: Yes, ma'am.

16 HEARING EXAMINER: Would it also be fair to say that at the
17 tail end of that same sentence you were serving at the
18 Progress House Work Release?

19 MR. BUFALINI: Yes, ma'am.

20 HEARING EXAMINER: Okay. And the only reason why,
21 Mr. Bufalini, I'm acknowledging any of that is because in
22 essence that's what makes you a ward of the State, okay?

23 MR. BUFALINI: Okay.

24 HEARING EXAMINER: Since you're still a ward of the State,
25 that gives DOC jurisdiction is what I'm trying to say.

1 MR. BUFALINI: Yes, ma'am.

2 HEARING EXAMINER: All right. Okay. We'll go ahead and
3 call Officer Dean.

4 MR. SHUMATE: Should we swear in?

5 HEARING EXAMINER: I'm going to do that all at the same
6 time. The other work release is at the same facility?

7 MR. BUFALINI: No.

8 HEARING EXAMINER: No? Okay.

9 MR. BUFALINI: So you're ready for Christmas?

10 MR. SHUMATE: No.

11 MR. BUFALINI: Ready to get it over with?

12 HEARING EXAMINER: Yeah, I don't, I'm not moved this year
13 one way or the other.

14 MR. BUFALINI: Yeah. Me neither. I thought I was going to
15 be.

16 HEARING EXAMINER: Got a handful of grandkids looking at
17 me, "What am I getting?"

18 MR. BUFALINI: Oh, God. How many grandkids do you have?

19 HEARING EXAMINER: Five.

20 MR. BUFALINI: Oh, Lord. That's kind of fun, though,
21 right?

22 HEARING EXAMINER: Sometimes.

23 MR. BUFALINI: Sometimes.

24 HEARING EXAMINER: Sometimes it is.

25 MR. BUFALINI: When you're waving goodbye?

1 HEARING EXAMINER: Well, you know, there's an unconditional
2 kind of love that exists --

3 MR. BUFALINI: -- Absolutely.

4 HEARING EXAMINER: -- that is just amazing.

5 MR. BUFALINI: Yes.

6 HEARING EXAMINER: When it comes to grandkids. Except my
7 10-year-old grandson seems to be slipping.

8 MR. SHUMATE: Good morning, CCO Shumate here at WCC
9 Hearings Unit. CCO Dean, please. Thank you.

10 MR. BUFALINI: Oh, Lord. I don't know. I wouldn't call
11 that slipping. It's just, that's how it is.

12 MR. SHUMATE: CCO Dean, it's Loren. How are you doing this
13 morning? Good. Good. Happy Holidays. Hey, we are here and
14 ready to go with Mr. Bufalini's hearing if you're ready?
15 Sure. Or turn it up.

16 MR. BUFALINI: I'm nervous.

17 MR. SHUMATE: You're doing fine. Just keep breathing.
18 Yes. And you are on speaker.

19 HEARING EXAMINER: Hi, Officer Dean.

20 MS. DEAN: Hello.

21 HEARING EXAMINER: Hi. Hearing Officer Sheryl Jackson.
22 And I just want you to know I have already gone through the
23 process of how this hearing is going to be conducted with
24 Mr. Bufalini. And he does have one witness at some point
25 that we will need to make a phone call for. And I just want

1 to ask you who all do you have with you and do you have a
2 preliminary matter or something you want to bring to my
3 attention?

4 MS. DEAN: It is just myself, CCO Kelly Dean. I do not
5 have any preliminary matters that I am aware of at this time.

6 HEARING EXAMINER: Okay. And no additional witnesses,
7 Officer Dean?

8 MS. DEAN: Not at this time, no.

9 HEARING EXAMINER: Okay. And, sir, just so you know, a
10 preliminary matter is something you would consider critical
11 for me to know.

12 MR. BUFALINI: Mm-hmm.

13 HEARING EXAMINER: Do you want to bring anything to my
14 attention at this point in time?

15 MR. BUFALINI: No, ma'am.

16 HEARING EXAMINER: Okay. Now if I can ask you, sir, to
17 raise you right hand. My question, do you solemnly affirm
18 any testimony you acknowledge today will be true?

19 MR. BUFALINI: Yes, ma'am.

20 HEARING EXAMINER: Officer Dean, same question?

21 MS. DEAN: I do.

22 HEARING EXAMINER: Okay. And can you please read the
23 specific allegation?

24 MS. DEAN: It is a 752 receiving a positive test for use of
25 unauthorized drugs, alcohol or other intoxicant on or before

1 12/11/16.

2 HEARING EXAMINER: Okay. Now, Officer Dean, just before I
3 ask Mr. Bufalini to offer his plea, he was questioning the
4 specific drug that is listed on the actual infraction, what
5 it actually is, M.O.P.?

6 MS. DEAN: The M.O.P. is the opiate category. It stands
7 for Morphine or Opiate. So that's going to be your opiates,
8 your heroin. It's the opiate family.

9 HEARING EXAMINER: Okay. Okay, so now I just, I just
10 learned what M.O.P. stands for.

11 MR. BUFALINI: Me, too.

12 HEARING EXAMINER: So now we know.

13 MR. BUFALINI: All right.

14 HEARING EXAMINER: Okay. So how do you plead?

15 MR. BUFALINI: Whichever way I plead are we going to come
16 up with a result today?

17 HEARING EXAMINER: You know, be honest with you, there's a
18 process in how I conduct the hearings and I kind of shared
19 that with you.

20 MR. BUFALINI: Okay.

21 HEARING EXAMINER: So I don't --

22 MR. BUFALINI: -- I'm just going to --

23 HEARING EXAMINER: -- I need you to listen to me --

24 MR. BUFALINI: -- Not guilty.

25 HEARING EXAMINER: -- because you asked a question.

1 MR. BUFALINI: Okay.

2 HEARING EXAMINER: And this is the thing. I don't like, it
3 feels like a little bit of control in how the hearing is
4 going to go.

5 MR. BUFALINI: Okay.

6 HEARING EXAMINER: I'm not here, I don't care which way you
7 plead.

8 MR. BUFALINI: Okay.

9 HEARING EXAMINER: But I'm going to make sure that your
10 hearing is at least fair.

11 MR. BUFALINI: Okay.

12 HEARING EXAMINER: Okay? So we take it step by step.

13 MR. BUFALINI: Okay.

14 HEARING EXAMINER: Is what I wanted you to know.

15 MR. BUFALINI: Yes, ma'am.

16 HEARING EXAMINER: Okay? So in reference to the 752 and
17 I'll read how the infraction is listed here. The 752 it
18 says, "Receiving a positive test for use of unauthorized
19 drug, alcohol," --

20 MR. BUFALINI: Yes.

21 HEARING EXAMINER: -- "Or other intoxicants on or before
22 12/11 of '16." Your plea?

23 MR. BUFALINI: Not guilty.

24 HEARING EXAMINER: Okay. Officer Dean, you heard his plea,
25 I'm assuming? You hearing us okay?

1 MS. DEAN: Yes.

2 HEARING EXAMINER: Okay. He pled not guilty to this. Can
3 I get you to present your supporting evidence?

4 MS. DEAN: Okay. In the discovery packet I have included
5 the acknowledgement of drug and alcohol testing signed by
6 Mr. Bufalini on 8/11/16 acknowledging that he's got to do
7 drug tests.

8 I've also included the handbook receipt saying, "I have
9 read or had read to me and fully understand this handbook and
10 agree to abide by the rules." Mr. Bufalini signed off on
11 that on 8/11/16.

12 I've also included handbook page 40 of 86, indicating that,
13 "No use or possession of alcohol, marijuana or illegal drugs
14 is permitted."

15 I have also included -- well, we don't need those. Then
16 the other thing I have is a major infraction report. The
17 infraction report is written by facility monitor, Wayne
18 Brown. And it reads as follows: "At 21:29 on 12/11/16,
19 Resident Bufalini, who was notified at control area that he
20 would need to produce a UA. At 21:30, Resident Bufalini
21 informed staff that he was ready to yield a UA. At 21:33,
22 Resident Bufalini yielded UA to Officer Brown, which tested
23 positive for M.O.P." which is the opiate family. "At 21:34,
24 Officer Fackler was called back to the UA room and verified
25 the result that Resident Bufalini, initialed a security tab,

1 sample was secured and placed in the refrigerator in the UA
2 room.

3 Resident Bufalini stated he never takes prescribed drugs of
4 any kind. The only ever over the counter he took was Aleve
5 yesterday sometime on 12/10/16."

6 HEARING EXAMINER: Is that all, Officer?

7 MS. DEAN: That is all for me.

8 HEARING EXAMINER: Okay. Okay. Mr. Bufalini, you've heard
9 the supporting evidence --

10 MR. BUFALINI: -- Yes, ma'am.

11 HEARING EXAMINER: -- that Officer Dean has acknowledged
12 and what she's indicating is the process of how the UA was
13 collected, you know.

14 MR. BUFALINI: I understand.

15 HEARING EXAMINER: And one of the things that's also
16 important that is being acknowledged here is that it was
17 witnessed by another person.

18 MR. BUFALINI: Mm-hmm.

19 HEARING EXAMINER: And all of that was kind of confirmed on
20 the process of how they, how UAs are done.

21 MR. BUFALINI: I see.

22 HEARING EXAMINER: I note that you've pled not guilty to
23 this, sir. I'd like to hear your side of what happened.

24 MR. BUFALINI: Well, I mean, it states what happened.

25 That's the, that's the bad part. I mean, the UA cup stated

1 that I yielded a positive UA.

2 I've been incarcerated for almost two years now. I
3 attended the OCC therapeutic community. I passed that. I
4 went to the Progress House. I was there for five months.
5 And regularly had UAs. I have about three weeks remaining on
6 my sentence.

7 HEARING EXAMINER: Mm-hmm.

8 MR. BUFALINI: And it would be totally absurd of me to try
9 to use any kind of drugs. I know they're regularly testing
10 there at all times. It would be, you would think that if I
11 was using drugs it would have come up at a prior time to
12 after being there for nearly five months.

13 Obviously, the test shows that I yielded a positive UA. So
14 in that aspect I have no answer for that. I don't know if it
15 was something I ate or something I took. I have no idea.
16 I'm completely, I have, I have struggled with addiction for
17 my whole life. And I've actually maintained sobriety now for
18 the longest period in which I've ever maintained it. And I'm
19 proud to say that.

20 And, you know, I almost wanted to come in here and plead a
21 guilty plea just to get this thing over with. That's why I
22 had asked you that. But I just refuse to plead guilty on
23 something that I didn't do.

24 HEARING EXAMINER: Okay. Officer Dean?

25 MS. DEAN: I have nothing further to add.

1 HEARING EXAMINER: Okay. Okay. Do you want to call your
2 witness?

3 MR. BUFALINI: No. I just want to get, I'm just carrying
4 on with this. I'm, it's fine. My dad's not going to put
5 anything into light except what I just stated.

6 HEARING EXAMINER: Okay. No, no guesses as to how you
7 could have --

8 MR. BUFALINI: -- Honestly, honestly, Ms. Jackson, I have
9 no clue. I mean, I, I have, I mean, I don't know. I have
10 no, absolutely no idea, no clue. I don't know if it was,
11 like, a -- I have no idea. I have no idea. I have no answer
12 for it.

13 HEARING EXAMINER: Okay. Well, based upon the supporting
14 evidence and again, Mr. Bufalini, what Officer Dean had to do
15 was present more evidence than not, that 51 percent.

16 MR. BUFALINI: Yeah.

17 HEARING EXAMINER: And what I have is the actual compliance
18 with the UA policy and process on how UAs are taken. And it
19 was validated and confirmed by another staff member there.

20 So what I'll do is find you guilty in reference to testing
21 positive for a unauthorized controlled substance.

22 His adjustment, please, Officer Dean?

23 MS. DEAN: Mr. Bufalini arrived on 8/15. He started work
24 at Founder's Choice at 8/23/16 so he went to work right away.
25 He has zero majors. Zero minors. Mr. Bufalini was always

1 please, thank you, turned in all his forms on time. I had no
2 behavior issues with him whatsoever.

3 In fact, Monday morning you could have told me anybody else
4 on my caseload had a positive UA and I would have believed
5 you before Mr. Bufalini. But the UA proved positive and I
6 can't argue against that. But he was a very good individual
7 on my caseload.

8 HEARING EXAMINER: Well, Officer Dean, now is this, is this
9 particular substance something that is becoming positive at
10 your facility?

11 MS. DEAN: No. Actually, our latest positive UAs have been
12 for meth. Our last three have been for meth.

13 HEARING EXAMINER: Okay. So when, did you have the
14 opportunity to meet with Mr. Bufalini before he was returned
15 here?

16 MS. DEAN: I absolutely did not. I was on vacation.

17 HEARING EXAMINER: Okay.

18 MS. DEAN: And then when I came back the following Monday
19 from my vacation, they were already putting him into custody.
20 Because CCO Wright had staffed the case with CCS Shepherd.
21 And they determined to take him back.

22 So my first interaction and understanding of this whole
23 situation was him getting put into custody.

24 HEARING EXAMINER: Okay. All righty. Okay. So no
25 infractions, minor, major, at this particular point for him.

1 Okay.

2 So, sir, how would you describe your adjusting since you
3 arrived there at the work release?

4 MR. BUFALINI: I was, I was indulging in work. Nothing but
5 work. And I was able to see my family on the weekends. My
6 mother is suffering from leukemia right now so it was a big,
7 big thing for me to be able to spend time with my mom. And
8 see her instead of over the phone for the last few years
9 which I had to do that. My biggest fear was to have to lose
10 her while I was incarcerated without seeing her again. I was
11 learning work ethic because I've never really worked like
12 that before. I had a great job. I enjoyed my work. I came
13 back. I slept and that's it.

14 But Ms. Dean was nothing but great for me. And I feel like
15 I've let her down in a sense. But I didn't do anything. So
16 I don't, I don't even know how to explain it.

17 HEARING EXAMINER: Okay. So what do you think,
18 Mr. Bufalini, would be a fair outcome for today's hearing?

19 MR. BUFALINI: I don't know, ma'am. That's hard for me to
20 say, because I truly, my -- I didn't do anything wrong.

21 HEARING EXAMINER: Well, I mean, this is the thing. What I
22 hear you saying in essence is consciously, you know, if I can
23 take you at your word, consciously nothing happened. What we
24 do have is a positive UA --

25 MR. BUFALINI: -- I understand that.

1 HEARING EXAMINER: -- that's the only thing that I'm
2 looking at here.

3 Officer Dean, your recommendation, please?

4 MS. DEAN: Mr. Bufalini is a DOSA. When I first met with
5 him and he first got here he did say his choice of drug is
6 heroin and Oxy. So it does meet up, the positive UA does
7 meet up with his choice drugs for the opiate family.

8 I would recommend 20 days loss of good time.

9 HEARING EXAMINER: Okay.

10 MS. DEAN: And termination from work release.

11 HEARING EXAMINER: Okay. So a termination from your work
12 release status and Office Dean, can you give the range? I
13 was trying to look for it, but it's harder for me to find
14 it --

15 MS. DEAN: A 752 carries up to 60 days loss of good time.

16 HEARING EXAMINER: Okay. Up to 60 days. Okay. Worst case
17 scenario, Mr. Bufalini, could have been the 60 days. And
18 clearly, you have that kind of time available.

19 This 20-day recommendation says to me that it's kind of a
20 matter of fact. I've known those who get positive UAs to get
21 higher recommendations. But this is merely for the fact that
22 it was positive.

23 MR. BUFALINI: Okay.

24 HEARING EXAMINER: So the termination of the work release
25 status and the 20 days loss of good conduct time, I think,

1 clearly addresses this particular behavior. Okay?

2 MR. BUFALINI: Okay.

3 HEARING EXAMINER: So this is what I'm going to do. Is
4 there anything more from either party?

5 MS. DEAN: Actually, I have a question for Mr. Bufalini.

6 HEARING EXAMINER: Okay.

7 MS. DEAN: Your father had called me and wanted to talk
8 about your hearing. And I can't talk about your hearing or
9 any infractions without your permission.

10 MR. BUFALINI: Okay.

11 MS. DEAN: He asked me if I could get your permission to
12 talk to him after the hearing about the outcome.

13 MR. BUFALINI: Yes, ma'am, please, I would like for you to
14 talk to him about that if you could.

15 MS. DEAN: Can you please tell me his full name?

16 MR. BUFALINI: David Anthony Bufalini.

17 MS. DEAN: Okay. So with your permission I will discuss
18 all outcomes and all details of this hearing today with your
19 dad?

20 MR. BUFALINI: Yes, ma'am.

21 MS. DEAN: Okay.

22 MR. BUFALINI: And, Ms. Dean, how do I find out, like, who
23 my CCO is once I get out of here?

24 MS. DEAN: They'll notify you with your release paperwork.

25 MR. BUFALINI: Okay.

1 MS. DEAN: And I also need to point out, just so you know,
2 once you have been found guilty at this hearing I have to
3 move forward with a 762 hearing and put your DOSA, we have to
4 go for you being terminated from treatment. So there will be
5 a second hearing following this one. Because I can't do both
6 of them at the same time. So I want you to hear that from
7 me, because that is the next step.

8 MR. BUFALINI: Okay. So I'm losing my DOSA?

9 MS. DEAN: I can't say that. But we do have to have a
10 second hearing to address that 762.

11 HEARING EXAMINER: Okay. If there's nothing further. This
12 session is now concluded at 9:35.

13 (December 20, 2016 hearing concluded)

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C E R T I F I C A T E

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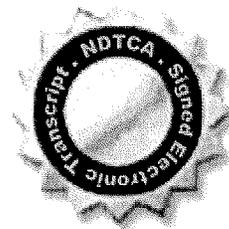
STATE OF OREGON)
)
COUNTY OF CLACKAMAS)

I, the undersigned, do hereby certify under penalty of perjury under the laws of the State of Washington that the foregoing court proceedings were transcribed under my direction as a certified transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability, including any changes made by the trial judge reviewing the transcript; that I received the audio and/or video files in the court format; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of July, 2017.

Catherine Leschi Wilcox

Catherine Leschi Wilcox



APPENDIX B

WASHINGTON STATE DEPARTMENT OF CORRECTIONS

AT WASHINGTON CORRECTION CENTER

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In re the Discipline of:)
PAUL BUFALINI,)
306464,)
) Inmate.)

FIRST DRUG OFFENDER SENTENCING ALTERNATIVE REVOCATION HEARING

January 4, 2017

Hearing Examiner Jeffrey Kasler Presiding

TRANSCRIBED BY: Catherine Leschi Wilcox, CET-913
 Reed Jackson Watkins, LLC
 Court Certified Transcription
 206.624.3005

A P P E A R A N C E S

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2

3 For the State of Washington Department of Corrections:

4 LOREN SHUMATE, Community Corrections Officer

5 Washington State Corrections Center

6 7345 Linderson Way Southwest

7 Tumwater, Washington 98501-6504

8

9 KELLY DEAN, Community Corrections Officer (Via Telephone)

10 Progress House Work Release

11 5601 Sixth Avenue

12 Tacoma, Washington 98406

13

14

15 For the Defendant:

16 PAUL BUFALINI

17

18

19 Also present:

20 David Bufalini (Via Telephone)

21

22

23

24

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JANUARY 4, 2017

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4 HEARING EXAMINER: Good morning. My name's Jeff Kasler.
5 I'm a hearings officer. I'm here today to conduct a fair,
6 impartial administrative DOSA hearing.

7 And for the record, your name is, sir?

8 MR. P. BUFALINI: Paul Bufalini.

9 HEARING EXAMINER: And I have a DOC Number listed as
10 306464; is that correct?

11 MR. P. BUFALINI: Yes, sir.

12 HEARING EXAMINER: And we're in regards to Pierce County
13 Cause No. 13-1-019240. As you can see, this is being
14 recorded. If you'd like a copy of the recording, you're
15 welcome to get one by sending a written request to the
16 address listed on the bottom of this document right here.
17 And they'll send you back a copy of the recording.

18 Also, at the top it says it's an appeal form. If I reach a
19 decision or impose a sanction today that you want to appeal,
20 you can do so by filling out that form, sending it to the
21 same address below within seven days of today's date.

22 That'll start the appeal process. Any questions on that?

23 MR. P. BUFALINI: No, sir.

24 HEARING EXAMINER: Okay. Today's date is 1/4/17. We're at
25 WCC. And we have CCO Dean on the line from Progress House

1 Work Release. And at this time I will swear in both parties.
2 If you'd raise your right hand, please.

3 Do you solemnly affirm the testimony you are about to give
4 in this matter is the truth?

5 MR. P. BUFALINI: Yes, sir, I do.

6 HEARING EXAMINER: And CCO Dean?

7 MS. DEAN: That is correct, yes.

8 HEARING EXAMINER: Thank you.

9 Okay. The hearing is conducted in three phases. We're
10 going to take care of the first phase. It's the
11 administrative phase. I'm going to make sure that you
12 received proper notification of today's hearing, that you
13 received the same discovery I received. And also that we
14 have jurisdiction in the matter.

15 So I have here a notice of allegation, hearing rights and
16 waiver form. On it lists one allegation I'll be hearing
17 today. The hearing rights are on the document. And I see
18 that it was signed on 1/3 of '17 at 8:30 a.m. Is that
19 correct?

20 MR. P. BUFALINI: Yes, sir.

21 HEARING EXAMINER: Okay. And at that time did you receive
22 a stack of documents like I have here?

23 MR. P. BUFALINI: I did.

24 HEARING EXAMINER: Contained in mine is a judgment and
25 sentence; notice of allegation, hearing rights and waiver

1 form; report of alleged violation. There was one
2 chronological sheet. There was facility plans. E-mail from
3 CDP or chemical dependency provider. A response to
4 termination of DOSA letter. A DOSA agreement. A discharge
5 summary dated 12/20/16. And a hearing decision and summary.
6 Oh, I'm sorry. That was dated 12/20/16, the hearing decision
7 and summary.

8 Did you receive those things as well?

9 MR. P. BUFALINI: Yes, sir.

10 HEARING EXAMINER: Okay. And I have reviewed the judgment
11 and sentence finding that DOSA was ordered and we have
12 jurisdiction in the matter.

13 Okay. Second part of the hearing is called fact finding.
14 In a moment, I'll read that allegation, ask you to enter a
15 plea of either guilty or not guilty to the allegation. If
16 you plead guilty, I'll allow you an opportunity, if you care
17 to, to give an explanation about what happened. I can take
18 that into consideration at the end of the hearing.

19 If you plead not guilty, you have the right to testify,
20 bring forward any witnesses or evidence on your own behalf.
21 And do you have any witnesses to call today?

22 MR. P. BUFALINI: Yes, sir.

23 HEARING EXAMINER: And who would that be?

24 MR. P. BUFALINI: David Bufalini, my father.

25 HEARING EXAMINER: Okay. And his number?

1 MR. P. BUFALINI: Two five three.

2 HEARING EXAMINER: Mm-hmm.

3 MR. P. BUFALINI: Two seven two two one zero zero. If that
4 doesn't work it'd be 253-208-2056.

5 HEARING EXAMINER: Two zero five six?

6 MR. P. BUFALINI: Yes, sir.

7 HEARING EXAMINER: Anybody else?

8 MR. P. BUFALINI: No, sir.

9 HEARING EXAMINER: Okay.

10 MR. P. BUFALINI: Oh, I also have a letter. I don't know
11 if that --

12 HEARING EXAMINER: -- Yeah, you can introduce that.

13 MR. P. BUFALINI: Okay.

14 HEARING EXAMINER: When we get there.

15 MR. P. BUFALINI: All right.

16 HEARING EXAMINER: Okay? So if you're found not guilty of
17 the allegation, then the hearing would be terminated at that
18 time. However, if there is a guilty finding we would move on
19 to the last part of the hearing, which is called disposition.

20 Hearsay evidence is admissible, but must be substantiated
21 or corroborated. Do you know what hearsay is?

22 MR. P. BUFALINI: Yes, sir.

23 HEARING EXAMINER: Okay. If we go to disposition I'll be
24 asking CCO Dean and yourself to give me information on two
25 things. Number One, how you've abided by DOSA so far, how

1 you did. Number Two would be recommendations on any
2 sanctions that might be imposed today. And I don't know if
3 you've read through the letter that you signed --

4 MR. P. BUFALINI: -- Yeah, I've read all of it.

5 HEARING EXAMINER: Okay. And then there's also the RCW
6 contained in my case that I can read. So anyway. It is what
7 it is.

8 Okay. So let's go ahead and read the allegation and take
9 your plea. It's a No. 762, failing to complete or
10 administrative termination from DOSA substance abuse
11 treatment program on or about 12/15/16. And how do you plead
12 to that?

13 MR. P. BUFALINI: Not guilty.

14 HEARING EXAMINER: Okay. And CCO Dean, could you give
15 supporting evidence and then I'll ask you to give supporting
16 evidence and call any witnesses.

17 MS. DEAN: Okay. I have included all of the documentation
18 that you read off. His DOSA judgment and sentence. His DOSA
19 letter, which he signed on -- I lost it. I believe it was
20 8/31.

21 I've included the discharge summary showing that he was
22 discharged from treatment and that is on, okay. Let me give
23 my report first and then we'll look at the documentation.

24 HEARING EXAMINER: Yeah.

25 MS. DEAN: So I did a initial serious infraction report.

1 It's written by myself. It reads as follows: "On 8/10/16,
2 Bufalini, Paul, DOC No. 306464 arrived at Progress House work
3 release. On 8/15/16, Resident Bufalini attended his CD
4 assessment appointment with Jason Lewis. See attached e-
5 mail. Resident Bufalini signed a substance use disorder,
6 treatment participation requirements and indicated outpatient
7 treatment on Wednesdays and Fridays, 5:00 to 7:00 p.m.
8 Resident Bufalini also signed substance use disorder prison
9 DOSA agreement. See attached.

10 On 8/17/16, Resident Bufalini started CD treatment. On
11 8/31/16, Resident Bufalini signed DOSA letter. See attached.
12 On 12/11/16, Resident Bufalini provided UA sample that tested
13 positive for opiates.

14 On 12/12/16, Resident Bufalini was taken into custody and
15 transported to WCC. On 12/21/16 [sic], DOC hearing was held
16 at WCC. Resident Bufalini was found guilty of positive UA on
17 12/11/16 and was sanctioned to 20 days loss of good time.

18 On 12/21/16, I, CCO Dean, received Resident Bufalini's
19 discharge summary from CDP Aplin. See attached. Resident
20 Bufalini was terminated from court-ordered CD treatment on
21 12/15/16."

22 Do you want me to walk you through all the document or can
23 you guys just look at them?

24 HEARING EXAMINER: I think we've both viewed the documents
25 in here. And are there some that you would find relevant,

1 outside of the judgment and sentence?

2 MS. DEAN: Just his DOSA letter acknowledging that he could
3 have his DOSA revoked if he was terminated from treatment.
4 And it says that, "This letter is to inform you of change of
5 department's required response to noncompliance related to
6 your substance -- or your sentence under the Prison DOSA
7 Offenders Sentence Alternative DOSA. Effective immediately,
8 if you fail to complete or are administratively terminated
9 from your court-ordered substance abuse treatment, you will
10 be subject to mandatory revocation to complete the unexpired
11 term of your Prison DOSA sentence, RCW 9.94A.662(3)."

12 When Mr. Bufalini signed this letter we had a long
13 conversation on the importance of doing his DOSA treatment
14 while here at Progress House work release. It was made very
15 clear to Bufalini that any infraction at Progress House work
16 release would then terminate him from treatment. Which would
17 then bring up the 762. Bufalini signed that letter
18 understanding that that was the expectation.

19 MR. P. BUFALINI: Did we lose her?

20 HEARING EXAMINER: Hmm?

21 MR. P. BUFALINI: Did we lose her?

22 HEARING EXAMINER: I'm sorry?

23 MR. P. BUFALINI: Oh, it almost sounded like she got cut
24 off. I didn't know if she was --

25 HEARING EXAMINER: Are you still there, Kelly?

1 MS. DEAN: Still there.

2 HEARING EXAMINER: Okay.

3 MS. DEAN: But if you need me to I can go through each
4 document with all the dates.

5 HEARING EXAMINER: Well, I guess, kind of cutting to the
6 chase, I have a substance use disorder discharge summary.

7 MS. DEAN: Mm-hmm.

8 HEARING EXAMINER: And if you want to go through that and
9 enlighten me, that would be great.

10 MS. DEAN: So let me find that one in my pile. I'm
11 flipping through it all.

12 Okay. Substance use disorder discharge summary and
13 continued care plan. This was written up by CDP Aplin. It
14 is dated 12/15/16. Reason for discharge is terminated. And
15 it states in the first box, summary of progress, last use
16 date was 12/11/16, positive UA for opiates. Continued care
17 plan. DOSA did not maintain abstinence from mood altering
18 drugs during the treatment period; however, he is disputing
19 the validity of the UA as of 12/15 and has not been found
20 guilty at a DOC hearing." But since then he has been found
21 guilty on 12/21 at the DOC hearing.

22 HEARING EXAMINER: Okay. And I think Mr. Bufalini is going
23 to want to call his father to testify. So I'm going to have
24 to take a break and do that. And I'll tell you what he asked
25 and what his father said.

1 MS. DEAN: Okay.

2 HEARING EXAMINER: Okay?

3 MS. DEAN: All right.

4 MR. P. BUFALINI: Is there any questions I can ask him for
5 her?

6 HEARING EXAMINER: Yeah, thanks. Are there any questions
7 that you would want to ask his father?

8 MS. DEAN: Not starting out. If there's anything from any
9 testimony he gives, I'll reserve the right to ask questions
10 then.

11 HEARING EXAMINER: Okay. Thank you.

12 MS. DEAN: You're welcome.

13 HEARING EXAMINER: Talk to you in a bit.

14 MS. DEAN: Okay. Bye.

15 HEARING EXAMINER: Bye. Go ahead. It's going to tell me
16 my code's no good again, 272-2100?

17 MR. P. BUFALINI: Yes, sir. That's his office. You're
18 going to have to ask for David Bufalini. It's his office.

19 RECEPTIONIST: Good morning. Bufalini Law Office.

20 HEARING EXAMINER: Hi. Is David Bufalini available,
21 please?

22 RECEPTIONIST: Yeah, one moment.

23 MR. D. BUFALINI: David Bufalini.

24 HEARING EXAMINER: Hi, Mr. Bufalini. My name's Jeff
25 Kasler. I'm a hearings officer for the Department of

1 Corrections. And your son wanted me to call you to testify
2 for the hearing that he's having today.

3 Would you want to testify?

4 MR. D. BUFALINI: Absolutely.

5 HEARING EXAMINER: Okay. I wanted to tell you that you are
6 being recorded. And we've been on the record now for a
7 little bit. We've gone through most of the hearing process
8 as far as fact finding goes.

9 We did contact the CCO at the work release and she gave
10 testimony. So I'm going to kind of, you know, jot down
11 whatever Paul asks you. And then she has the right to, you
12 know, come back and ask questions if she wants to.

13 MR. D. BUFALINI: Okay. That's fine.

14 HEARING EXAMINER: Okay. Thank you. So I'm going to go
15 ahead and turn it over to you, Mr. Bufalini.

16 MR. P. BUFALINI: I just, I'll turn it over to my father.
17 He can go ahead and explain the situation.

18 HEARING EXAMINER: Okay.

19 MR. D. BUFALINI: Well, giving an open ended statement, I
20 guess, gives me some leeway here. I want to make a couple of
21 preliminary observations about my son. He's never been
22 involved in any acts of violence related to any of the crimes
23 that he has committed.

24 Secondly, when I was able to have or begin to have social
25 visits after he had spent the requisite amount of time at the

1 Progress House, we took advantage of that privilege every
2 Saturday and Sunday. And also on Thanksgiving.

3 And I can attest that Number One, we understood the rules.
4 Number Two, Paul was always in my custody and presence. We
5 went straight from Progress House to our home in University
6 Place each time. We never left the home during any of those
7 visits. Paul and I spent all that time together, typically
8 watching football. Or baseball during that season.

9 But we never had any visitors to our home when Paul was
10 there. Paul never left our home when he was there. I never
11 took him anywhere after arriving at our home, except to drive
12 him back to Progress House at the designated time. And
13 frequently we were a little bit early each of those times.

14 As far as I know, and I'll stand corrected if there's
15 evidence to the contrary, during Paul's entire periods of
16 incarceration at various facilities, he's been most recently
17 at Olympic Correction Center, as far as I know he never had
18 any violations or any reason to impose sanctions of any kind.
19 As far as I know, he was cooperative. He met his obligations
20 there.

21 I guess most disappointing we have the prospect of him
22 losing the DOSA sentencing alternative here is that he was so
23 close to completion. I believe he had attended, attended 30
24 or so of the mandatory and I've heard different numbers, 32
25 classes or 36 classes. But regardless, he never missed a

1 class.

2 Our entire conversations when we were together with him and
3 we've suffered through a long history of addiction with Paul.
4 And seen this issue from the inside. Paul was making good
5 progress from our perspective. He was gainfully employed.
6 He was earning an income. He was abiding the rules of
7 Progress House. He spoke constantly of the date of his
8 release from Progress House. Which, ironically, would have
9 been today. And tomorrow is Paul's birthday and we had
10 spoken a lot of being able to go out to dinner and really for
11 the first time celebrate his birthday with him in an
12 unrestricted environment.

13 It's unfathomable to me that Paul would act in a way that
14 would jeopardize something that he had worked several years
15 to get to that point. He didn't have access to, I've heard
16 different results. I'm not quite sure what he tested
17 positive for, or what the test result read as positive. I
18 have been told, and again, I don't know if this is true or
19 not, that Number One, a request to retest simply is denied.
20 And secondly, that the sample that this hearing and possible
21 sanctions are based on, is no longer available for testing.
22 And I don't know if that's true or not.

23 If that is true, given the consequences of a positive test
24 result, I think and I'm not going to go off on some
25 constitutional law argument, but I would simply suggest that

1 due process should allow the accused the right and the
2 ability to have a full blown lab workup done of the sample to
3 determine whether or not this was actually an accurate,
4 positive reading from that test.

5 As I understand it, the test is really an over-the-counter
6 test that's available to anybody. And false positives cannot
7 be ruled out, I don't think, based on that test.

8 So I don't know if discussing the results are even part of
9 this discussion or if the hearing officer simply assumes as
10 fact that this was a positive. But without the ability for a
11 full blown evaluation of the sample, and again, given the
12 consequences of a finding of a breach, I find that
13 troublesome.

14 I think a lesser sanction, if the test is assumed to be
15 accurate, given Paul's behaviors up to that point, given his
16 performance up to that point, and given the fact that he has
17 complied with everything required of him except that, I would
18 hope that the hearings examiner would really, seriously
19 consider a lesser sanction.

20 I just don't see an upside to throwing Paul back into the
21 system to serve out the balance of his term when he is
22 literally within sight of the finish line here. And
23 prospects moving forward, again, save for this detour if we
24 want to call it that, should just shut down all of the
25 progress that he's made.

1 I just see that as too severe and I think probably yields a
2 result that would not be within the spirit and the hope of
3 DOC. At least that's my hope. I think DOC should be about
4 rehabbing people and giving them a chance. And if there's a
5 lesser sanction that would signal to Paul the consequences,
6 while allowing him to stay in the program, complete the
7 program, and gainful employment, I think that serves DOC's
8 underlying purpose. And I think it serves Paul's underlying
9 goal.

10 HEARING EXAMINER: Okay. Thank you. Is there any
11 questions that you wanted to ask?

12 MR. P. BUFALINI: No, sir.

13 HEARING EXAMINER: No?

14 MR. P. BUFALINI: I can start talking really quick if you
15 want. I mean, just, you know, backing up his facts and
16 telling you my side of the story.

17 HEARING EXAMINER: Okay. I'd need to get CCO Dean.

18 MR. P. BUFALINI: Okay.

19 HEARING EXAMINER: Back on the line so that she can cross-
20 examine.

21 MR. P. BUFALINI: I understand.

22 HEARING EXAMINER: Okay, sir, thank you very much for
23 testifying today. I appreciate it. And I'll definitely take
24 into consideration what you said.

25 MR. P. BUFALINI: I love you, Dad.

1 MR. D. BUFALINI: I love you, Paul. I welcome or I wanted
2 to thank you for giving me a chance to weigh in on this. I
3 really do appreciate it.

4 HEARING EXAMINER: Oh, you bet. Have a great day. Happy
5 New Year.

6 MR D. BUFALINI: Thank you. Bye bye.

7 HEARING EXAMINER: Bye bye.

8 MR. P. BUFALINI: Oh, man, I'm, like, shaking.

9 ELECTRONIC VOICE: Thank you for calling Progress House
10 Work Release. If you know the person you are calling, you
11 may enter it now or press zero to reach the front desk.

12 MR. P. BUFALINI: Zero.

13 ELECTRONIC VOICE: One moment please.

14 MR. P. BUFALINI: It's quicker that way.

15 ELECTRONIC VOICE: This is the general delivery mail box.
16 At the tone, please say the name of the person you are
17 calling. One moment, please.

18 RECEPTIONIST: Progress House. How may I help you?

19 HEARING EXAMINER: Hey, it's Hearings Officer Kasler.
20 Could you connect me with Kelly Dean, please?

21 RECEPTIONIST: All right. Just one second.

22 HEARING EXAMINER: Thank you.

23 MS. DEAN: Progress House work release. This is Kelly
24 Dean.

25 HEARING EXAMINER: Hi, Kelly. It's H.O. Kasler again. So

1 anyway, we just finished up with David Bufalini. And he, you
2 tell me if I'm wrong. He addressed really two major issues.
3 I think one, he addressed the prior hearing that he had had
4 that ended up in his termination from work release. And kind
5 of went through, you know, they had spent a lot of time
6 together. He didn't know how he could use, you know, that
7 sort of thing. Okay?

8 MS. DEAN: Okay.

9 HEARING EXAMINER: All right. And second part was
10 addressing disposition and that he didn't feel, you know,
11 that it would be the right thing to revoke the DOSA. And
12 gave some reasons why. And again, referred back to the prior
13 hearing.

14 So was there any questions that you wanted to readdress
15 with Mr. Bufalini, David Bufalini?

16 MS. DEAN: No.

17 HEARING EXAMINER: Okay. All right. Now is there any
18 questions that you wanted to ask of CCO Dean?

19 MR. P. BUFALINI: No, sir.

20 HEARING EXAMINER: CCO Dean, is there any questions you
21 want to ask of Mr. Bufalini?

22 MS. DEAN: No.

23 HEARING EXAMINER: Okay. And you were going to testify,
24 right?

25 MR. P. BUFALINI: Yes, sir.

1 HEARING EXAMINER: Okay. Go ahead.

2 MR. P. BUFALINI: Again, like my father stated, I've been
3 incarcerated now for 24 months. The first part of my
4 sentence I attended the therapeutic community at OCC, which
5 is intensive inpatient treatments, five days a week, 40 hours
6 a week. I completed that. I was an upper structure member
7 at OCC. And I did a really good job. I got discharged at a
8 1.0 with no issues whatsoever. And I got fortunate enough to
9 get to work release with about 5.5 months remaining on my
10 sentence.

11 Again, you know, I've had a long history with drug use.
12 And a lot of failed attempts. But this time around I had a
13 completely different mindset of how I was going to go about
14 it. So getting to the work release was pretty exciting. I
15 got to get a job. I had full-time employment, never missed a
16 day at work.

17 Again, I was at work release for roughly about five months.
18 You know, at work release you pretty much know you're getting
19 UA'd on a weekly basis, so for me to use any kind of drugs
20 would have been, I mean, absurd for me. Right off the bat, I
21 know this is kind of prior. I don't even know if this is any
22 kind of, if this helps me whatsoever. But instantly I asked
23 for another UA. I immediately begged them. I told them I'd
24 pay for it. Because every single UA I've taken -- well,
25 that's kind of exaggerated, but a lot of the UAs you take,

1 the lines on the cup are very faded. And they sometimes have
2 to get a second opinion on whether or not they see a line on
3 the cup.

4 So it's somewhat a little bit, it's scary, because a lot's
5 on the line for me there with the cup and such. So, you
6 know, immediately when I got to Shelton I asked for a UA.
7 I've been asking if I could take a UA for quite some time
8 just to show that I, in fact, was not dirty for opiates.

9 I, I have been sitting, today is my release day. I have
10 been, I have been battling this thing for two years. And I
11 can sit here and honestly say to you that I did not use drugs
12 at all. And I mean that. Because I'm proud of that. It's
13 been a battle for me. It's been a lifelong battle for about
14 16 years that I've struggled with.

15 HEARING EXAMINER: The prior hearing that you had, that was
16 for use of opiate? Is that what it was for?

17 MR. P. BUFALINI: Morphine.

18 HEARING EXAMINER: For morphine?

19 MR. P. BUFALINI: Yes, sir.

20 HEARING EXAMINER: Okay. And were you given one of these
21 at the last hearing?

22 MR. P. BUFALINI: Yes, and I turned it in.

23 HEARING EXAMINER: Okay. Have you heard anything back?

24 MR. P. BUFALINI: No, sir.

25 HEARING EXAMINER: Okay. So what I've got to say is that

1 everything hinges on that right now, okay. I don't have any
2 alternative except to do what I'm told to do through the RCW
3 and what the Department directs me to do. So any outcome of
4 this hearing today is going to be solely based on that. And
5 nothing personal from me.

6 MR. P. BUFALINI: There's nothing that, there's, it's just,
7 like, why do you even have the hearing if it's an automatic
8 DOSA revoke?

9 HEARING EXAMINER: I hear you.

10 MR. P. BUFALINI: Why? I mean, I've been going through it
11 here. Not to say for the fact that I'm telling the truth.
12 And I am.

13 HEARING EXAMINER: Mm-hmm.

14 MR. P. BUFALINI: But based on my history, of course,
15 nobody believes you. But I'm sitting here telling you the
16 honest to God truth.

17 HEARING EXAMINER: Mm-hmm.

18 MR. P. BUFALINI: And now I'm looking at a revoke?

19 HEARING EXAMINER: Well, I can't retry what you already
20 did.

21 MR. P. BUFALINI: Well, I pleaded not guilty, you know. I
22 mean, you would think that that would be a mandatory thing to
23 send that into a laboratory. These cups actually state on
24 there --

25 HEARING EXAMINER: -- I understand exactly what you're

1 saying. I deal with this for the last 15 years.

2 MR. P. BUFALINI: So what was the point of even going
3 through this hearing?

4 HEARING EXAMINER: I understand. I know.

5 MR. P. BUFALINI: Why? If it was already predetermined
6 that I'm losing my DOSA, why?

7 HEARING EXAMINER: I agree.

8 MR. P. BUFALINI: And it doesn't, and it says on the RCW I
9 may be subject to. That's not binding. That's not about
10 "You are going to be." I mean, there's been instances where
11 I know people haven't been revoked. I had two, or I had a
12 few classes remaining. I would never have jeopardized that.

13 HEARING EXAMINER: Mm-hmm.

14 MR. P. BUFALINI: I am going through so hell right now.

15 HEARING EXAMINER: Mm-hmm.

16 MR. P. BUFALINI: My mom has leukemia. Now I'm going to
17 get two years and lose my mom over something I did not do.
18 Because they wouldn't, they, why would I beg them to put it
19 into another cup? Why? Immediately, I said, "Please, use
20 another cup. Please."

21 HEARING EXAMINER: Mm-hmm.

22 MR. P. BUFALINI: Why would I do that? There's no reason I
23 would do that.

24 HEARING EXAMINER: Mm-hmm. Best of all worlds it would
25 have been sent to a lab.

1 MR. P. BUFALINI: Well, yeah, you'd think so based on what
2 the situation is now. Send it to a laboratory. My father
3 actually asked for them to. He'll pay for it. Why not?
4 They put it into a baggie and seal it up. Why would they do
5 that?

6 HEARING EXAMINER: Mm-hmm.

7 MR. P. BUFALINI: Give me a shot, like, send it to a lab.

8 HEARING EXAMINER: Mm-hmm.

9 MR. P. BUFALINI: I have two more years now for something I
10 did not do, sir.

11 HEARING EXAMINER: Okay.

12 MR. P. BUFALINI: I promise you.

13 HEARING EXAMINER: All right. I realize I'm not in your
14 seat, but I can empathize with your situation.

15 MR. P. BUFALINI: This is just crazy. Everybody is getting
16 revoked now because of these classes, you know. It's just a
17 Band-Aid. You're just going to send people, let's say I did
18 use, okay --

19 HEARING EXAMINER: -- Whoa, whoa, whoa, whoa, whoa, whoa.
20 Hold on. Hold on. It's an RCW.

21 MR. P. BUFALINI: Well, I'm just saying so that's going to
22 help me as a drug addict? Oh, send me back to prison for two
23 years. Oh, that's going to help. Yeah, no, that's just
24 going to make it worse. There's nothing in prison that helps
25 an addicted person and drugs. This is a disease. This is

1 not just, "Oh, let's just throw him in prison for two more
2 years so he can sit there." Especially if somebody's not
3 guilty.

4 At least send it to a laboratory. There's no need for
5 those, those cups specifically state that they're not 100
6 percent accurate. It says that on there. There's a reason
7 why they send a bag, what do they say, send to the lab if it
8 comes up positive. False negatives. That's a term that's
9 real. False positive or whatever, you know. This is absurd.

10 You can even ask Ms. Dean. I was, I did nothing wrong. I
11 was, I abided by the rules. I did everything I needed to do.
12 And you're telling me three weeks from the gate I would have
13 started using knowing damned well that every week you're
14 UA's? You've got to crazy. I would never do that.

15 I was so proud of my, how much, how far I've gotten. But
16 now I have to sit here for three weeks in the R Units and sit
17 here and wait for a hearing that's already predetermined?
18 How is that fair? There's no fairness to that whatsoever.
19 Absolutely not.

20 HEARING EXAMINER: I agree.

21 MR. P. BUFALINI: Absolutely not fair. I mean, you know --

22 HEARING EXAMINER: I agree 100 percent. I do. I mean, up
23 until whenever this notice came out, we didn't have to
24 revoke.

25 MR. P. BUFALINI: Yeah.

1 HEARING EXAMINER: We could have taken some good time or
2 something like that and called it good. But the AG's Office
3 said, "You're not abiding by the RCW. And this is what
4 you're going to do." I'm sorry. I mean, I can't help that.
5 You know, the only thing I can say is that you've got some
6 good support from him out there.

7 MR. P. BUFALINI: Yeah, yeah, I mean, yeah. Absolutely --

8 HEARING EXAMINER: -- Which I hope would help with this.

9 MR. P. BUFALINI: How?

10 HEARING EXAMINER: Well, he was citing some stuff that's,
11 you know, pretty good stuff to cite. And you don't seem like
12 a dummy. It seems like you could pretty much fill out one of
13 these and say the same things that you just stated to me.
14 Right?

15 MR. P. BUFALINI: It just seems pointless. I mean, it just
16 seems so unfair.

17 HEARING EXAMINER: Well, don't give up.

18 MR. P. BUFALINI: Why wouldn't I? Look at my
19 circumstances.

20 HEARING EXAMINER: Okay. Okay.

21 MR. P. BUFALINI: This is so unfair to me.

22 HEARING EXAMINER: I understand.

23 MR. P. BUFALINI: Absolutely unfair.

24 HEARING EXAMINER: I think it's unfair to you. But I, you
25 know, I don't do it, I lose my job. You know? I'm not going

1 to lose --

2 MR. P. BUFALINI: -- You know, you come in here with the
3 thought that maybe there's a chance, that maybe they can look
4 at this and go, "Okay, this doesn't seem right, like,
5 something may be wrong here."

6 HEARING EXAMINER: Well, I'm, like I said before, I'm not
7 there to retry what's already been tried.

8 MR. P. BUFALINI: I understand that.

9 HEARING EXAMINER: You know, and the only thing that I go
10 by and that we've been told to go by is the discharge
11 summary. And the discharge summary says, "Terminated."

12 MR. P. BUFALINI: Well, that's that then.

13 HEARING EXAMINER: We just went over the RCW and what it
14 says --

15 MR. P. BUFALINI: It says, "You may be subject to." That's
16 not stating, "You are going to be."

17 HEARING EXAMINER: Okay. Well, let's get there and discuss
18 that. Okay? All right. So anyway, based on the information
19 contained in here, the discharge summary as I've stated to
20 you already does say, "Terminate," and that was due to drug
21 use.

22 And I know you deny that. And I know you said you didn't
23 do it. Your dad has a lot of belief in that as well. But
24 anyway, it did happen. So I'm going to enter a finding of
25 guilt.

1 And at this time I'm going to hear what CCO Dean has to say
2 about your adjustment while you're at work release.

3 MR. P. BUFALINI: So I don't understand why we're doing
4 this.

5 HEARING EXAMINER: And then I want to talk about, well,
6 let's do it. I mean, if you don't want to do it, you don't
7 have to.

8 MR. P. BUFALINI: I'm just saying. It's just pointless.
9 You know what you're going to do. You're terminating it.

10 HEARING EXAMINER: You don't have to be present for the
11 hearing if you don't want to be. And I'd fully understand
12 you doing that. Okay? So can you hang in there with me?

13 MR. P. BUFALINI: Yeah.

14 HEARING EXAMINER: All right. CCO Dean, you still there?

15 MS. DEAN: I am.

16 HEARING EXAMINER: Okay. So we're looking at adjustment.

17 MS. DEAN: Mr. Bufalini arrived here on 8/10. He started
18 work at Founder's Choice on 8/23. He's had no major
19 infractions. No minor infractions. He's always turned in
20 all his work and on time. He's always been please and thank
21 you. I've had no one behavior issue with Mr. Bufalini, with
22 the exception of the positive UA.

23 HEARING EXAMINER: Still there?

24 MS. DEAN: Yup.

25 HEARING EXAMINER: Okay. Go ahead.

1 MS. DEAN: Did you hear everything?

2 HEARING EXAMINER: I did.

3 MS. DEAN: Oh. So Mr. Bufalini arrived on 8/10 of '16. He
4 started working at Founder's Choice on 8/23 of '16. He was
5 working full-time. He was going to his classes. He was
6 always please and thank you. Turned his stuff in, all his
7 paperwork he turned it in on time. All of our interactions
8 were pleasant. I had no behavior issues with Mr. Bufalini up
9 until the positive UA on 12/11. He had no majors and no
10 minors.

11 HEARING EXAMINER: Okay. So how do you think you adjusted
12 while you were there?

13 MR. P. BUFALINI: Like I already said, I did everything I
14 needed to do and I --

15 HEARING EXAMINER: -- Sounds like you did well. How did
16 you do in the institution before you went there?

17 MR. P. BUFALINI: Perfectly. I abided by all the rules. I
18 never was guilty of any -- I was an upper structure member at
19 the OCC, which is a therapeutic community. I had no, no
20 infractions. Graduated with honors.

21 HEARING EXAMINER: CCO Dean, what's your recommendation?

22 MS. DEAN: Per the statute, I have to ask, I have to ask
23 for DOSA revoke.

24 HEARING EXAMINER: Because of the RCW?

25 MS. DEAN: Yes.

1 HEARING EXAMINER: Okay. And your recommendation, sir?

2 MR. P. BUFALINI: Mine?

3 HEARING EXAMINER: Yeah. I would think it would be not
4 revoking.

5 MR. P. BUFALINI: Do not revoke my DOSA.

6 HEARING EXAMINER: Okay. I'm going to take a deferred
7 decision. I'm going to try and find the paperwork for that.
8 The reason I'm going to do that is you're under appeal now.
9 And I don't know what the outcome of that is going to be, so
10 I really can't base any sanction, right, for your termination
11 if the sanction given wasn't just. Or wasn't upheld by the
12 review committee, okay? So what I'm going to do, if that's
13 all right with you --

14 MR. P. BUFALINI: -- What does that mean?

15 HEARING EXAMINER: You're under appeal on what terminated
16 you --

17 MR. P. BUFALINI: -- Yeah.

18 HEARING EXAMINER: -- to come here to make this happen.

19 MR. P. BUFALINI: Okay.

20 HEARING EXAMINER: I don't know what that's going to be.

21 MR. P. BUFALINI: So we're just going to wait for that
22 outcome?

23 HEARING EXAMINER: They may say, "Hey, he had the right to
24 test it in the lab." They may -- I don't know what's going
25 to come out of that. But it may come back that they're going

1 to hold it over for another hearing. They may find you not
2 guilty. I don't know what's going to come out of that.

3 MR. P. BUFALINI: So we're just going to wait for the
4 outcome of that?

5 HEARING EXAMINER: The thing that triggered this to happen
6 was that that's under appeal. Okay?

7 MR. P. BUFALINI: Yeah.

8 HEARING EXAMINER: So let's say it comes back and you're
9 found not guilty. How could I revoke your DOSA if you're
10 found not guilty of the thing that brought you here in the
11 first place that got you terminated from treatment?

12 MR. P. BUFALINI: Okay.

13 HEARING EXAMINER: Do you understand?

14 MR. P. BUFALINI: Yes, sir.

15 HEARING EXAMINER: Okay. Now there's a certain document
16 that I had and I'm not able to find it here. I don't know
17 why. I usually carry it with me everywhere. But it's a form
18 and I'm going to try and find it for you to sign. And it's a
19 form that says that you're waiving your right to, you know,
20 have the --

21 MR. P. BUFALINI: Outcome?

22 HEARING EXAMINER: -- outcome decided today. Do you want
23 to do that?

24 MR. P. BUFALINI: Yes, sir. Please.

25 HEARING EXAMINER: Okay. All right.

1 MR. SHUMATE: I thought Jackson said something about the
2 appeal. I don't know if it hadn't been mailed out or if it's
3 been done yet or not. I thought, I don't know if she said
4 there was one or if it, she heard back.

5 HEARING EXAMINER: Well, I don't know. But he'd have the
6 right to call that in, you know. You can call that in, the
7 decision that's made.

8 MR. P. BUFALINI: Okay.

9 HEARING EXAMINER: All right.

10 MR. P. BUFALINI: Meaning?

11 HEARING EXAMINER: Well, we're going to have a hearing,
12 right. We're going to finish this hearing.

13 MR. P. BUFALINI: Okay.

14 HEARING EXAMINER: But I may dismiss the charge, or the
15 violation, the infraction.

16 MR. P. BUFALINI: Okay.

17 HEARING EXAMINER: So you're going to get a notice of that,
18 you know, when it comes out, the decision. And I can also
19 look into it, you know, to see where it's at in the process
20 or whatever.

21 MR. P. BUFALINI: So Ms. Jackson said that I didn't get
22 out?

23 MR. SHUMATE: No, no, no. Just regarding --

24 MR. P. BUFALINI: The outcome?

25 MR. SHUMATE: -- the appeal.

1 MR. P. BUFALINI: So would they have already come up with a
2 decision on that? Or is that just kind of pending?

3 HEARING EXAMINER: Well, I don't have --

4 MR. SHUMATE: We don't have that information.

5 HEARING EXAMINER: I don't have anything to address that
6 with today.

7 MR. P. BUFALINI: But it did get out in time, right? Is
8 that what you?

9 HEARING EXAMINER: Oh, you're fine.

10 MR. P. BUFALINI: Because I was kind of concerned because I
11 didn't have an envelope right away. So I was, I didn't know
12 when they said five or seven business days. But did they
13 count the weekend on that?

14 HEARING EXAMINER: Did you come here the same day as your
15 hearing?

16 MR. P. BUFALINI: No.

17 HEARING EXAMINER: Next day?

18 MR. P. BUFALINI: No.

19 HEARING EXAMINER: Day after that? Where did you send the
20 appeal out from?

21 MR. P. BUFALINI: Here.

22 HEARING EXAMINER: Here.

23 MR. P. BUFALINI: Yeah.

24 HEARING EXAMINER: Okay. So was it --

25 MR. P. BUFALINI: But it was a holiday.

1 HEARING EXAMINER: Was it within seven working days?

2 MR. P. BUFALINI: That I sent it in the mail?

3 HEARING EXAMINER: Yeah.

4 MR. P. BUFALINI: Yeah. But it was Christmas weekend.

5 HEARING EXAMINER: And I've been on, see it's a review
6 committee, okay, is what it is. And we all have to serve on
7 it.

8 MR. P. BUFALINI: Okay.

9 HEARING EXAMINER: From time to time to time. And it all
10 rotates. So when I've done it if somebody has a good
11 argument and they're saying that I couldn't get an envelope
12 or something like that, they're still going to look at it.

13 MR. P. BUFALINI: Okay.

14 HEARING EXAMINER: Even if it's outside of the seven days.

15 MR. P. BUFALINI: Okay.

16 HEARING EXAMINER: Yeah.

17 MR. P. BUFALINI: So that's not bound by, okay.

18 HEARING EXAMINER: No. No.

19 MR. P. BUFALINI: Yeah, because I was kind of stressed out
20 about getting that out on time. But I'm glad that.

21 HEARING EXAMINER: Yeah. And I'm going to look into it
22 when I get back to the office.

23 MR. P. BUFALINI: So do you think there might be an outcome
24 right now?

25 HEARING EXAMINER: I have no idea. I've got to look into

1 that when I get back.

2 MR. P. BUFALINI: Okay.

3 HEARING EXAMINER: Okay? Okay. So, CCO Dean, are we good?

4 MS. DEAN: Question.

5 HEARING EXAMINER: Yeah.

6 MS. DEAN: Deferred decision, I don't do anything in OMNI
7 until I hear back from you?

8 HEARING EXAMINER: Exactly. Everything is, like, frozen
9 solid just like outside. Right?

10 MS. DEAN: Right. So I just wait until I hear back from
11 you?

12 HEARING EXAMINER: Yes, ma'am. In fact, I'd be coming back
13 here and finishing the hearing.

14 MS. DEAN: Oh, okay. And I would get notified of that?

15 HEARING EXAMINER: Yeah. Well, you'd be notified of when
16 we're going to continue, yeah.

17 MS. DEAN: Okay.

18 HEARING EXAMINER: Okay?

19 MR. SHUMATE: Can we verify his release date real quick?

20 MR. P. BUFALINI: Two three seventeen.

21 MR. SHUMATE: Okay.

22 HEARING EXAMINER: Two three?

23 MR. P. BUFALINI: Yes, sir.

24 HEARING EXAMINER: Okay. So we're okay?

25 MR. P. BUFALINI: Yeah.

1 HEARING EXAMINER: Okay.

2 MR. P. BUFALINI: Today was mine, but they gave me 20 days
3 on the sanction and I lost my 10-day good time.

4 HEARING EXAMINER: So that extends that out?

5 MR. P. BUFALINI: Yeah.

6 HEARING EXAMINER: Okay. Thank you.

7 MS. DEAN: All right. Thank you.

8 HEARING EXAMINER: Mm-hmm. Bye bye.

9 MR. P. BUFALINI: So can I ask you something as far as --

10 HEARING EXAMINER: -- I'm going to pause at this time. Do
11 you want me to stay on the record? Okay.

12 That concludes the hearing to this point. And the time is
13 11:08 a.m. on 1/4/17. So that has been deferred for
14 Mr. Bufalini, 306464.

15 (January 4, 2017 hearing concluded)

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C E R T I F I C A T E

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STATE OF OREGON)
)
COUNTY OF CLACKAMAS)

I, the undersigned, do hereby certify under penalty of perjury under the laws of the State of Washington that the foregoing court proceedings were transcribed under my direction as a certified transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability, including any changes made by the trial judge reviewing the transcript; that I received the audio and/or video files in the court format; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of July, 2017.

Catherine Leschi Wilcox

Catherine Leschi Wilcox



APPENDIX C

WASHINGTON STATE DEPARTMENT OF CORRECTIONS

AT WASHINGTON CORRECTION CENTER

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In re the Discipline of:)
PAUL BUFALINI,)
306464,)
 Inmate.)

HEARING REGARDING REMAND AND APPOINTMENT OF LEGAL COUNSEL

February 22, 2017

Hearing Examiner Paul Ockerman Presiding

TRANSCRIBED BY: Catherine Leschi Wilcox, CET-913
 Reed Jackson Watkins, LLC
 Court Certified Transcription
 206.624.3005

A P P E A R A N C E S

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For the State of Washington Department of Corrections:

LOREN SHUMATE, Community Corrections Officer

Washington State Corrections Center

7345 Linderson Way Southwest

Tumwater, Washington 98501-6504

KELLY DEAN, Community Corrections Officer (Via Telephone)

Progress House Work Release

5601 Sixth Avenue

Tacoma, Washington 98406

For the Defendant:

PAUL BUFALINI

Also present:

David Bufalini (Via Telephone)

1 FEBRUARY 22, 2017

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3
4 HEARING EXAMINER: Okay. But I'm going to start at Square
5 One.

6 MR. P. BUFALINI: Okay.

7 HEARING EXAMINER: I'm back on the record. My recorder
8 just shut off. So if anybody sees any of the lights go out,
9 please let me know before we go too far.

10 Just a recap. We've been in here, what, less than five
11 minutes.

12 MR. P. BUFALINI: Mm-hmm. Something like that.

13 HEARING EXAMINER: Probably. And I told you I was
14 reviewing the packet that was just handed to me. It's now
15 9:36 a.m. and I was going through the packet. Asked you not
16 to say anything or talk about your case until I had a chance
17 to review everything so I could pay attention to you. Is
18 that accurate so far?

19 MR. P. BUFALINI: Yes, sir.

20 HEARING EXAMINER: In my review of the case, I noticed some
21 documents that were in the case that were from the last
22 hearing.

23 MR. P. BUFALINI: Mm-hmm.

24 HEARING EXAMINER: I didn't, I took them out. I handed
25 them to the CCO. Had him read them into the record, what

1 they were, not what the, I don't want to know what the
2 content is.

3 MR. P. BUFALINI: Okay.

4 HEARING EXAMINER: Because it's irrelevant.

5 MR. P. BUFALINI: Okay.

6 HEARING EXAMINER: CCO, would you please restate what those
7 documents are?

8 MR. SHUMATE: Yes. Yeah, it's paperwork that's related to
9 a hearing, previous hearing that was held on 12/20/2016 here
10 at WCC.

11 HEARING EXAMINER: Okay. So I'm going to actually ask, I'm
12 going to swear everybody in a little early because then you
13 brought up a letter that you received from the Administrator
14 of the Hearings Unit, Dominga Soliz.

15 MR. P. BUFALINI: Mm-hmm.

16 HEARING EXAMINER: And we were having a conversation about
17 that when I noticed that the recorder was off. So would you
18 state your name for the record, please?

19 MR. SHUMATE: Yes. CCO Loren Shumate.

20 HEARING EXAMINER: And state your name, please?

21 MR. P. BUFALINI: Paul Bufalini.

22 HEARING EXAMINER: Okay. Will you both raise your right
23 hand? Do you solemnly affirm that any testimony you provide
24 here today will be the truth?

25 MR. SHUMATE: Yes, I do.

1 MR. P. BUFALINI: Yes, sir.

2 HEARING EXAMINER: Thank you. Mr. Bufalini, so we're
3 having a -- did I leave anything out so far other than the
4 conversation we were having about the letter?

5 MR. P. BUFALINI: No, sir.

6 HEARING EXAMINER: So in the letter you're under the
7 impression that -- I'm under the impression that I know this
8 has been remanded.

9 MR. P. BUFALINI: Mm-hmm.

10 HEARING EXAMINER: Okay. So the allegation is a 762.

11 MR. P. BUFALINI: Okay.

12 HEARING EXAMINER: That I'm kind of upset to hear.

13 MR. P. BUFALINI: Yes.

14 HEARING EXAMINER: You are, we should probably call the
15 work release. Or I might have to call --

16 MR. P. BUFALINI: -- Can you, my dad has talked to Ms.
17 Soliz. He's an attorney. He's waiting for the phone call.

18 HEARING EXAMINER: Okay.

19 MR. P. BUFALINI: He can explain to you exactly what I'm
20 trying to explain to you.

21 HEARING EXAMINER: You have the right to call witnesses.

22 MR. P. BUFALINI: I understand.

23 HEARING EXAMINER: I'm not going to start with taking
24 testimony from your dad about what this hearing is. Does
25 that make sense to you?

1 MR. P. BUFALINI: Yeah. So at what point do I request this
2 to be continued so I can have counsel here?

3 HEARING EXAMINER: Okay. So if, first of all, we have to
4 decide what I'm hearing today.

5 MR. P. BUFALINI: Okay.

6 HEARING EXAMINER: That's the first issue, right?

7 MR. P. BUFALINI: Yes, sir.

8 HEARING EXAMINER: Would you agree with that?

9 MR. P. BUFALINI: Yes.

10 HEARING EXAMINER: And then once I decide that you made a
11 request. That's the other thing that you just noted when I
12 noticed the recorder wasn't on, that you want to be
13 represented.

14 MR. P. BUFALINI: Yes, sir.

15 HEARING EXAMINER: I'll make the determination on whether
16 or not I'm going to allow you to be represented during the,
17 if we proceed with this hearing today, during the course of
18 this hearing today.

19 MR. P. BUFALINI: Okay.

20 HEARING EXAMINER: Okay? It's not an automatic right in
21 this process for it, okay?

22 MR. P. BUFALINI: Okay.

23 HEARING EXAMINER: So those are the things. And then I'll
24 explain the hearing process to you and well, if I appoint an
25 attorney, we'll continue this.

1 MR. P. BUFALINI: Okay.

2 HEARING EXAMINER: To a later date.

3 MR. P. BUFALINI: Okay.

4 HEARING EXAMINER: If I don't then I'll proceed today. You
5 can make an argument to have it continued anyway. But and
6 then I'll weigh all that. That's the process. I don't want
7 to get ahead of myself either.

8 MR. P. BUFALINI: I completely, I've had this letter for
9 two weeks so you can imagine. I've already gone through this
10 whole process. It's been very painful for me getting the
11 letter. So I'm kind of, I'm just at a loss, okay, well why
12 has it been remanded? There must be a reason, right.

13 HEARING EXAMINER: Okay.

14 MR. P. BUFALINI: Don't you see where I could, why that
15 would be suggested? Okay. This hearing is remanded --

16 HEARING EXAMINER: -- Okay, all's that tells me is you get
17 another hearing.

18 MR. P. BUFALINI: Yeah, but why? There's a reason why.

19 HEARING EXAMINER: Yeah.

20 MR. P. BUFALINI: Obviously, she didn't like something,
21 something along the lines where she listened --

22 HEARING EXAMINER: -- Okay. And I'm not here to --

23 MR. P. BUFALINI: -- No, I get it --

24 HEARING EXAMINER: -- And that's why I got rid of all of
25 that information is I'm not here to let that, the State sway

1 me on what happened last time.

2 MR. P. BUFALINI: Okay.

3 HEARING EXAMINER: I'm not going to hear, you know --

4 MR. P. BUFALINI: -- Okay.

5 HEARING EXAMINER: -- I mean, you can certainly testify
6 about the facts.

7 MR. P. BUFALINI: I understand.

8 HEARING EXAMINER: But if the fact if you're arguing that
9 the fact that this got remanded should somehow --

10 MR. P. BUFALINI: -- No, no, that's not what I'm arguing.
11 I'm just suggesting because --

12 HEARING EXAMINER: -- my decisions here today --

13 MR. P. BUFALINI: -- No, no, no. But from my understanding
14 that I've been told, even the previous hearings officer
15 informed me, the 762 hearing is kind of, it's kind of just
16 going through the process. There's no really, you already
17 know what the outcome is. We both know.

18 HEARING EXAMINER: I never know what the outcome is of a
19 hearing.

20 MR. P. BUFALINI: Every single time, have you ever done a
21 762 hearing? Ever done a DOSA revoke? Because of the fact
22 that they're saying I signed this contract. I mean, it's
23 kind of, like, it's just a process which --

24 HEARING EXAMINER: -- You asked me a rhetorical question.

25 MR. P. BUFALINI: Well, yeah, I'm saying that, like, the

1 last hearing officer told me --

2 HEARING EXAMINER: -- Do you know what that is?

3 MR. P. BUFALINI: Yes. Absolutely.

4 HEARING EXAMINER: Well, I'm not trying to insult you.

5 MR. P. BUFALINI: -- No, I'm not --

6 HEARING EXAMINER: -- I'm just, I said a word. I want to
7 make sure you understand --

8 MR. P. BUFALINI: -- And so the hearings officer informed
9 me he would have been fired if he didn't revoke my DOSA based
10 on the fact that he had a letter from the Attorney General
11 saying he has to revoke people because they're terminated
12 from classes. No matter what the circumstances are.

13 So it's frustrating to me because especially since I
14 thought, "Okay, here, we've got another shot at this."
15 Because there's a long story involved here. It's not just --

16 HEARING EXAMINER: -- So is this conversation because you
17 want the first hearing to be heard, right?

18 MR. P. BUFALINI: Yes.

19 HEARING EXAMINER: That led --

20 MR. P. BUFALINI: -- Led to the 762.

21 HEARING EXAMINER: Okay. Okay. So with that being, okay.
22 So that's what I need to find out.

23 MR. P. BUFALINI: Yes.

24 HEARING EXAMINER: Whether or not the first hearing or the
25 second hearing was remanded.

1 MR. P. BUFALINI: Okay.

2 HEARING EXAMINER: Okay? And so that's something I'm going
3 to need to make a phone call on. The question I have is I'm
4 not, I'm not sure whether, I mean, I need to make that phone
5 call on the record or not. That's the question I'm trying to
6 sort through right here. Because this is not something that
7 I obviously anticipated. I think because it doesn't specify.
8 It just says --

9 MR. P. BUFALINI: -- Well, I mean, there's two different
10 things. One the 31st and then the other says the
11 circumstances leading to my incarceration. Which entailed
12 were the UA. That's what the circumstances leading to my
13 incarceration were.

14 HEARING EXAMINER: But this says, "I have reviewed Paul's
15 hearing and sanction imposed on January 31, 2017." That was,
16 was that the revocation hearing?

17 MR. P. BUFALINI: Yeah.

18 HEARING EXAMINER: So that's what she references, his
19 hearing is remanded --

20 MR. P. BUFALINI: -- But then when she talked to my father
21 she said that it was everything in that letter, that the
22 circumstances leading to my incarceration. They've had
23 several conversations. Or they've talked on e-mail and on
24 the phone. And according to him, he says that it was clear
25 to him that it was the circumstances leading to my

1 incarceration and so on and so forth.

2 HEARING EXAMINER: Well, yeah, and I get -- okay.

3 MR. P. BUFALINI: And so my understand --

4 HEARING EXAMINER: -- And when we use the word
5 "incarceration" in my opinion, you've been incarcerated since
6 you went into (inaudible), you know what I'm saying? So you
7 were incarcerated when you were at work release. Is that
8 where you were?

9 MR. P. BUFALINI: I've been incarcerated for --

10 HEARING EXAMINER: -- Yeah that's what I'm saying. So when
11 you say, "Leading to your incarceration," I see it you've
12 never been unincarcerated. But you mean your return --

13 MR. P. BUFALINI: -- After my --

14 HEARING EXAMINER: -- Just so we're talking about the same
15 thing, right.

16 MR. P. BUFALINI: Yes, sir.

17 HEARING EXAMINER: Okay. Okay.

18 MR. P. BUFALINI: And I really was hoping that you would
19 grant me, I know that a lot of people ask for that, but to
20 have counsel for this. Because there's a lot of
21 circumstances --

22 HEARING EXAMINER: -- Okay. There's a process for that.
23 I'm not going to get into the attorney review before I start
24 the attorney review.

25 MR. P. BUFALINI: Okay.

1 HEARING EXAMINER: Okay? I respect that you want an
2 attorney. But I don't want to be influenced in part over
3 statements you make before I get into that process.

4 MR. P. BUFALINI: Okay.

5 HEARING EXAMINER: On its own. I want that process to be
6 weighed on its own merits. Right?

7 MR. P. BUFALINI: Okay.

8 HEARING EXAMINER: Okay. So what I'm going to do is this
9 -- I think it's appropriate for me to get clarification from
10 the administrator on this. And I don't think I need to put
11 that on the record. I'm not calling her as a witness. I'm
12 calling for clarification based on the remand.

13 And so I'm going to go off the record. It's 9:44 a.m.
14 Based on, I mean, it's your assertion that this is the wrong
15 infraction, correct?

16 MR. P. BUFALINI: Well, it's my, it's my understanding and
17 hope that it would be the whole everything. The remanded
18 sanctions for the UA and leading into the 762 hearing.
19 Because from my understanding the 762, it's inevitable what's
20 going to happen here. It's like, and then there was another
21 issue with the fact of them informing me when my DOSA was
22 revoked. My original hearing was January 4th. And then
23 they're saying the sanctions were imposed on the 31st because
24 there was an issue because Mr. Kasler, he continued my
25 hearing, or continued -- he withheld his decision based on my

1 appeal for the 752 hearing.

2 HEARING EXAMINER: Mm-hmm.

3 MR. P. BUFALINI: The appeal was answered on January 9th in
4 a letter. So I go, I'm still waiting to get called back to a
5 hearing to get my, to get the information on, "Okay, well,
6 what's going to happen." Because he said he's going to call
7 me back. Mr. Kasler apparently went on leave of some sort.

8 I go to my FMRT on the 11th of January and they inform me
9 my DOSA has been revoked and that my new release date is
10 2019. I am well past my release date. I'm like, "What?"
11 And they haven't informed -- how am I supposed to be able to
12 appeal this if I haven't even been informed that my DOSA has
13 been revoked or given the appeal paperwork or anything.

14 HEARING EXAMINER: I'm not following you. You said
15 somebody told you your DOSA was revoked --

16 MR. P. BUFALINI: -- Yes at FMRT.

17 HEARING EXAMINER: Have you had a hearing that your DOSA
18 was revoked?

19 MR. P. BUFALINI: I had my hearing. He continued, he --

20 HEARING EXAMINER: -- Okay.

21 MR. P. BUFALINI: -- withheld his decision.

22 HEARING EXAMINER: He did a deferred decision --

23 MR. P. BUFALINI: -- Yes.

24 HEARING EXAMINER: Okay.

25 MR. P. BUFALINI: Until the appeal had come back. The

1 appeal came back in the mail on January 9th. I got the
2 letter, okay.

3 HEARING EXAMINER: Okay. And it was denied? Was it
4 denied?

5 MR. P. BUFALINI: Yeah, the original appeal was denied.

6 HEARING EXAMINER: So the hearing officer's decision for
7 that hearing was affirmed, right, on that --

8 MR. P. BUFALINI: -- Not, well, yeah, but according to him
9 he was going to call me back. So I was waiting for the
10 decision from him to be called back to C Building and have a
11 decision.

12 HEARING EXAMINER: Okay.

13 MR. P. BUFALINI: So I can get the paperwork. And then at
14 that point I know I have five days to appeal it.

15 HEARING EXAMINER: Okay. No, your appeal, but that's kind
16 of a moot point, because your appeal got heard.

17 MR. P. BUFALINI: No. But I'm saying for this, for the
18 DOSA revoke.

19 HEARING EXAMINER: See, I think, I think that's my point is
20 I think that's what she's responding to.

21 MR. P. BUFALINI: No it's --

22 HEARING EXAMINER: -- Did you ever appeal this one?

23 MR. P. BUFALINI: Yes.

24 HEARING EXAMINER: And what did the appeal come out?

25 MR. P. BUFALINI: It didn't come back. She sent this

1 letter before the appeal came back.

2 HEARING EXAMINER: Okay. So I need some clarification. I
3 need to know how to move forward --

4 MR. P. BUFALINI: -- That's what I was hoping, yeah.

5 HEARING EXAMINER: So I'm going to, I'm going to pause the
6 record. It is 9:47. I'm going to try to get a hold of her.
7 If I can't get a hold of her then I'm going to do some other
8 hearings and try to resolve this today.

9 MR. P. BUFALINI: Okay.

10 HEARING EXAMINER: Okay? But I think that's the best plan
11 of action.

12 MR. P. BUFALINI: Okay.

13 HEARING EXAMINER: Is and so the question is that you're
14 under the assumption that I'm -- tell me exactly what, you
15 told me that your, the conversation with her and your dad led
16 you to believe that I'm, that the hearing would be not about
17 the 762. But about the --

18 MR. P. BUFALINI: -- There was never any --

19 HEARING EXAMINER: -- leading up to the 762.

20 MR. P. BUFALINI: I'm going off of what it says on here.
21 And then my father was under the impression as well when they
22 spoke --

23 HEARING EXAMINER: -- So that's --

24 MR. P. BUFALINI: -- that it was everything that had to do
25 with the letter.

1 HEARING EXAMINER: That's what you, and that's what you
2 stated.

3 MR. P. BUFALINI: -- That's what I understand.

4 HEARING EXAMINER: And so that indicates that, that, um, to
5 me that you're saying that this isn't just relating to the
6 762; is that an accurate statement?

7 MR. P. BUFALINI: Yes, sir.

8 HEARING EXAMINER: Okay. So based on that, it is now 9:48.
9 I'm going to go off the record.

10 MR. SHUMATE: I have one clarification question.

11 HEARING EXAMINER: Okay.

12 MR. SHUMATE: You had stated that you were never informed
13 when CCO -- or when the hearings officer, Kasler, took a
14 deferred.

15 MR. P. BUFALINI: Mm-hmm.

16 MR. SHUMATE: Were you not called in by another, while he
17 was absent, you were --

18 MR. P. BUFALINI: -- On the 31st --

19 MR. SHUMATE: -- Let me finish, please. Were you not
20 called in by another hearings officer and given his deferred
21 decision at a later date? Yes or no?

22 MR. P. BUFALINI: After my dad sent them letters arguing my
23 point and what's going on with this. After it had already
24 been entered in the kiosk, my release date.

25 MR. SHUMATE: Okay.

1 MR. P. BUFALINI: About three weeks after they did call me
2 in on the 31st.

3 MR. SHUMATE: Okay. Right.

4 MR. P. BUFALINI: Or 30th. And informed me of this.

5 MR. SHUMATE: Okay. Okay.

6 HEARING EXAMINER: So it was the only thing I agree with
7 you.

8 MR. P. BUFALINI: I mean, it was four weeks after the fact.

9 HEARING EXAMINER: Okay. I don't know if that has anything
10 to do with Mr. Kasler's --

11 MR. SHUMATE: No. I just wanted to clarify that he was
12 informed of that deferred decision.

13 HEARING EXAMINER: All right. So okay. So I don't have to
14 make any rulings on that, but I appreciate the clarification.
15 It's 9:49. I'm going to pause the record and then we'll
16 reconvene hopefully here shortly.

17 (Recess)

18 HEARING EXAMINER: Okay. I'm on the record. It is 9:57.
19 I did talk to Ms. Soliz, luckily got a hold of her. And my
20 understanding is right. I'm here on the 762 today, okay. So
21 there is, there wasn't a conversation with, from her end.
22 She remanded it. And that's a decision she decided to make.

23 So I'm going to hear that. And so I'm going to finish
24 reviewing. I haven't got that far yet. And then we'll go
25 through, I'll go through and screen and decide whether to

1 appoint an attorney. Okay. Does that make sense?

2 MR. P. BUFALINI: Yeah.

3 HEARING EXAMINER: Okay. So does that answer your --

4 MR. P. BUFALINI: -- Yeah.

5 HEARING EXAMINER: -- do you understand where, what my role
6 is here today --

7 MR. P. BUFALINI: Mm-hmm.

8 HEARING EXAMINER: -- and what infraction and everything.
9 So all right. So where was I. Let's see.

10 Are you presenting this?

11 MR. SHUMATE: CCO is.

12 HEARING EXAMINER: Oh, CCO?

13 MR. SHUMATE: Dean.

14 HEARING EXAMINER: Okay. We should probably call the CCO.

15 MR. SHUMATE: Excuse me.

16 HEARING EXAMINER: Get him on the phone. Tell him that
17 we'll call him back depending on the outcome.

18 MR. P. BUFALINI: This 762 hearing isn't just a formality?

19 HEARING EXAMINER: It's a hearing where I'll make decisions
20 as we go. So nothing I've ever done is a formality. I'm not
21 going to lie to you or pin you into a corner before I have
22 the hearing.

23 MR. P. BUFALINI: -- No, no, that's not what --

24 HEARING EXAMINER: -- Well, I know you earlier stated
25 something to the effect your rhetorical statement, you know.

1 And I review every hearing I've done, I've done a lot on the
2 facts and merits --

3 MR. P. BUFALINI: -- I'm glad, you seem to be fair. And
4 I'm just wondering if it's, I just had the feeling the last
5 time we just went through the process in order to just to --

6 HEARING EXAMINER: -- Okay. This is a, this is a new
7 hearing.

8 MR. P. BUFALINI: Okay.

9 HEARING EXAMINER: I'm not trying to cut you off.

10 MR. SHUMATE: Good morning. Loren out at the hearings unit
11 at WCC. CCO Dean, please. Thank you.

12 Yeah, this is Loren again. CCO Dean did not pick up.
13 We're in the middle of a hearing and we need her to testify.
14 Thank you.

15 MR. P. BUFALINI: I'm truly not coming off in any way or
16 form.

17 HEARING EXAMINER: Okay.

18 MR. P. BUFALINI: I just, this has been such a long process
19 for me.

20 HEARING EXAMINER: Fair enough.

21 MR. P. BUFALINI: I am --

22 HEARING EXAMINER: -- I'm okay. I hope I'm not, I'm not
23 anxious. I'm not --

24 MR. P. BUFALINI: -- Yeah, well --

25 HEARING EXAMINER: -- anything. I'm here to do my job.

1 MR. P. BUFALINI: -- I get it and I appreciate that.

2 HEARING EXAMINER: -- And --

3 MR. P. BUFALINI: -- And I don't want you to think I'm
4 being rude in any way.

5 HEARING EXAMINER: I don't think you are.

6 MR. P. BUFALINI: I'm just, I have, this has been the most
7 miserable experience of my life.

8 HEARING EXAMINER: Okay. Okay. And I'm not, I don't, I'm
9 not passing any judgment on you, you know. I'm okay with
10 everything that's transpired here.

11 MR. SHUMATE: Kelly, it's Loren. How you doing?

12 HEARING EXAMINER: This is what I do.

13 MR. P. BUFALINI: All right. I get it.

14 MR. SHUMATE: Good. Hey, I just wanted to let you know
15 we're delaying things. We're in the middle of the hearing
16 that you were waiting to testify at 10:00 for. Just to let
17 you know, he's going to be screened for legal representation.
18 That's going to take a few minutes.

19 So either way, I will call you back after we do that. I
20 just wanted to give you an update. Okay. Will do. Thank
21 you. Bye.

22 HEARING EXAMINER: So I'm going to start this portion of
23 the hearing at this time.

24 Good morning. My name is Paul Ockerman. I'm a hearing
25 officer with the Department of Corrections. I'm here today

1 to conduct a fair and impartial administrative hearing.

2 Mr. Bufalini, will you please state your full name, date of
3 birth and DOC number for the record?

4 MR. P. BUFALINI: Paul Bufalini, 1/5/79, 306464.

5 HEARING EXAMINER: Okay. Thank you. Today is the 22nd of
6 February, 2017. It's 10:06 a.m. and participating here today
7 besides myself are?

8 MR. SHUMATE: CCO Loren Shumate.

9 HEARING EXAMINER: And your name, please?

10 MR. P. BUFALINI: Paul Bufalini.

11 HEARING EXAMINER: And will you both raise your right hand.
12 I know I swore you in earlier, but I'm going to follow the
13 script. Do you solemnly affirm that any testimony you
14 provide in this proceeding today will be the truth?

15 MR. P. BUFALINI: I do.

16 MR. SHUMATE: Yes, I do.

17 HEARING EXAMINER: Thank you. The hearing today will be
18 conducted on the following felony cause, Pierce AE a split
19 judgment sentence, 13-1-01924-0. And that component was for
20 Identity Theft First. You received 36.75 months. Community
21 custody.

22 I think the important thing here is that I identify the
23 crimes referenced in the judgment and sentence, because you
24 weren't actually on community custody. So Identity Theft
25 First, Identity Theft Second, Possession of Controlled

1 Substance. Pierce Cause AF 13-1-01924-0 is a bail jump,
2 looked like there were two counts on your judgment and
3 sentence, Forgery, Possession of Stolen Property, Second
4 Unlawful Possession of Payment Instruments.

5 Those convictions resulted in the court granting you a
6 DOSA. You agreeing to and the court granting you a DOSA on
7 1/14/15. And that is still active. You are still an inmate
8 serving that sentence; would you agree with that statement?

9 MR. P. BUFALINI: Yes.

10 HEARING EXAMINER: Okay. I made note of this, we're at the
11 Washington Correction Center. As you can see this hearing is
12 being recorded. If you would like a copy of this recording,
13 you may send a written request to the Hearing Records Unit,
14 which is -- listed at the bottom of that form I just handed
15 you. It's an appeal form and a copy will be made and sent to
16 you.

17 The form can be used to submit a written appeal should you
18 choose to file one upon the outcome of this hearing. You are
19 entitled to appeal today's hearing. All appeals must be
20 filed within seven calendars of receiving my decision. Okay?

21 MR. P. BUFALINI: Mm-hmm.

22 HEARING EXAMINER: Does that make sense?

23 MR. P. BUFALINI: Yes, sir.

24 HEARING EXAMINER: Do you have any questions about that?

25 MR. P. BUFALINI: No.

1 HEARING EXAMINER: Participating I've already noted who is
2 here today. At this time I swore you both in, correct? So
3 the next part is does the defendant request an attorney. You
4 verbally asserted that you want to be represented; is that
5 correct?

6 MR. P. BUFALINI: Yes, sir.

7 HEARING EXAMINER: Okay. Having had that request I will be
8 asked to make a determination about whether an attorney will
9 be appointed to represent you at your hearing. I want to go
10 over those questions at this time.

11 What is your understanding of why we are here today?

12 MR. P. BUFALINI: My understanding is a remanded sanction
13 hearing for my hearing to be reheard.

14 HEARING EXAMINER: Do you understand what a community
15 custody hearing consists of?

16 MR. P. BUFALINI: Yes.

17 HEARING EXAMINER: Okay.

18 MR. P. BUFALINI: I believe so. I mean, I don't know the
19 ins and outs of it. But do I understand what a community
20 custody hearing is?

21 HEARING EXAMINER: Yeah, well, I misspoke. Not a community
22 custody hearing. A work release, a 762 infraction hearing.
23 Do you understand?

24 MR. P. BUFALINI: Do I understand?

25 HEARING EXAMINER: Yeah, what that is?

1 MR. P. BUFALINI: Yes, somewhat, I guess. I'm kind of a
2 little bit foggy at the whole idea. But yeah. I understand
3 what it mainly consists of.

4 HEARING EXAMINER: What are you foggy of?

5 MR. P. BUFALINI: As far as the 762 is a pretty new
6 infraction. The contract we signed, what it states --

7 HEARING EXAMINER: -- It's not a new infraction.

8 MR. P. BUFALINI: The 762 is a DOSA revocation hearing.

9 HEARING EXAMINER: Yeah --

10 MR. P. BUFALINI: -- It's a 762 --

11 HEARING EXAMINER: -- Yeah, yeah, just so you know --

12 MR. P. BUFALINI: -- Oh it's based on the contract --

13 HEARING EXAMINER: -- I've been doing 762s for 13 years --

14 MR. P. BUFALINI: -- Okay.

15 HEARING EXAMINER: -- or roughly around that time. So just
16 for clarification it's not new. But so I'm not trying to
17 argue with you --

18 MR. P. BUFALINI: -- No, I get it. Yeah. I'm, yeah, I get
19 it.

20 HEARING EXAMINER: Okay. As I mentioned, I'm a hearing
21 officer. What is your understanding of the role or job of a
22 hearing officer?

23 MR. P. BUFALINI: To play the role of the judge and
24 prosecutor.

25 HEARING EXAMINER: Okay. So I just asked you about just

1 the hearing officer. And I'm not, I don't play the role
2 of --

3 MR. P. BUFALINI: -- You're the judge.

4 HEARING EXAMINER: Yeah, I would say that's accurate.

5 MR. P. BUFALINI: Okay.

6 HEARING EXAMINER: But make no mistake about it --

7 MR. P. BUFALINI: -- I get it.

8 HEARING EXAMINER: -- I'm not here to prosecute you, okay?
9 Do you understand what a judge does or a hearing officer in
10 the normal course of their duty?

11 MR. P. BUFALINI: What he does? Yeah, for the most part I
12 get it.

13 HEARING EXAMINER: Could you tell me what --

14 MR. P. BUFALINI: -- So I don't know. These questions are
15 going to be determining whether or not I have counsel? If I
16 don't understand am I supposed to act like I don't understand
17 something.

18 HEARING EXAMINER: I don't want you to act like anything.
19 Just tell me the truth, because then I think you're gaming
20 me.

21 MR. P. BUFALINI: No, I'm not gaming --

22 HEARING EXAMINER: -- No no, I'm just saying that that's --

23 MR. P. BUFALINI: -- You're saying do I understand what a
24 judge does in a courtroom? Yes.

25 HEARING EXAMINER: Yeah. You seem bright and articulate to

1 me.

2 MR. P. BUFALINI: Yes.

3 HEARING EXAMINER: I'll just get that out there. You know
4 what a rhetorical question is, you know. But there's a
5 process for appointing an attorney. And part of that process
6 is what I'm doing right now, okay?

7 MR. P. BUFALINI: Okay.

8 HEARING EXAMINER: There is another part of the process
9 that probably would be my instincts applies to more what
10 you're after. But I'm going to go through the process.

11 So not everybody can defend themselves because they don't
12 have the capacity to.

13 MR. P. BUFALINI: Okay.

14 HEARING EXAMINER: Does that make sense?

15 MR. P. BUFALINI: Yeah.

16 HEARING EXAMINER: So I'm going to go through this process
17 and ask you these questions. And I --

18 MR. P. BUFALINI: -- What's the other process?

19 HEARING EXAMINER: I'll get to that in a second.

20 MR. P. BUFALINI: Okay.

21 HEARING EXAMINER: Okay?

22 MR. P. BUFALINI: Well, I'm fully competent so I don't
23 think we should run through all these questions.

24 HEARING EXAMINER: I'm going to run through them.

25 MR. P. BUFALINI: I worked graveyard. I haven't slept at

1 all.

2 HEARING EXAMINER: Okay.

3 MR. P. BUFALINI: And they made me work all morning and I
4 haven't even slept a wink. So...

5 HEARING EXAMINER: Okay. So what does a judge do? What do
6 you think the role of a judge is?

7 MR. P. BUFALINI: To determine somebody's guilt, finding of
8 guilt.

9 HEARING EXAMINER: Okay. What is your understanding of an
10 infraction?

11 MR. P. BUFALINI: A violation of a rule.

12 HEARING EXAMINER: What does it mean to be guilty?

13 MR. P. BUFALINI: To have committed a rule violation.

14 HEARING EXAMINER: What is your understanding of a
15 sanction?

16 MR. P. BUFALINI: Imposed sentence.

17 HEARING EXAMINER: What are the possible sanctions you
18 could receive if you are found guilty?

19 MR. P. BUFALINI: DOSA revoke.

20 HEARING EXAMINER: What is the CCO's role during this
21 hearing?

22 MR. P. BUFALINI: I don't know.

23 HEARING EXAMINER: Okay. So the CCO's role is to try to
24 prove you are guilty of the infraction. As best you can,
25 tell me in your own words what the role of the CCO is at the

1 hearing?

2 MR. P. BUFALINI: You just told me.

3 HEARING EXAMINER: Okay. So can you tell me if you
4 understood what I just told you?

5 MR. P. BUFALINI: Yes.

6 HEARING EXAMINER: What?

7 MR. P. BUFALINI: To prove my guilt.

8 HEARING EXAMINER: Okay. What would you do if your CCO
9 wanted you to plead guilty, but you didn't want to?

10 MR. P. BUFALINI: I wouldn't.

11 HEARING EXAMINER: What does a witness do?

12 MR. P. BUFALINI: Tells their side of the story.

13 HEARING EXAMINER: Tells what?

14 MR. P. BUFALINI: Their side of the story.

15 HEARING EXAMINER: Okay. You have rights and
16 responsibilities during this hearing, I want to make sure you
17 understand both your rights and responsibilities.

18 Are you required to testify during this hearing?

19 MR. P. BUFALINI: I don't know.

20 HEARING EXAMINER: Okay. Part of the, and I'll cover this
21 in a minute, the notice of allegation, hearing rights and
22 waiver, is that you have, to testify during the hearing or
23 remain silent. Your silence will not be held against you.

24 Do you understand that?

25 MR. P. BUFALINI: Yes.

1 HEARING EXAMINER: So if I ask that question again, are you
2 required to testify at this hearing?

3 MR. P. BUFALINI: No.

4 HEARING EXAMINER: Okay. If you do answer the questions,
5 must you tell the truth?

6 MR. P. BUFALINI: Yes.

7 HEARING EXAMINER: And are you allowed to ask your own
8 questions?

9 MR. P. BUFALINI: Yes.

10 HEARING EXAMINER: Okay. I am convinced that you don't
11 have acuity issues. That you can defend yourself.

12 So in regard -- well, let me back up. I haven't made the
13 determination of whether to appoint counsel or not. So at
14 this time I'm going to ask you are there any unusually
15 complex issues --

16 MR. P. BUFALINI: -- Yes.

17 HEARING EXAMINER: -- in your case? And what are those?

18 MR. P. BUFALINI: My due process rights and such.

19 HEARING EXAMINER: I'm not doing this, I'm asking what are
20 those? And I'm done with the screening questionnaire. So
21 I'm asking you.

22 So now we're moving to the other prong of, the two prongs
23 are is there any, you know, does somebody have the acuity or
24 ability, IQ, to defend themselves.

25 MR. P. BUFALINI: Yeah.

1 HEARING EXAMINER: And you obviously to me do. The second
2 one is are there any unusually complex issues? And if so,
3 what are they?

4 MR. P. BUFALINI: The complex issues are just basically my
5 due process and how the evidence was handled in the case
6 prior to this.

7 HEARING EXAMINER: So what's that mean?

8 MR. P. BUFALINI: What's what mean?

9 HEARING EXAMINER: What does that mean? Because, you know,
10 there's not a, an automatic right to counsel in these cases.
11 So what about your case makes it unusually complex?

12 MR. P. BUFALINI: Just the laws and the due process laws.
13 I don't understand them completely. According to my dad,
14 they were completely broken. I can't sit here and describe
15 to you why. But he is very familiar with the law and he
16 informs me that there is many different arguments that we can
17 make that are justifying why my being not guilty.

18 HEARING EXAMINER: Of the 762?

19 MR. P. BUFALINI: Or both here, yeah.

20 HEARING EXAMINER: Okay. I got the --

21 MR. P. BUFALINI: -- I mean, this is, yeah. I get it.
22 You're not going to get my counsel here.

23 HEARING EXAMINER: I never, I've never said anything about
24 what --

25 MR. P. BUFALINI: -- Because you said I'm competent to --

1 HEARING EXAMINER: -- There's two prongs. One is you're
2 competent. If you weren't, I would have appointed an
3 attorney.

4 MR. P. BUFALINI: Okay.

5 HEARING EXAMINER: The other one is unusually complex
6 issues and that's what we're talking about now.

7 MR. P. BUFALINI: Okay.

8 HEARING EXAMINER: So I haven't made any determination on
9 whether I'm going to appoint you a counsel or not.

10 MR. P. BUFALINI: It's just hard for me to explain. But he
11 informs me that there is many different violations that we
12 can argue here during this sanction. And you can feel free
13 to ask him. He's waiting by the phone right now.

14 HEARING EXAMINER: Okay. Is there any -- so just for a
15 point of clarity. You understand there's two things I'm
16 looking at whether to appoint an attorney, right?

17 MR. P. BUFALINI: Yes, sir.

18 HEARING EXAMINER: So the --

19 MR. P. BUFALINI: -- Complex issues and competence.

20 HEARING EXAMINER: -- you understand I haven't made a
21 determination, right?

22 MR. P. BUFALINI: Yeah. Yeah. I mean --

23 HEARING EXAMINER: -- You may be assuming I'm not. I don't
24 know.

25 MR. P. BUFALINI: Okay.

1 HEARING EXAMINER: I'm still, honestly, I'm looking you
2 right in the eye. I don't know what I'm going to do.

3 MR. P. BUFALINI: Okay.

4 HEARING EXAMINER: Okay? But the other one is is I need to
5 determine whether I believe there is any unusually complex
6 issues. It's unusual for me to call a witness to help
7 articulate that. You see what I'm saying? I'm not saying
8 I'm not going to. I'm just, I want to think this through for
9 a second.

10 I'm not, I don't know if you can tell, but I'm not in a
11 rush.

12 MR. P. BUFALINI: Yeah.

13 HEARING EXAMINER: I want to make sure I do it right.

14 MR. P. BUFALINI: Was there ever any indication on why this
15 has been remanded?

16 HEARING EXAMINER: Was there any indication why it's been
17 remanded?

18 MR. P. BUFALINI: Yes.

19 HEARING EXAMINER: The --

20 MR. P. BUFALINI: Why? What's the reason?

21 HEARING EXAMINER: The administrator opted, that's one of
22 the reasons to remand it.

23 MR. P. BUFALINI: Okay. But why? Why?

24 HEARING EXAMINER: Surrounding the attorney issue, of
25 whether or not you get the ability to request one.

1 MR. P. BUFALINI: Because it wasn't offered to me before?
2 Is that what she is saying.

3 HEARING EXAMINER: Sir, I'm not going to put words into the
4 hearing. I've answered that question, you know, the most I'm
5 going to. I really don't know what her thought process was
6 in the course of my conversation. Okay?

7 MR. P. BUFALINI: But can you understand how I would go,
8 "Okay, well, why are they remanding this?"

9 HEARING EXAMINER: Yeah.

10 MR. P. BUFALINI: I mean, what's going on here?

11 HEARING EXAMINER: Yeah.

12 MR. P. BUFALINI: I have a right to know that, right?

13 HEARING EXAMINER: I don't know. I don't know if you do or
14 not.

15 MR. P. BUFALINI: I mean, you can't understand --

16 HEARING EXAMINER: -- I mean, you don't have a right to
17 make me tell you. I don't know --

18 MR. P. BUFALINI: -- I'm not trying to make tell me, I'm
19 just saying put yourself in my shoes. I sit here. I've
20 taken [sic] you don't know my whole story and I'm sure we'll
21 get to that. You understand I am, I didn't do anything
22 wrong, let's just say that. Long story short. I get my DOSA
23 revoked 11 days to my release date. It was the most
24 difficult thing I've ever experienced ever. Truly. I'm
25 dealing with it. I'm sitting in the R units. I get

1 sanctioned. I get found guilty. And then I get a letter in
2 the mail saying, "Okay, wait." There is some hope here.
3 Okay.

4 HEARING EXAMINER: There is. I'm conducting a hearing on
5 you and I'm try to decide whether to appoint an attorney. I
6 really want to focus on that, because the hearing
7 administrator has no, what's the word I can use? Influence
8 on whether I --

9 MR. P. BUFALINI: -- I get it.

10 HEARING EXAMINER: -- appoint an attorney.

11 MR. P. BUFALINI: She made that clear. She made that clear
12 to my dad.

13 HEARING EXAMINER: Okay.

14 MR. P. BUFALINI: It's up to you.

15 HEARING EXAMINER: Okay.

16 MR. P. BUFALINI: And I see that. And I understand it.
17 But it's hard for me to explain exactly what the reasoning
18 behind it is.

19 HEARING EXAMINER: Okay.

20 MR. P. BUFALINI: I'm fully competent. That's not an
21 issue.

22 HEARING EXAMINER: Yeah, right. I totally agree with you
23 on that --

24 MR. P. BUFALINI: -- But the other issue is is there's a
25 lot of legality stuff that I can't explain. I'm not a

1 lawyer. But like I said, my dad's been sitting there waiting
2 for a phone call.

3 HEARING EXAMINER: Okay. You know what? I'm going to,
4 this isn't something that that -- I haven't been faced with
5 this situation having I guess a dad attorney on the phone.
6 Or, you know, as a witness. I'm going to allow you to call.

7 Any objection to calling his dad as a witness, CCO?

8 MR. SHUMATE: No, State does not object.

9 HEARING EXAMINER: Okay. So I'm going to allow you to call
10 your witness at this time.

11 MR. P. BUFALINI: Okay. I appreciate it --

12 HEARING EXAMINER: -- And we're just going to stick to
13 the --

14 MR. P. BUFALINI: -- That's fine.

15 HEARING EXAMINER: -- unusually complex issue. And then
16 we'll, I'll go from there.

17 MR. P. BUFALINI: You can explain that part. I'll let you
18 talk to him.

19 HEARING EXAMINER: Okay.

20 MR. P. BUFALINI: Okay.

21 HEARING EXAMINER: Well, he's your witness.

22 MR. P. BUFALINI: Okay.

23 HEARING EXAMINER: So the question is to you is what are,
24 are there any unusually complex issues that exist in your
25 case? And if so, what are they?

1 MR. P. BUFALINI: Okay.

2 HEARING EXAMINER: Those are the questions. All right?

3 MR. P. BUFALINI: All right. Okay.

4 HEARING EXAMINER: So let's go ahead and --

5 MR. P. BUFALINI: -- Can we explain to him what we're doing
6 here?

7 HEARING EXAMINER: Yeah, that's fair. You can ask me to
8 explain that once he gets on the record.

9 MR. SHUMATE: What's the number?

10 MR. P. BUFALINI: Two five three, two seven two, two one
11 zero zero.

12 HEARING EXAMINER: And his name's David?

13 MR. P. BUFALINI: Yes, sir. Again, Mr. Ockerman, I'm sorry
14 if I'm coming off --

15 HEARING EXAMINER: -- You're all right. Look, I don't
16 know --

17 MR. P. BUFALINI: -- I get it. I just get the feeling --

18 HEARING EXAMINER: -- It's all you, okay.

19 MR. P. BUFALINI: I need to go to bed.

20 RECEPTIONIST: Good afternoon. Law Offices of David
21 Bufalini. How can I help you?

22 MR. P. BUFALINI: Hi, I'm --

23 HEARING EXAMINER: -- This is Paul Ockerman. I'm a hearing
24 officer with the State of Washington DOC. And is
25 Mr. Bufalini, David, available?

1 RECEPTIONIST: Yes, he is. One moment. Let me get him for
2 you.

3 HEARING EXAMINER: Okay. Thank you. So I know he's your
4 witness, but I've got to talk to him.

5 MR. P. BUFALINI: I get it, yeah. And you can explain to
6 him. That would be fine.

7 MR. D. BUFALINI: David Bufalini.

8 HEARING EXAMINER: Yeah, hi, Mr. Bufalini. My name is Paul
9 Ockerman. I am a hearing officer with the Department of
10 Corrections, State of Washington. I'm conducting a hearing
11 on your son. He's identified himself as your son, Paul. And
12 he's called you as a witness.

13 This is being recorded. You are on speakerphone. Are you
14 willing to testify in this matter?

15 MR. D. BUFALINI: I am.

16 HEARING EXAMINER: Okay. And would you state --

17 MR. D. BUFALINI: Yeah.

18 HEARING EXAMINER: Okay. So would you --

19 MR. D. BUFALINI: I was just talking to Dominga Silva
20 [sic].

21 HEARING EXAMINER: Hold on, hold on, hold on. Would you
22 state your name and your relationship for the record, please?

23 MR. D. BUFALINI: My name is David Bufalini. I am the
24 father of Paul Bufalini.

25 HEARING EXAMINER: And would you raise your right hand,

1 Mr. Bufalini.

2 MR. D. BUFALINI: Yes.

3 HEARING EXAMINER: And do you solemnly affirm that any
4 testimony you provide during this proceeding today will be
5 the truth?

6 MR. D. BUFALINI: Yes, absolutely.

7 HEARING EXAMINER: Okay. And so just so you know, your son
8 has asked for an attorney. And part of that process is a
9 screening. And we've gone through the first part of that,
10 which is the acuity, somebody's ability to defend themselves
11 based on their understanding of the process and so on and so
12 forth.

13 And I've, I'm convinced that he, that I'm not going to
14 appoint an attorney for that reason. And he agreed with me.
15 Would you?

16 MR. P. BUFALINI: Yes.

17 HEARING EXAMINER: Yeah. With that decision. The other
18 thing we look at is whether or not there's any unusually
19 complex issues in the case. And that's where I'm at right
20 now is looking, I've asked, and that's why he's called you as
21 a witness. So I want to keep it in the scope of what I'm
22 looking at right now. Does that make sense to you?

23 MR. D. BUFALINI: Absolutely.

24 HEARING EXAMINER: Okay. So go ahead.

25 MR. D. BUFALINI: You know, from my perspective, there are

1 basic Constitutional issues involved in the original
2 violation. As I said, I was speaking to Dominga Silva --
3 Soliz, I'm sorry, when you called. And so I ended that
4 conversation. And Paul, I'm not sure Paul gave you a copy of
5 her February 8th letter.

6 HEARING EXAMINER: He did. Or he didn't give me a copy,
7 but he gave me a copy to review that was read into the
8 record.

9 MR. D. BUFALINI: Okay. So --

10 HEARING EXAMINER: -- So I've seen it.

11 MR. D. BUFALINI: -- I was calling, I had spoken to her
12 last week after I got the letter. And I called today to get
13 clarification to determine, to try to understand the scope of
14 today's hearing that she was indicating in her February 8th
15 letter.

16 And she confirmed for me that this, she's asked for a
17 remand that goes all the way back to the urine test that
18 determined the violation. And that was how I read her
19 letter. But, you know, sometimes letters can be read two
20 ways.

21 And so I called her specifically to get clarification on
22 the scope of the remand that she was ordering by this letter.
23 And she said what it says, to go back and review the
24 circumstances leading to his incarceration, which was the
25 urine test. As well as the revocation of his DOSA.

1 And she said no, I wanted it to go back to look at the
2 circumstances of his incarceration. And then moving forward
3 from there looking at everything that happened after that.

4 HEARING EXAMINER: Mr. Bufalini, just, we've clarified this
5 already today. When we talk about incarceration, in my view,
6 Paul, your son's, been incarcerated since he was sentenced.
7 And so I know that just so we're all talking on the same
8 sheet of music, that when we talk about his incarceration,
9 he's never not been incarcerated that I'm aware of since he
10 got sentence --

11 MR. P. BUFALINI: -- What is, what is --

12 HEARING EXAMINER: -- I think I understand what you're
13 saying. We call that returned to --

14 MR. P. BUFALINI: -- What he's saying is the UA portion.

15 HEARING EXAMINER: Right.

16 MR. P. BUFALINI: And you guys are saying that we're not
17 dealing with that. But he's saying that he just spoke to her
18 on the phone and she's saying that they do want to.

19 HEARING EXAMINER: Okay. Right. I heard that, too, but I
20 just wanted to clarify.

21 MR. P. BUFALINI: Yeah.

22 HEARING EXAMINER: But I also spoke to Ms. Soliz when I
23 started the hearing your son brought up the issue that we're
24 discussing now about what am I, you know, that his
25 understanding and I read the letter. And when I read the

1 letter, I thought it pertained to the last hearing he had.
2 Because it references a decision, I believe, on 1/31/17,
3 which I don't have, I didn't know about before this. I knew
4 it was remanded. That's all I knew.

5 But I did talk to Ms. Soliz. And she indicated to me that
6 I'm here on the 762 infraction hearing. So that's a little
7 different. I mean, I certainly don't think you're lying to
8 me, but I'm a little confused because there's a difference
9 between what you just stated and what she told me.

10 MR. D. BUFALINI: Okay. Well, I would certainly invite you
11 to give her a call back. Because the concern that I have had
12 right from the get-go, a couple of them. Number One, I've
13 gotten conflicting messages about what happened to the urine.
14 I mean, the urine is the evidence that is being used to
15 incarcerate Paul for another two years. There was a Court of
16 Appeals decision that was published yesterday that Ms. Soliz
17 had read that I have printed and read that speaks to this
18 exact situation.

19 And the decision was driven primarily by the fact that that
20 petitioner, Mr. Schley, was facing an additional 2.5 years of
21 incarceration. And under the circumstances would be entitled
22 to counsel on that basis.

23 But to speak more directly to the issue that you're talking
24 about, there are complicated due process, Constitutional
25 right issues here. Not just questions of whether DOC has

1 followed its procedures, because those are very clearly
2 stated and it's easily understood. This goes a lot deeper
3 than that.

4 If DOC, if the people in possession of the urine that is
5 being used as the basis to incarcerate him for two more years
6 have destroyed that evidence, then clearly there's a
7 violation of Constitutional due process rights, because the
8 evidence itself is gone. It can't be recreated. It was in
9 the exclusive control of DOC. And there's an inference that
10 arguably the evidence may have been favorable to his
11 position.

12 You know, I think he has a right to have that urine tested
13 at a lab. So we've been told it was preserved and put in a
14 freezer. And we've been told it was discarded. At this
15 point, I don't know if it exists. But I would suggest if it
16 doesn't exist, if they've destroyed it, that there's a
17 serious Constitutional violation issue here that no nonlawyer
18 is likely to be able to conceptualize or know where to go to
19 get information to support his argument.

20 So this goes way beyond DOC procedures. It goes a lot
21 deeper into Constitutional issues. And I would submit to you
22 that Paul is not qualified or trained to make those arguments
23 and support his position constitutionally. And it certainly
24 would require the assistance of counsel to get the full
25 measure of that argument. There's just no way he could

1 possibly put it together.

2 HEARING EXAMINER: Okay. And --

3 MR. D. BUFALINI: On that basis I think that he qualifies.
4 In combination with the consequence. You know, this Schley
5 case says the initial hearing to determine a violation when
6 you're facing an additional two years of incarceration sets a
7 higher burden of proof on the Department to meet. And again,
8 goes right to the heart of the destruction of the evidence.

9 HEARING EXAMINER: What is that Schley case? Is that a
10 Washington Court of Appeals?

11 MR. D. BUFALINI: Absolutely, yeah, it was published
12 yesterday. Ms. Soliz had read it so she was familiar with
13 it.

14 HEARING EXAMINER: She had already read it before you
15 talked to her today?

16 MR. D. BUFALINI: Well, she told me that she did. And as
17 we discussed the merits of that case, the facts, it was
18 obvious to me that she had because she knew what the facts
19 were. But yeah, it's a decision out of the Court of --
20 Division I of the Court of Appeals. It's a personal
21 restraint petition. And the last name of the petitioner
22 there was Schley, S-C-H-L-E-Y. Division I. And it's a
23 published opinion, which means it has --

24 HEARING EXAMINER: So -- are you there?

25 MR. D. BUFALINI: Yes, I am.

1 HEARING EXAMINER: Okay. So and I understand your
2 argument. What I'm trying to wrap my head around is, is
3 whether or not what led up to -- so this is 762, asserting
4 that he was terminated from DOSA. I mean, I haven't even
5 gotten into the facts of this case yet, but I can, but the
6 762 infraction reads, "Failing to complete or administrative
7 termination from DOSA substance abuse treatment program on or
8 about 12/15/16."

9 So I can, I think I can make the distinction that that's
10 the State's position is that he was terminated from
11 treatment.

12 MR. D. BUFALINI: See what happens in Schley, the court's
13 issue in this case that I just was talking about is that it's
14 a rubber stamped revocation of DOSA once a violation is
15 found. And that's been our concern, too.

16 So you have to go back to the threshold question: were his
17 Constitutional rights preserved at the hearing that led to a
18 finding that he had violated?

19 HEARING EXAMINER: But won't that be re-hearing the facts
20 of that case at that point, then? I mean, I guess that's
21 what I'm trying to, that's what I'm looking at is I'm not
22 hearing that. That case was already heard.

23 MR. D. BUFALINI: -- Okay, but --

24 HEARING EXAMINER: -- Right? And so, and I'm thinking out
25 loud here, but you know, so would I then be, would the State

1 then have the burden to prove it twice?

2 MR. D. BUFALINI: The State would be held to a higher
3 standard of proof and basically, yeah. You know, again, my
4 conversation with Ms. Soliz this morning was on all of these
5 points. And her comment to me was, "You're raising
6 legitimate issues."

7 HEARING EXAMINER: Okay.

8 MR. D. BUFALINI: Including the destruction of the
9 evidence, if in fact, it was destroyed. So when, you know,
10 this new case says that the State's burden isn't that high.
11 When you're talking about incarcerating somebody for two more
12 years, the penalty is so severe that the burden of proof at
13 the very first hearing level has to be a higher burden of
14 proof. Because there's so much at stake.

15 So, you know, that's exactly the situation here. I guess
16 you're going to have to get clarification from Ms. Soliz.

17 HEARING EXAMINER: Yeah. I mean, you know, you raise some
18 good points. I'm not saying that. It's just for me it's a
19 matter of how far can I reach back if I'm conducting a 762
20 hearing. You know what I'm saying? To apply it that, and I
21 guess the point is that since the prong I'm looking at is
22 whether there is any unusually complex issues in the case, on
23 face value, you know, it was somebody terminated, I think the
24 law is pretty clear on if somebody is terminated from DOSA
25 treatment.

1 MR. D. BUFALINI: Yeah, that's the problem --

2 HEARING EXAMINER: -- Right? And I, yeah, and I'm not here
3 to pass judgment on the law. I'm just saying that that's the
4 thing. Is that really that unusually complex? But if we're
5 going back and reviewing previous hearings and decisions that
6 were made and second guessing those, then there's a level of
7 complexity to that. Does that make sense to you?

8 MR. D. BUFALINI: Well --

9 HEARING EXAMINER: -- Does that make sense to you, Paul?

10 MR. D. BUFALINI: -- My understanding is you're just
11 reviewing whether the revocation procedures were followed.
12 That comes after the violation has been determined.

13 MR. P. BUFALINI: That's right.

14 HEARING EXAMINER: Wait, wait, say that again. I'm sorry.
15 I missed that.

16 MR. D. BUFALINI: Yeah. From your perspective when you're
17 talking about complexity of issues that might require the
18 assistance of counsel, if the scope of your review is only
19 whether DOSA revocation was appropriate at that time, then I
20 would probably agree, the issues are not that complex.

21 HEARING EXAMINER: Right, that's --

22 MR. D. BUFALINI: -- Because revocation is automatic.

23 HEARING EXAMINER: That's what I'm saying. And so for me
24 it hinges on how far back. And I don't think I can, I think
25 I'm going to have to revisit with Ms. Soliz and get some

1 direction on that.

2 MR. D. BUFALINI: Absolutely.

3 HEARING EXAMINER: Because it sounds like you talked to her
4 after I talked to her. And I guess, and so.

5 Okay. So what I'm going to do, is there anything else
6 that?

7 MR. D. BUFALINI: No, again, I think the question of
8 complexity can only be answered when you fully understand the
9 scope of the remand. And that's what you're saying.

10 HEARING EXAMINER: Well, I don't think I need to understand
11 the scope of the remand. I need to understand the scope of
12 this hearing.

13 MR. D. BUFALINI: -- That's what I mean.

14 HEARING EXAMINER: Yeah. Because to me the remand is
15 irrelevant. It was a decision that was made by the
16 administrator to give another process from start to finish.
17 And so that's what I do. I do hearings. And so why it was
18 remanded really isn't important to me, really. Because I'm
19 going to make my determinations based on the merits that are
20 brought to me. You see what I'm saying?

21 But whether or not there's direction about if I go back
22 further than I would traditionally go back in terms of
23 looking at a reason why somebody was potentially terminated
24 from treatment, that's a different issue. Does that make
25 sense?

1 MR. D. BUFALINI: That's the issue.

2 HEARING EXAMINER: Right. And that's your issue. And
3 that's your argument. I understand that. But that's what
4 I'm saying is that's not our standard operating procedure.
5 And so --

6 MR. D. BUFALINI: I get that. This is a one-off.

7 HEARING EXAMINER: It is.

8 MR. D. BUFALINI: But my purpose of my call to Ms. Soliz
9 this morning was to ask that very question: what's the scope
10 of the hearing that you're demanding? Because as I read the
11 letter, the scope includes "the circumstances of his
12 incarceration." Well, the circumstances of his incarceration
13 in the context of the hearings we're involved in are the pee
14 test. Not going all the way back to his original sentencing.
15 We're not going to revisit that obviously.

16 HEARING EXAMINER: No, I know. And I'm not, I wasn't
17 implying that we go that far back. I'm just, but even going
18 back to the, you know --

19 MR. D. BUFALINI: -- The violation.

20 HEARING EXAMINER: -- the, uh, what's the word I'm looking
21 for? Elements of the UA and that evidence, is going back
22 further in these type of cases than I would normally go back.
23 Right?

24 MR. D. BUFALINI: Yeah, absolutely, based --

25 HEARING EXAMINER: -- Because that makes sense, right.

1 So --

2 MR. D. BUFALINI: In her letter initially, her February 8th
3 letter, I was struck by the fact that she's remanding, or at
4 least as I initially read it, was remanding specifically,
5 among other things to quote "investigate the circumstances"
6 end quote leading to Paul's incarceration. Incarceration
7 being yanked out of Progress House and taken down to Shelton
8 and thrown in jail.

9 So what were the circumstances that led to that? Well, it
10 was this pee test, using an over-the-counter drug store pee
11 in a cup. With disclaimers by the manufacturer that this
12 material should be sent to a lab to verify the results.

13 And, you know, when someone is staring two years in state
14 prison for a violation, then that evidence needs to be
15 preserved and tested. And if it's not, then I would suggest
16 that there is no basis, the DOC cannot support the initial
17 incarceration that yanked him out of there.

18 HEARING EXAMINER: Well, yeah, okay. I don't want to get
19 ahead of myself, but I would disagree with you in part that
20 that infraction was already heard. So at what point can the
21 Department move forward with, you know. I don't want to get
22 into any of the specifics. It's just a general response to a
23 statement that you made that I believe he had a hearing for
24 that UA, right?

25 MR. D. BUFALINI: Of course.

1 HEARING EXAMINER: Yeah. So at what, I mean, yeah.

2 MR. D. BUFALINI: The question --

3 HEARING EXAMINER: -- So and that's the issue is he already
4 had a hearing for that UA. And that process, as far as I had
5 been aware, ran its course.

6 MR. P. BUFALINI: All right. Then you're missing the issue
7 here that I'm framing here for you.

8 HEARING EXAMINER: Okay.

9 MR. D. BUFALINI: Okay? The issue is what was the standard
10 of proof that the Department applied to a finding that there
11 was a violation made.

12 HEARING EXAMINER: An infraction. It should have been
13 preponderance.

14 MR. D. BUFALINI: Okay. And, you know, it's not clear to
15 me whether that was stated anywhere, Number One. And Number
16 Two, it to me again considering the fact that once a
17 violation is found, he's out of DOSA, period. It's
18 automatic. And because of the consequence of when he's
19 yanked out of DOSA he's going to prison for two years.

20 HEARING EXAMINER: Yeah. Well, that's so there's a step
21 and I really don't want to have a hearing on the process.
22 But --

23 MR. D. BUFALINI: -- Okay, well --

24 HEARING EXAMINER: -- Hold on. There's a standard there
25 that just because somebody is found guilty of an infraction,

1 there is another step. And that is the treatment component
2 decides what the next step is --

3 MR. P. BUFALINI: -- No, when you're kicked out of work
4 release it's automatic. You're terminated from treatment.
5 It doesn't matter.

6 HEARING EXAMINER: But I'm saying another entity does that
7 separate than the hearing. And the findings. That's my
8 point is those are two actions. Those aren't one action.
9 One may lead to the other, you know, but those are two
10 separate actions.

11 MR. D. BUFALINI: They are technically, but functionally
12 they're not. Because once a violation --

13 MR. P. BUFALINI: (Inaudible).

14 HEARING EXAMINER: -- Okay, hold on. Paul, I can't have
15 you talking at the same time as your dad. If you're done
16 with questions with him. Are we done with him?

17 MR. D. BUFALINI: Again, this new case says that because
18 revocation is automatic if there's a violation found, the
19 proof requirements at the violation hearing stage are more
20 stringent. Because there's so much at stake, loss of
21 personal freedom for two years.

22 HEARING EXAMINER: I certainly think I should have the
23 opportunity to review that decision before I go any further.

24 MR. D. BUFALINI: Great. And Ms. Soliz again presumably
25 she'll confirm what I told you. But I'm telling you what she

1 said as I raised all of the issues, including the destruction
2 of the evidence.

3 HEARING EXAMINER: Okay.

4 MR. D. BUFALINI: You know, these are legitimate issues.
5 Actually the words she used was "You're pushing all the right
6 buttons." That was a quote from her.

7 HEARING EXAMINER: Okay.

8 MR. D. BUFALINI: So, you know, everything I'm positing
9 with you is what I was talking to her about. And she
10 recognized that those were serious issues that needed to be
11 resolved. So it goes back to the violation stage at this
12 point.

13 HEARING EXAMINER: Okay. And so and I understand your
14 argument on that. And so do you have any other points?

15 MR. D. BUFALINI: Well, the other point I would raise is I
16 think my son is entitled to know whether the urine was
17 disposed of or whether it was preserved. That's a question
18 that he deserves an answer to. Because the answer to that
19 question may very well dictate the direction going forward
20 here.

21 So that's a critical answer. We need to know if this
22 evidence was preserved or not. And presumably, if you can
23 start the process of tracing it and inquiring, "Where's the
24 pee?" I hate to be --

25 HEARING EXAMINER: -- No, that's all right. But I'm not

1 going to do that. I mean, that's not my role. That is a
2 question that either you or Paul could ask the State once we
3 get to the evidentiary phase. Or the adjustment phase of
4 this hearing.

5 So depending on what I decide to do first of all, that,
6 that question is not going to have any bearing on whether I
7 appoint counsel or not.

8 MR. D. BUFALINI: Okay. Well --

9 HEARING EXAMINER: So I don't want to, we're kind of
10 getting, I think, out of scope of little bit. But so
11 regarding unusually complex issues is there any other
12 statements you want to make? Because I would like to --

13 MR. D. BUFALINI: I think that's our entire discussion.

14 HEARING EXAMINER: Okay. I understand your argument. And
15 that's what I guess I wanted to know is that that's the
16 argument right there.

17 MR. D. BUFALINI: That's it.

18 HEARING EXAMINER: Okay. All right.

19 MR. D. BUFALINI: Yeah.

20 HEARING EXAMINER: So I'm going to -- do you have any other
21 questions for your witness?

22 MR. P. BUFALINI: No.

23 HEARING EXAMINER: Okay. So I'm going to, we're going to
24 terminate the phone call at this time. And I'm not sure
25 whether or not you'll be called today again or not.

1 MR. P. BUFALINI: I'll call you later.

2 MR. D. BUFALINI: I'm available at this number all day.

3 HEARING EXAMINER: Okay. All right. Thank you. That
4 concludes your testimony at this point. Have a good day.

5 MR. D. BUFALINI: Bye.

6 HEARING EXAMINER: Bye.

7 So okay. So for me it all depends on the scope of what I
8 can consider. If I go back that far then, you know, he makes
9 a compelling argument. If it's the scope of what happened
10 after the hearing. I mean, I --

11 MR. P. BUFALINI: So are you going to call Ms. Dominga
12 [sic]?

13 HEARING EXAMINER: Yeah.

14 MR. P. BUFALINI: Again. I mean, can we just continue this
15 until you get all, everything settled, figure out --

16 HEARING EXAMINER: -- Yeah. And I also, I wouldn't mind
17 some time to review Schley as well. So I'm going to continue
18 this matter.

19 MR. P. BUFALINI: All right.

20 HEARING EXAMINER: Do you think that it's reasonable to
21 continue this?

22 MR. P. BUFALINI: Absolutely.

23 HEARING EXAMINER: Okay.

24 MR. P. BUFALINI: I was hoping you were going to do that --

25 HEARING EXAMINER: -- Okay.

1 MR. P. BUFALINI: -- so you can get all your ducks and get,
2 we're all on the same page here.

3 HEARING EXAMINER: Okay.

4 MR. P. BUFALINI: Because obviously, everybody has a
5 different opinion on it. I seem to be coming off like, you
6 seem to be thinking I'm being, like, you know, pushy or
7 whatnot. And maybe I'm misreading you --

8 HEARING EXAMINER: -- What is that look? You're grinning
9 right now. And since I started this hearing you've made
10 statements that are absolutely not consistent with --

11 MR. P. BUFALINI: -- No, no.

12 HEARING EXAMINER: -- with what's going on.

13 MR. P. BUFALINI: Okay.

14 HEARING EXAMINER: Okay? And I'm not lecturing you, I'm
15 just telling you --

16 MR. P. BUFALINI: -- I know, but --

17 HEARING EXAMINER: -- I know you don't know what's in my
18 mind. And maybe you're trying to read me and you're not
19 doing an accurate job. Because I am not in a rush --

20 MR. P. BUFALINI: -- You're pretty neutral. Okay.

21 HEARING EXAMINER: -- I am neutral --

22 MR. P. BUFALINI: -- I'm going to respect that. I'm going
23 to --

24 HEARING EXAMINER: -- and, you know --

25 MR. P. BUFALINI: -- I see you're very oriented. I see

1 that you take your time and I respect that. That's great.

2 HEARING EXAMINER: And as we go through this, I'm not
3 saying whether, I don't know whether you're going to like all
4 of my decisions or not. But --

5 MR. P. BUFALINI: -- I know --

6 HEARING EXAMINER: -- know this: you're not frustrating
7 me.

8 MR. P. BUFALINI: Okay. Cool.

9 HEARING EXAMINER: I'm not holding any ill will towards
10 anything you've said or done here today.

11 MR. P. BUFALINI: Okay. Good. Good.

12 HEARING EXAMINER: You need to leave with that.

13 MR. P. BUFALINI: Good.

14 HEARING EXAMINER: All right.

15 MR. P. BUFALINI: I have a lot of stress. I just lost my
16 grandfather two days ago.

17 HEARING EXAMINER: I'm sorry.

18 MR. P. BUFALINI: My grandmother passed away four weeks
19 ago. So during this time of incarceration, I've lost both my
20 grandparents, I mean --

21 HEARING EXAMINER: -- Your dad's side?

22 MR. P. BUFALINI: No, my mom's side.

23 HEARING EXAMINER: Okay.

24 MR. P. BUFALINI: I've missed their funerals. It's just
25 been really hard. So.

1 HEARING EXAMINER: Okay. And I can tell you're under a lot
2 of stress. Please don't project that onto what you think I'm
3 going through though as we go forward --

4 MR. P. BUFALINI: -- No, I won't.

5 HEARING EXAMINER: Okay. So anyway I am going to continue
6 this.

7 Now the process is that if I appoint an attorney then we
8 continue it again. So when we reconvene this, you understand
9 that. I just want you to be, you're still okay with that.

10 MR. P. BUFALINI: Yeah. Listen, my release date is 2019.

11 HEARING EXAMINER: Okay. So you've got no issue with that?

12 MR. P. BUFALINI: No, sir.

13 HEARING EXAMINER: Okay, that's what --

14 MR. P. BUFALINI: -- I just want a fair hearing.

15 HEARING EXAMINER: Okay.

16 MR. P. BUFALINI: -- And once you hear my story I think
17 you'll understand --

18 HEARING EXAMINER: -- Hold on. Hold on. Don't --

19 MR. P. BUFALINI: -- I know, I'm just saying I'm not going
20 into detail.

21 HEARING EXAMINER: And I'm just saying I don't want you to
22 even say that. All right. Okay. So that it is 10:51.

23 MR. P. BUFALINI: Do we know when the date will be or next
24 week?

25 HEARING EXAMINER: That's a good question. Yeah, as a

1 matter of fact, before I go off the record --

2 MR. P. BUFALINI: -- And you're going to be the one doing
3 this, right?

4 HEARING EXAMINER: I'm going to be the one that will finish
5 this part of it.

6 MR. P. BUFALINI: Okay.

7 HEARING EXAMINER: There's no --

8 MR. P. BUFALINI: -- It might be --

9 HEARING EXAMINER: It could be a different hearing officer
10 if I appoint counsel that hears it. I don't know.

11 MR. P. BUFALINI: Okay.

12 HEARING EXAMINER: Okay? So but I, at this point, it would
13 make no sense for me to schedule, to continue this and have
14 somebody else trying to decipher --

15 MR. P. BUFALINI: -- That's what I hoping.

16 HEARING EXAMINER: -- Yeah, I'll at least make the
17 determination of whether to appoint counsel.

18 So what I'm going to do is I'm going to fill this hearing
19 continuance form out.

20 MR. P. BUFALINI: They got me working an IME porter job. I
21 got to work until 6:30 in the morning and that's not so good.

22 HEARING EXAMINER: Well, it's better than being there.

23 MR. P. BUFALINI: My whole schedule is so off balance right
24 now, from 7:00 to 3:00 and then morning until afternoon it
25 sucks.

1 HEARING EXAMINER: Okay. Let me, okay, I need to see what
2 day I'm here next week first of all. And then see if there's
3 any. Okay.

4 MR. P. BUFALINI: How many hearings do you guys do a day?

5 HEARING EXAMINER: It depends. Anywhere, oh, it depends on
6 where we are. Yesterday I did two in Pacific County.

7 MR. P. BUFALINI: Oh, you do county?

8 HEARING EXAMINER: Yeah, we travel.

9 MR. P. BUFALINI: Oh, wow.

10 HEARING EXAMINER: All over the place. So yeah.

11 MR. P. BUFALINI: Do you do the DOC hearings for people who
12 are violations and stuff like that?

13 HEARING EXAMINER: Yeah, that's all we do. Yeah. Okay.
14 Let me look at this and see if I'm out here next week. I'm
15 just, just so you know, I'm looking at the schedule.

16 MR. P. BUFALINI: Okay. Yeah.

17 HEARING EXAMINER: I'm here on March 1st, Wednesday. So
18 now I need to go look at the docket that day.

19 MR. P. BUFALINI: That's two weeks from now?

20 HEARING EXAMINER: Oh. Let me go back. I looked at the
21 wrong --

22 MR. P. BUFALINI: -- No, that's right. I can't believe
23 it's March in one week.

24 HEARING EXAMINER: Yeah. Okay.

25 MR. P. BUFALINI: It's 28 days, right?

1 HEARING EXAMINER: Okay. So what I'm going to do is I'm
2 going to call and get, I think they can fit it in. So.

3 OFFICE ASSISTANT: Hearings. This is Erika.

4 HEARING EXAMINER: Hi, Erika, this is Paul Ockerman.
5 You're on speakerphone. And this is being recorded. I'm
6 conducting a hearing. I'm not necessarily calling you as a
7 witness. But I don't want to do anything in secrecy.

8 OFFICE ASSISTANT: Okay.

9 HEARING EXAMINER: So I want to schedule, I'm part way
10 through a review for an attorney and I need to finish that
11 review next Wednesday. Can you add the offender to my docket
12 next Wednesday?

13 OFFICE ASSISTANT: Yeah.

14 HEARING EXAMINER: Okay. And it's -- are you ready for the
15 DOC number?

16 OFFICE ASSISTANT: Yeah.

17 HEARING EXAMINER: Three zero six four six four.

18 OFFICE ASSISTANT: Three zero six four six four. Let's
19 see.

20 HEARING EXAMINER: There's eight there so I figured you
21 could. I guess --

22 OFFICE ASSISTANT: Let's see. And he's at WCC?

23 HEARING EXAMINER: Yeah.

24 OFFICE ASSISTANT: Okay. Although I don't normally
25 schedule for that so I'm trying to figure out the module

1 where I'm at.

2 HEARING EXAMINER: Okay.

3 MR. SHUMATE: Maybe she could move a couple of those to
4 Thursday? That's what we've done in the past.

5 HEARING EXAMINER: Oh. Okay.

6 MR. SHUMATE: To make room for this one.

7 HEARING EXAMINER: You know, I don't think it'll take that
8 long.

9 MR. SHUMATE: Okay. Okay. Just a thought.

10 HEARING EXAMINER: Yeah, I think that was a good point.
11 What does Thursday look like? There's only five there. I
12 can talk to them about that.

13 MR. SHUMATE: Okay.

14 HEARING EXAMINER: So you can fit it on there, right?

15 OFFICE ASSISTANT: I'm looking right now.

16 HEARING EXAMINER: I've got to believe you can, because
17 there's nine today. And there's only eight that day.

18 OFFICE ASSISTANT: Okay. So next, um, I could. The last
19 hearing looks like it's scheduled at 3:00. Do you want me to
20 add it?

21 HEARING EXAMINER: Well, yeah, if you add it anywhere,
22 we'll call him out first probably.

23 MR. SHUMATE: Yeah.

24 HEARING EXAMINER: Okay.

25 OFFICE ASSISTANT: Okay. I will add it after that 3:00 one

1 if that works.

2 HEARING EXAMINER: Yeah, that works. But we'll, I'm going
3 to notify him that we're going to call him at 8:30?

4 MR. SHUMATE: Yeah.

5 HEARING EXAMINER: Can we call him first? Okay. We're
6 good. Thanks, Erika.

7 OFFICE ASSISTANT: Okay. You're welcome.

8 HEARING EXAMINER: Appreciate it. Have a good day.

9 OFFICE ASSISTANT: You, too.

10 HEARING EXAMINER: Bye.

11 OFFICE ASSISTANT: Bye.

12 MR. SHUMATE: I can tell Lance we'll get him.

13 HEARING EXAMINER: Okay. So I put 8:30. So I've signed
14 this. This is a hearing continuance form that good cause,
15 I'm finding that there is good cause to continue this hearing
16 to continue attorney screening process. If you agree, well,
17 either way I need you to sign here. You have agreed verbally
18 on the record.

19 MR. SHUMATE: Do I need to re-serve him next Monday?

20 HEARING EXAMINER: No.

21 MR. SHUMATE: Okay.

22 HEARING EXAMINER: That's the thing about, that's why we --

23 MR. SHUMATE: Good.

24 HEARING EXAMINER: I need you to sign this, too. And you
25 do not need to re-serve him because that's what we're doing

1 right now on the record. And that's kind of weird. I don't
2 know why we put that there.

3 Okay. So --

4 MR. P. BUFALINI: -- So next Wednesday is just going to be
5 a decision on the attorney.

6 HEARING EXAMINER: It's going to be, okay, so how it's
7 going to happen is if I decide to appoint an attorney, I'll
8 reschedule it. If I don't decide to appoint an attorney,
9 that'll be your hearing.

10 MR. P. BUFALINI: Okay.

11 HEARING EXAMINER: Does that make sense?

12 MR. P. BUFALINI: Yes, sir.

13 HEARING EXAMINER: Do you have any questions?

14 MR. P. BUFALINI: No.

15 HEARING EXAMINER: All right.

16 MR. P. BUFALINI: Thank you.

17 HEARING EXAMINER: Okay. That concludes this matter for
18 today. It's 11:00 a.m. exactly and good luck to you.

19 MR. P. BUFALINI: Thank you, Mr. Ockerman.

20 HEARING EXAMINER: All right. I'll see you next week.

21 MR. P. BUFALINI: See you next week.

22 HEARING EXAMINER: Okay.

23 (February 22, 2017 hearing concluded)

24

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C E R T I F I C A T E

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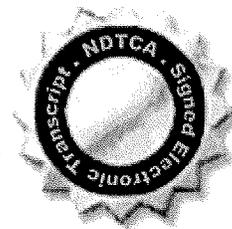
STATE OF OREGON)
)
COUNTY OF CLACKAMAS)

I, the undersigned, do hereby certify under penalty of perjury under the laws of the State of Washington that the foregoing court proceedings were transcribed under my direction as a certified transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability, including any changes made by the trial judge reviewing the transcript; that I received the audio and/or video files in the court format; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of July, 2017.

Catherine Leschi Wilcox

Catherine Leschi Wilcox



APPENDIX D

WASHINGTON STATE DEPARTMENT OF CORRECTIONS

AT WASHINGTON CORRECTION CENTER

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In re the Discipline of:)
PAUL BUFALINI,)
306464,)
 Inmate.)

SECOND DRUG OFFENDER SENTENCING ALTERNATIVE REVOCATION HEARING

March 1, 2017

Hearing Examiner Paul Ockerman Presiding

TRANSCRIBED BY: Catherine Leschi Wilcox, CET-913
 Reed Jackson Watkins, LLC
 Court Certified Transcription
 206.624.3005

A P P E A R A N C E S

1

2

3 For the State of Washington Department of Corrections:

4 LOREN SHUMATE, Community Corrections Officer

5 KATHLEEN JONAS, Community Corrections Officer

6 Washington State Corrections Center

7 7345 Linderson Way Southwest

8 Tumwater, Washington 98501-6504

9

10 KELLY DEAN, Community Corrections Officer (Via Telephone)

11 Progress House Work Release

12 5601 Sixth Avenue

13 Tacoma, Washington 98406

14

15

16 For the Defendant:

17 PAUL BUFALINI

18

19

20 Also present:

21 David Bufalini (Via Telephone)

22

23

24

25

1 MARCH 1, 2017

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3
4 HEARING EXAMINER: Okay. I'm on the record. Paul
5 Bufalini.

6 MR. P. BUFALINI: Yes.

7 HEARING EXAMINER: I'm Paul Ockerman still. Continuation
8 from a hearing I started on 2/22/17. It was a review
9 component of the hearing and okay. Let me go ahead.

10 So it's the 1st of March, 2017. It's 8:44 a.m. and
11 participating here today besides myself are?

12 MR. SHUMATE: CCO Loren Shumate.

13 HEARING EXAMINER: And your name, please?

14 MR. P. BUFALINI: Paul Bufalini.

15 HEARING EXAMINER: And also in here is?

16 MS. JONAS: CCO Kathy Jonas.

17 HEARING EXAMINER: Okay. And we all, are you calling?

18 MS. JONAS: No, I'm just --

19 HEARING EXAMINER: You're not testifying right?

20 MS. JONAS: No.

21 HEARING EXAMINER: Would you both raise your right hand?
22 Do you solemnly affirm that any testimony you provide here
23 today will be the truth?

24 MR. P. BUFALINI: Yes, sir.

25 MR. SHUMATE: Yes, I do.

1 HEARING EXAMINER: Thank you. Mr. Bufalini, I continued
2 this hearing so that I could have a consult with the hearing
3 administrator, Ms. Dominga Soliz, regarding what seemed like
4 a contradiction of what I was told when I took that recess
5 last time and what your father, David Bufalini testified to.

6 You recall that?

7 MR. P. BUFALINI: Yes, sir.

8 HEARING EXAMINER: Okay. And so I had a conversation with
9 her. She said that I'm to follow the process. And that this
10 isn't, this hearing is not reaching back into the first
11 hearing you had. Okay? And so it's what I thought was the
12 case, but your dad made some compelling arguments for me to
13 revisit that. And I've done that and I've confirmed that the
14 intent is to follow the process. Okay?

15 And so with that being said, I don't find that there's
16 anything unusually complex about this case. I'm rehearing
17 the last hearing you had. And I've already made the decision
18 that, you know, you don't have acuity or a problem on the
19 acuity end of it. You seemed like a bright guy. And so
20 that's the decision I'm making.

21 I'm going to since I'm here and as a matter of fact, I
22 believe the record would reflect and when your dad was
23 testifying during our dialog, I said if I'm not going back
24 into that other hearing, then it's not really complex. And
25 my recollection is that he confirmed that. It was his and

1 your wish, based on the testimony I got last week, that that
2 was what you wanted to do. But that's not what we're going
3 to do for those reasons I have stated.

4 I have direction from the Department to follow the current
5 process. Okay? So do you understand my decision? So I'm
6 not going to appoint an attorney. I'm denying your request.
7 Okay?

8 MR. P. BUFALINI: Yeah.

9 HEARING EXAMINER: Okay. So with that being said --

10 MR. P. BUFALINI: -- Can I ask you why is this being, why
11 has this hearing been remanded? You haven't, I don't
12 understand why you can't give me a clear answer.

13 HEARING EXAMINER: I thought I did.

14 MR. P. BUFALINI: No.

15 HEARING EXAMINER: Okay. I thought I did. You asked me
16 some specific questions. You asked me, A, do I know and I
17 said yes. And then it was remanded based on the, you weren't
18 notified that, ahead of time about your right to and
19 eligibility to request to be --

20 MR. P. BUFALINI: -- I wasn't --

21 HEARING EXAMINER: -- Hold on. Let me finish. To be
22 screened for an attorney.

23 MR. P. BUFALINI: I wasn't notified on that in the
24 beginning, the first hearing I received. I didn't receive
25 that same request.

1 HEARING EXAMINER: So that's a whole separate issue that.
2 So what she did, she remanded the last hearing. And so I've
3 answered your question. Specifically what I'm hearing today
4 is the last hearing that was held, okay? And I'm fully aware
5 that appeals, PRPs, everything else can be filed, you know.
6 But that doesn't change where I'm at today.

7 Okay? Did I answer your question?

8 MR. P. BUFALINI: Yeah.

9 HEARING EXAMINER: Okay. So are there any preliminary
10 matters that we need to address?

11 MR. SHUMATE: There are none that I'm aware of.

12 HEARING EXAMINER: Okay. And you still can call your dad
13 as a witness in this, you know.

14 So I'm just going to go, I'd like to get the CCO on the
15 line --

16 MR. SHUMATE: Okay.

17 HEARING EXAMINER: -- who is going to be actually
18 presenting this case.

19 MR. P. BUFALINI: And you weren't, you didn't listen to
20 that last PRP and see that, you didn't read?

21 HEARING EXAMINER: I was instructed, the Department hasn't
22 exhausted all their legal options with that either. And so
23 I'm, nothing, nothing's changed. With our current process.

24 MR. P. BUFALINI: This is so unfair.

25 MR. SHUMATE: Good morning. Loren Shumate, CCO out here at

1 WCC.

2 HEARING EXAMINER: Hold on a second. What did you say?

3 MR. P. BUFALINI: This is just unfair.

4 HEARING EXAMINER: Okay. All right. I just wanted, I
5 thought that's what I heard you say. You haven't, I'm going
6 to ask that you hold your comments until it's your turn to
7 testify.

8 MR. SHUMATE: Yeah, just a moment, please.

9 HEARING EXAMINER: Go ahead.

10 MR. SHUMATE: Okay. I'm at the Hearings Unit at WCC.
11 Sorry for the interruption. And we're looking for CCO Dean
12 if she's available. Thank you. Appreciate it.

13 Good morning, CCO Dean, it's Loren. How you doing? You
14 ready to go? Ready for a hearing? Okay. Go ahead. Okay.
15 We'll put you on speakerphone.

16 HEARING EXAMINER: Hi. This is Paul Ockerman. I'm
17 conducting a hearing on Paul Bufalini. Who is on the phone,
18 please?

19 MS. DEAN: CCO Kelly Dean.

20 HEARING EXAMINER: Okay. Kelly Dean. And will you raise
21 your right hand, Ms. Dean?

22 MS. DEAN: Yes.

23 HEARING EXAMINER: And do you solemnly affirm that any
24 testimony you provide here today will be the truth?

25 MS. DEAN: I do.

1 HEARING EXAMINER: Okay. Thank you. Just so you know to
2 bring you up to date, I've made a finding regarding the
3 request for counsel. And I've denied the request based on I
4 don't, based on the arguments that were made during the last
5 hearing process. Or the review, I should say, whereas, Paul
6 Bufalini's father, David, argued that the hearing
7 administrator had implied that I was going to hear evidence
8 based on the remand going back into the hearing that preceded
9 the last hearing he had.

10 So, in other words, I believe it was a UA hearing, the last
11 one was. I believe the 762. And so I conferred with the
12 hearing administrator, Dominga Soliz, and I was informed
13 that's not the case. That the last hearing was the one that
14 was remanded. And, therefore, I made the decision that given
15 that that I'm not going to find, making a finding that
16 there's unusual complex issues with this case.

17 And so, therefore, I've denied Mr. Bufalini's request to be
18 represented. I'm going to proceed with the 762 hearing at
19 this time. Okay?

20 MS. DEAN: Okay.

21 HEARING EXAMINER: Okay. So with that being said, this
22 hearing, I've already gone on the record with the date and
23 time and everything. This hearing will be conducted in three
24 phases. The first phase will confirm that you received
25 proper notice of the allegation, hearing rights, waiver and

1 discovery. It's called the administrative phase and that's
2 what we're in now.

3 I need to advise you this is being recorded. The recording
4 will be saved by the Department. You can get a free copy by
5 sending a written request to the address at the bottom of
6 that form. A copy will be made and sent to you. Do you
7 understand that?

8 MR. P. BUFALINI: Yes.

9 HEARING EXAMINER: You also have the right to appeal my
10 decisions today. If you choose and wish to file an appeal,
11 you can fill that form out. Attach additional sheets as
12 necessary. You send your appeal to the address at the bottom
13 of the form. You have seven days from the conclusion of this
14 hearing in which to file an appeal if you choose to do so.

15 Do you understand that right of how to proceed?

16 MR. P. BUFALINI: Yes.

17 HEARING EXAMINER: Do you have any questions about that?

18 MR. P. BUFALINI: No.

19 HEARING EXAMINER: I do have the authority and jurisdiction
20 to conduct this hearing today. You were convicted Pierce
21 County Cause, looks like a split judgment and sentence, AE
22 13-1-01924-0, Identity Theft First, Identity Theft Second,
23 and Possession of a Controlled Substance.

24 You were given a, granted a DOSA of 36.75 months, 25 months
25 and 12 months, respectively, for those crimes. The

1 sentencing date was 1/14/15.

2 In addition, you were convicted under Pierce Cause AF 13-1-
3 01924-0 of Bail Jump, Forgery, Possession of Stolen Property,
4 and Unlawful Possession of Payment Instruments. You were
5 given community custody of 29.75, 12.75 and 12.75 for the
6 Bail Jump, Possession of Stolen Property, and Unlawful
7 Issuance of Payment -- or I'm sorry, Unlawful Possession of
8 Payment Instruments.

9 The forgery, which I did not write down, the forgery would
10 be Count 5. Oh, I see, and it's 12.75 months community
11 custody as well.

12 Those, or that basically you are serving time. So the
13 community custody portion isn't as relevant as the prison
14 time in terms of the hearing. Because you were serving your
15 prison sentence before that, before you ever got to the
16 community. And transitioning through the work release at the
17 time that you were returned here and remain an inmate at this
18 time. Would you agree with that statement?

19 MR. P. BUFALINI: Yes.

20 HEARING EXAMINER: And the sentencing occurred on 1/14/15.
21 I see that you, at some point the appeal was remanded. The
22 hearing was scheduled on 2/22/17. We attempted to hear this
23 that day. I guess it was rescheduled prior to that, but
24 that's the date that we previously attempted to hear this. I
25 continued the hearing for good cause to review whether or not

1 I was going to appoint an attorney. I've done that. And
2 this is the first available hearing date. So I'm going to
3 find that everything is in order here.

4 The second phase of the hearing I will consider the
5 infraction. I'll be asking you to enter a plea of guilty or
6 not guilty to it. I'll note that if you choose to plead
7 guilty, most likely I will find you guilty. A guilty plea is
8 a high level of evidence. Does that make sense?

9 MR. P. BUFALINI: Yes.

10 HEARING EXAMINER: I need to, the State will present
11 witnesses if they choose to do so. You'll have an
12 opportunity to question the evidence, cross-examine any
13 witnesses. You'll also have the same opportunity to present
14 your own case, including witnesses if you so choose. The
15 CCO, in turn, can cross-examine your testimony, any witnesses
16 that you present. And I can ask questions of all parties.

17 You understand that?

18 MR. P. BUFALINI: Yes.

19 HEARING EXAMINER: Are you calling any witnesses today?

20 MR. P. BUFALINI: Yes.

21 HEARING EXAMINER: Who are you going to call?

22 MR. P. BUFALINI: My dad.

23 HEARING EXAMINER: Would you state his name, please?

24 MR. P. BUFALINI: David Bufalini.

25 HEARING EXAMINER: Thank you. And we've already referenced

1 him, but okay. Are you calling any additional witnesses, CCO
2 Dean?

3 MS. DEAN: I am not.

4 HEARING EXAMINER: Okay. I need to advise you hearsay is
5 admissible in this hearing today. I will not find you guilty
6 based solely on hearsay that I find unreliable, okay?

7 I might have already said this, but the burden of proof is
8 preponderance. What that means is if I believe it's more
9 likely than not that you committed the infraction, I'll find
10 you guilty. If it's more than 50 percent likely, then I will
11 find you guilty.

12 If I find you guilty of the infraction, we'll proceed to
13 the third and final phase of the hearing. It's called the
14 dispositional phase. The first component of that is
15 adjustment. The second one is recommendation. I'll ask both
16 yourself and the CCO to tell me how you've adjusted to the
17 work release. And I'll also take recommendations from both
18 of you. I'll consider those and I'll make a decision on what
19 to do. Okay?

20 Your sanction could include up to revocation of your DOSA.
21 Do you have any questions regarding the process?

22 MR. P. BUFALINI: No.

23 HEARING EXAMINER: Okay. CCO, are there any preliminary
24 matters?

25 MS. DEAN: Not that I'm aware of.

1 HEARING EXAMINER: Okay. So this is a notice of
2 allegation, hearing rights, and waiver. Do you understand
3 the allegation against you?

4 MR. P. BUFALINI: Yes.

5 HEARING EXAMINER: Do you understand your rights?

6 MR. P. BUFALINI: Yeah.

7 HEARING EXAMINER: Do you have any questions about your
8 rights?

9 MR. P. BUFALINI: No.

10 HEARING EXAMINER: And is that your signature dated
11 2/21/17?

12 MR. P. BUFALINI: Yes.

13 HEARING EXAMINER: Were you given an opportunity to review
14 this packet?

15 MR. P. BUFALINI: Yeah.

16 HEARING EXAMINER: Okay. And I re-served you a hearing
17 continuance form on, on 2/22/17. Is that your signature
18 noting that you have a hearing scheduled today at this time,
19 right?

20 MR. P. BUFALINI: Yes.

21 HEARING EXAMINER: Okay. So I'll find that everything is
22 in order to proceed with this hearing today.

23 I'm taking notes. Okay. At this time, CCO Dean, will you
24 please read the allegation into the record and I'll take your
25 plea, Mr. Bufalini.

1 MS. DEAN: So on 762, failing to complete or administrative
2 termination from DOSA sentence of treatment program on or
3 about 12/15/16.

4 HEARING EXAMINER: How do you plead?

5 MR. P. BUFALINI: Not guilty.

6 HEARING EXAMINER: Okay. Your evidence, Ms. Dean?

7 MS. DEAN: In my packet I have included a handbook receipt
8 saying that "I have read or had read to me and fully
9 understand the handbook and agree to abide by all rules in
10 the handbook." That's dated, or signed and dated by
11 Mr. Bufalini on 8/11/16.

12 I've also included expectations of custody facility plan,
13 fifth from the bottom it says, "Participate and follow all
14 recommendations of chemical dependency assessment." That is
15 dated on 8/10/2016, signed by Mr. Bufalini.

16 I have included the DOSA letter, which I served to
17 Mr. Bufalini on 8/31/16. And it reads that, "This letter is
18 to inform you of a change in the Department's required
19 response to noncompliance related to your sentence under the
20 Prison Drug Offender Sentence Act, or DOSA. Effective
21 immediately, if you fail to complete or are administratively
22 terminated from your court-ordered substance abuse treatment,
23 you will be subject to mandatory revocation to complete the
24 unexpired term of your prison DOSA sentence." Mr. Bufalini
25 signed off on that on 8/31/16.

1 I have included initial serious infraction report. It
2 reads as follows: "On 8/10/16, Bufalini, Paul, DOC 306464,
3 arrived at Progress House work release. On 8/15/16, Resident
4 Bufalini attended his CD assessment appointment with Jason
5 Lewis. See attached e-mail. Resident Bufalini signed
6 substance use disorder treatment participation requirements
7 that indicated outpatient treatment on Wednesdays and Fridays
8 from 7:00, I'm sorry, from 5:00 to 7:00 p.m. Resident
9 Bufalini also signed substance use disorder prison DOSA
10 agreement. See attached.

11 On 8/17/16, Resident Bufalini started CD treatment. On
12 8/31, Resident Bufalini signed DOSA letter. See attached.
13 On 12/11/16, Resident Bufalini provided UA sample that tested
14 positive for opiates. On 12/12/16, Resident Bufalini was
15 taken into custody and transported to WCC.

16 On 12/21, DOC hearing was held at WCC. Resident Bufalini
17 was found guilty of positive UA on 12/11/16 and sanctioned to
18 20 days loss of good time.

19 On 12/21, I, CCO Dean, received Resident Bufalini's
20 discharge summary from CDP Aplin. See attached. Resident
21 Bufalini was terminated from court-ordered CD treatment on
22 12/15/16."

23 HEARING EXAMINER: Okay. Thank you.

24 MS. DEAN: Um --

25 HEARING EXAMINER: -- Hold on a second. I'm taking some

1 notes, please.

2 MS. DEAN: Okay.

3 HEARING EXAMINER: Okay. Go ahead.

4 MS. DEAN: I also wrote another major infraction report and
5 it simply states that "On 12/21/16 I, CCO Dean, received a
6 copy of Bufalini's CD treatment discharge summary completed
7 by CDP Aplin stating he has been terminated from treatment."

8 I also included a copy of the e-mail from Jason Lewis and
9 that the DOSA attend schedule appointments to start ODP group
10 on 8/17/16 at 5:00 p.m. at Progress House work release. DOSA
11 is assigned to CDP Lewis and CCO was notified by e-mail.

12 I've included the substance use disorder treatment
13 participation requirements. It is listed above for Progress
14 House work release outpatient treatment, Wednesdays and
15 Fridays, 5:00 to 7:00 p.m. That is signed by Mr. Bufalini
16 on 8/15.

17 I have also included the substance abuse disorder prison
18 DOSA agreement. And that was signed off on 8/15 as well. On
19 the back page it says, "I agree I will fully participate in
20 required substance abuse treatment programs."

21 I have also included -- oh, that goes on for a couple of
22 pages. His substance use disorder discharge summary --

23 HEARING EXAMINER: -- Hold on, hold on. Let me find that.
24 Okay. Go ahead, please.

25 MS. DEAN: Substance use discharge summary and continued

1 care plan and this was written by CDP Aplin and it was a
2 summary of progress. The last use date was 11/12 [sic]
3 positive for opiates. Reason for discharge it says,
4 "Terminated."

5 I've also included the copy of the hearing that was held
6 for 12/11 showing a guilty finding of a 752 for positive UA.

7 HEARING EXAMINER: Okay. Hold on. Hold on second. I took
8 that information out of the packet. I'm not going to
9 consider --

10 MS. DEAN: -- Okay.

11 HEARING EXAMINER: -- a previous finding. This was
12 remanded for a new hearing so before I had a opportunity to,
13 I saw what it was when I was reviewing the packet last week.
14 And it's been omitted from the packet. So I'd ask that we
15 not reference any decisions that were made at a prior
16 hearing, okay?

17 MS. DEAN: Okay. And the last thing I've included was
18 Mr. Bufalini's judgment and sentence for special drug
19 offender sentencing that ordered him to do court-ordered
20 treatment. And to remain in compliance with his DOSA
21 sentence. And that was signed in open court by Mr. Bufalini
22 on 1/14/15.

23 HEARING EXAMINER: That was what? What document was that?

24 MS. DEAN: Judgment and sentence.

25 HEARING EXAMINER: Okay. Yeah, right. I got that. And in

1 terms of the discharge summary, can you, I got in my notes
2 that you said he was positive for opiates and terminated on
3 12/15/16.

4 MS. DEAN: Correct.

5 HEARING EXAMINER: Can you provide a overview of that
6 treatment?

7 MS. DEAN: Yes. The discharge summary is in the packet.
8 It was done by Mr. Aplin. And at the top it says, "Reason
9 for discharge is termination." And it quotes a date of last
10 use of 12/11/16, positive UA for opiates.

11 HEARING EXAMINER: Okay. I think you --

12 MS. DEAN: -- And when I first met with Mr. Bufalini he did
13 state to me that his drug of choice is opiates.

14 HEARING EXAMINER: Okay. Anything else?

15 MS. DEAN: That is all I have.

16 HEARING EXAMINER: Okay. Do you have any questions for
17 her?

18 MR. P. BUFALINI: No.

19 HEARING EXAMINER: Do you want to call your witness?

20 MR. P. BUFALINI: Yes.

21 HEARING EXAMINER: Okay. And what's the phone number?

22 MR. P. BUFALINI: Two five three. Two seven two. Two one
23 zero zero.

24 HEARING EXAMINER: So obviously we can't have both you,
25 Ms. Dean, and the witness on at the same time. So we're

1 going to terminate your phone call, call the other witness.
2 Obviously, probably don't know what they're going to, what
3 the testimony is going to be. I'll provide a summary of that
4 to you. Do you have any questions that you would like asked
5 of a witness before?

6 MS. DEAN: Offhand it would be depending on what they say.

7 HEARING EXAMINER: Okay. All right. So we'll call you
8 back when we're done with the witness.

9 MR. SHUMATE: Thank you.

10 HEARING EXAMINER: Go ahead.

11 RECEPTIONIST: Good morning. Law Offices of David
12 Bufalini.

13 HEARING EXAMINER: Yeah, this is Paul Ockerman. I'm a
14 hearing officer with DOC. Is David Bufalini available?

15 RECEPTIONIST: He is. One moment. I will get him on the
16 phone, okay?

17 HEARING EXAMINER: Okay.

18 MR. D. BUFALINI: David Bufalini.

19 HEARING EXAMINER: Yeah, hi, Mr. Bufalini. This is Paul
20 Ockerman. I'm conducting a hearing, the hearing on Paul
21 Bufalini.

22 MR. D. BUFALINI: Yes.

23 HEARING EXAMINER: And he's called you as a witness here
24 today. Would you state your -- are you willing to testify in
25 this matter?

1 MR. D. BUFALINI: I am.

2 HEARING EXAMINER: It is being recorded. And would you
3 state your name and your relationship, please with Mister,
4 with Paul?

5 MR. D. BUFALINI: My name is David Bufalini and I'm Paul's
6 biological father.

7 HEARING EXAMINER: Okay. And will you raise your right
8 hand.

9 MR. D. BUFALINI: Yes.

10 HEARING EXAMINER: And do you swear or affirm that any
11 testimony you provide here today will be the truth?

12 MR. D. BUFALINI: Yes.

13 HEARING EXAMINER: Okay. So he's called you as a witness.
14 We're actually in the hearing. Do you have any objection to
15 me telling him where I'm at with this?

16 MR. P. BUFALINI: No. Please do.

17 HEARING EXAMINER: Okay. So after our conversations on the
18 22nd I consulted with Dominga Soliz, the hearing
19 administrator. Based on what I saw primarily as somewhat of
20 a contradiction between what you were, you were saying and
21 what I'd already spoken to her about on the, you know,
22 regarding the scope of the hearing.

23 MR. D. BUFALINI: Yes.

24 HEARING EXAMINER: And she clearly indicated to me that she
25 remanded the last hearing and that was the scope of the

1 hearing that I'm going to consider. So based on that, I made
2 the decision not to appoint counsel. As you recall, I
3 verbalized that if we were going back to the previous
4 hearing, which I didn't think that was appropriate, but I was
5 going to vet that. And that if I went back to the previous
6 hearing, then I may have decided to appoint an attorney.

7 But given the scope of the hearing that was remanded, I did
8 not find there was any unusually complex issues. So I've
9 denied the request for attorney. And I've proceeded with the
10 hearing up until this point. Went through the hearing
11 process with Paul. And the State has provided their evidence
12 and he's called you as a witness to testify on his behalf, or
13 present evidence. I'm not sure what questions he may ask
14 you. But keep in mind that your testimony can be cross-
15 examined by the CCO.

16 Now the CCO that's presenting the case is at the work
17 release. And the representative here in the room is Loren
18 Shumate. I'd also note that there is another CCO in here,
19 who is observing by the name of Kathy Jonas. Just so you
20 know who is in the room. And obviously, your son's in the
21 room as well as Mr. Shumate.

22 So I'm going to, Paul has called you as a witness. What
23 questions do you have for your dad?

24 MR. P. BUFALINI: Just go ahead, Dad. Just.

25 MR. D. BUFALINI: Well, I need some clarification. The

1 purpose of today's hearing is to determine whether or not the
2 DOSA revocation sanction was appropriate?

3 HEARING EXAMINER: The purpose of today's hearing is to re-
4 hear the facts surrounding the infraction, 762 infraction,
5 that the State alleges occurred on 12/15/16. So I'm
6 basically --

7 MR. D. BUFALINI: -- The question that I have and that I've
8 had from the start is where's the urine sample?

9 HEARING EXAMINER: And I'm not, I don't know. I don't,
10 that's not something that I am, you know, after I talked to
11 Ms. Soliz. First of all, I wouldn't investigate that on my
12 own accord anyway. But you, well, you've called him as a
13 witness. And so it, this is not, I guess, an open mic. The
14 process is your son can ask you questions as a witness and
15 you can respond to those, which can be cross-examined.

16 And so I don't want to get outside the process scope here,
17 because I know you have been, you know, involved in this
18 case. But I'm going to keep the testimony and the process
19 intact.

20 MR. D. BUFALINI: Well, I guess the first observation I'd
21 make is that I don't know that Paul even knows what questions
22 to ask me. Which probably serves to illustrate more than
23 anything his need for the assistance of counsel. You know,
24 apparently you've made the decision that he's not entitled to
25 counsel, Number One. Number Two, that this hearing isn't for

1 the purpose of determining whether the finding of a violation
2 was appropriate in the first place.

3 I'd challenge that on his behalf as a witness, I guess, and
4 not as his attorney of record. Because my understanding of
5 DOC policy is that they are required to maintain the evidence
6 that constitutes proof of a violation. And in his case, the
7 evidence was the urine.

8 And I've repeatedly asked someone to Number One, either
9 confirm or not whether the urine sample still exists or not.
10 If it doesn't exist, then there's been a huge due process
11 violation that Paul would not have a clue about. And would
12 need the assistance of counsel.

13 So, you know, this seems to be proforma to me. And I'm not
14 trying to be contentious here. But if this is simply did, in
15 light of the confirmation that there was a violation, based
16 on the statement that the sample was dirty, without the
17 actual evidence itself. And now the question is, "Well, was
18 there justification for revocation of his DOSA?" My
19 understanding is once there's proof of a violation, DOSA
20 revocation is automatic. That there's no discretion
21 involved.

22 And so my son's facing two years of prison time based on an
23 allegation that he gave a dirty UA. And best I can tell, the
24 sample is gone.

25 HEARING EXAMINER: And I do want to respond to that that

1 the scope of my hearing, of this hearing today is whether or
2 not he failed to complete or was administratively terminated
3 from DOSA abuse treatment on or about 12/15/16.

4 Now you certainly have the ability or he did and with your
5 help to appeal that previous hearing, that previous sanction.
6 And take whatever recourse you need to take regarding that,
7 you know.

8 And so I'm hearing whether or not he was terminated. So I
9 don't, I still, I'm going to --

10 MR. P. BUFALINI: -- That's the thing. You know I was
11 terminated.

12 HEARING EXAMINER: I'm going to focus, well, I've got the
13 evidence presented to me.

14 MR. P. BUAFALINI: -- So --

15 HEARING EXAMINER: -- And so you have the opportunity to
16 question the evidence that's presented to me. So that's what
17 I know.

18 And I'm not going to reach back into an old hearing and try
19 the facts of that hearing. I don't think that's appropriate
20 here.

21 MR. D. BUFALINI: But the evidence that you have is that he
22 didn't complete. Is that right?

23 HEARING EXAMINER: The evidence that has been read into the
24 record IS that he was administratively terminated from DOSA
25 treatment.

1 MR. D. BUFALINI: Sure. And so there's really nothing for
2 you to review, because you don't get to look behind the
3 reason for the revocation. You just know he was revoked.

4 HEARING EXAMINER: I'm just looking to see whether or not,
5 I mean, I'm going to weigh all the facts here. And I'm going
6 to determine whether or not he was revoked. Whether or not
7 the entity -- or terminated, I should say. Whether or not
8 the entity that terminated him, whether there was evidence to
9 support that. So that's, that's my role here.

10 And I have to stop for a minute, David Bufalini. I want to
11 tell you, Paul, I understand you might not agree with my
12 decision -- hold on, hold on, don't interrupt me. I'll give
13 you an opportunity to respond. But body language is a big
14 part of communication --

15 MR. P. BUFALINI: -- I --

16 HEARING EXAMINER: -- Hold on. Please.

17 MR. D. BUFALINI: -- Paul --

18 HEARING EXAMINER: -- And when you're sitting across from
19 me and I'm having a conversation, you're shaking your head
20 and, you know, making gestures then it's a distraction of
21 body gestures. I'm not saying you're doing anything
22 inappropriate. I'm just asking you to maintain --

23 MR. P. BUFALINI: -- I apologize.

24 HEARING EXAMINER: -- I appreciate that. Until I have an
25 opportunity to give you an opportunity to respond. So that

1 when you respond, I'm giving you my full attention. And I'm
2 not distracted. Okay? Is that fair?

3 MR. P. BUFALINI: Yes, it is.

4 HEARING EXAMINER: Okay.

5 MR. P. BUFALINI: But I'm going to say this has been a very
6 frustrating process for me. I have accepted the fact that my
7 DOSA had been revoked. They remanded this hearing --

8 HEARING EXAMINER: -- Right.

9 MR. P. BUFALINI: -- which, and like, turned my feelings,
10 like, "Oh, maybe I have a shot at this."

11 HEARING EXAMINER: Mm-hmm.

12 MR. P. BUFALINI: Because I'm going to go back to the UA
13 situation. I immediately requested for another UA to be
14 given to me. I have, I have been clean 26 months to this
15 day. For a fact. I immediately requested at that point for
16 them to send my UA to a laboratory in which I was under the
17 impression they were going to be sending it to a lab. They
18 sealed my UA, told me they were sending it to a lab. And
19 then later tell me, "No, we don't send it to a lab."

20 That very second I begged them to please send, this cup
21 that they're using is a preliminary test. My DOSA is in
22 line. You would think that they would have to send my UA
23 out. I had 11, I had two weeks to my release date. I have
24 worked my butt off, okay. I have suffered with addiction for
25 over 11 years. And the first time in my life I have

1 succeeded at maintaining my sobriety, they're going to bring
2 into question the fact that I have a UA dirty?

3 I completed the most toughest, cruelest outpatient at OCC
4 for 11 months. I completed it with flying colors. I had UAs
5 regularly. I get to Progress House for 5.5 months, Ms. Dean
6 will even attest to this, she was shocked that the fact that
7 they told her I had a dirty UA. I went to my treatment
8 classes. I completed everything I needed to complete with
9 two weeks remaining they told me, "Oh, you have a dirty UA."
10 I was flabbergasted. I was shocked.

11 You would think, okay, I have two years in my life, okay.
12 At least send it to a laboratory, okay. Like, give me an
13 opportunity to at least UA again. I immediately, why would I
14 request that? There's such thing as false positive UAs.
15 When you're talking about two years of somebody's life, you
16 would think that they would at least give me another
17 opportunity to pee in a cup. I have, I have been peeing in
18 cups for years and years. There is times when those cups
19 give you a false positive reading. In which I guarantee you
20 that this is the case in this situation.

21 Now my DOSA has been revoked over something I did not --

22 HEARING EXAMINER: -- Your DOSA hasn't been revoked.

23 MR. P. BUFALINI: Well, the thing is, sir, that's why I'm
24 shaking my head over here. Because I know, like, the last
25 hearings officer informed me that if you guys do not revoke

1 on a 762 infraction, that you guys are in line to be fired.
2 The Attorney General letter that he read me that Mr. Jeff, I
3 don't remember, the other hearings officer --

4 HEARING EXAMINER: Kasler. You mentioned last time.

5 MR. P. BUFALINI: Mr. Kasler, he told me, he read a letter
6 saying that they have to revoke you.

7 HEARING EXAMINER: And so let me respond to that. I mean,
8 I would really question whether or not a hearing officer
9 would be fired because, if, you know. With good, and being
10 an employee with good standing --

11 MR. P. BUFALINI: -- But he made that --

12 HEARING EXAMINER: -- I need to respond to that --

13 MR. P. BUFALINI: -- He made that comment that --

14 HEARING EXAMINER: -- I wasn't there. I don't know.

15 MR. P. BUFALINI: -- I get it, Mr. Ockerman, and I can see
16 you're very thorough with all your stuff. And I'm not trying
17 to be rude here --

18 HEARING EXAMINER: -- I don't think you're rude. I think
19 you're passionate --

20 MR. P. BUFALINI: -- I am, this is absolutely something I'm
21 passionate about --

22 HEARING EXAMINER: -- I see that --

23 MR. P. BUFALINI: -- because I have worked my ass off to be
24 clean and sober, okay. I have been clean and sober for
25 damned near 26 months to this day, okay. I should have been

1 out two months ago and then their, their allegations are that
2 I peed dirty, which I've attested immediately. I called my
3 dad immediately right after the UA. He's going to sit here
4 and give you his testimony of where I was, what I was doing.

5 I have been clean and I'm proud of that.

6 HEARING EXAMINER: Okay.

7 MR. P. BUFALINI: And now, now I have two more years on my
8 sentence over something I did not do. I'm telling you the
9 truth. Nobody wants to believe me. Nobody. I've lost my
10 Grandma. I lost my grandfather in the last two months that
11 I've missed over something I did not do. And I have worked
12 my butt off. This addiction has been a horrible thing for
13 me, something that I failed at and failed at and failed at
14 and failed at, okay.

15 HEARING EXAMINER: Can I give you a Kleenex?

16 MR. P. BUFALINI: I have, I have over the years I have
17 continuously failed at this attempt to maintain my sobriety,
18 sir. And for one time I have, I have done absolutely
19 amazing. And I'm proud of it, okay. There is drugs in
20 prison. There is an option to do drugs. I have chose not
21 to. And now I'm being, the consequences are two more years
22 of my life over something I have not done. And it has been
23 very hard for me to accept that. Because nobody wants to
24 listen to me, okay.

25 HEARING EXAMINER: And I can, I do want to listen to you.

1 And I can appreciate your passion. And I'll just say that.
2 And I gave you a lot of latitude there, you know, to testify
3 just now. I really need to focus on the witness and, you
4 know, what, and I'm not insensitive --

5 MR. P. BUFALINI: -- I get it --

6 HEARING EXAMINER: -- to the passion you're showing here
7 right now.

8 MR. P. BUFALINI: I just want you, I feel like I probably
9 was disrespectful. And I want to give you a reason what was
10 going on in my head --

11 HEARING EXAMINER: -- I think you --

12 MR. P. BUFALINI: -- I'm not a disrespectful person at all.

13 HEARING EXAMINER: Let me respond to that. I don't think
14 anything you've done during the course of this hearing, I
15 said this last week --

16 MR. P. BUFALINI: -- Oh, I shouldn't be sitting here
17 shaking my head. That's rude. That's rude --

18 HEARING EXAMINER: -- is angering me or --

19 MR. P. BUFALINI: -- I shouldn't do that. I know better
20 than that.

21 HEARING EXAMINER: I don't feel disrespected or angered. I
22 don't feel like you were directing that at me. I was just
23 pointing out that, okay, so this, my assumption is is that
24 every hearing I do, the record can be reviewed. And so I've
25 got to verbalize what I'm seeing.

1 MR. P. BUFALINI: All right.

2 HEARING EXAMINER: You know what I mean? And one of my
3 responsibilities is to stay focused so that I can make
4 decisions based on the facts. Not based on posture and body
5 language and stuff like that. So --

6 MR. P. BUFALINI: -- But the decision --

7 HEARING EXAMINER: -- that being said --

8 MR. P. BUFALINI: -- the decision you're making here is
9 whether or not I was terminated from treatment.

10 HEARING EXAMINER: My decision today is whether or not, and
11 I've made several already, but my decision that's in front of
12 me now is whether or not you committed the 762 infraction.
13 That's my decision, that's --

14 MR. P. BUFALINI: -- So if I did then my DOSA is being
15 revoked?

16 HEARING EXAMINER: So I'm not even getting, I told you the
17 process. We go, I make a finding. If I find you guilty then
18 we proceed to the dispositional phase. In the dispositional
19 phase there's two components --

20 MR. P. BUFALINI: -- The thing, the thing I don't get is --

21 HEARING EXAMINER: -- I'm not going to jump ahead.

22 MR. P. BUFALINI: Okay. But okay.

23 MR. D. BUFALINI: So today's hearing and this harkens back
24 to exactly what my main issue is with this. If the purpose
25 of the hearing today is to determine whether or not there was

1 a violation, then the only evidence that you have that there
2 was a violation is a written statement from someone that says
3 he peed dirty. You don't have any other evidence.

4 HEARING EXAMINER: That's, okay.

5 MR. D. BUFALINI: Am I correct? You have a statement --

6 HEARING EXAMINER: -- Okay, so --

7 MR. D. BUFALINI: -- saying his UA on the 15th was dirty.

8 HEARING EXAMINER: Okay. Stop. Please. You're not,
9 you're not in a, you, he can call you as a witness. You're
10 not in a position to ask questions. If your son asks me that
11 question and this isn't a opportunity for you. Otherwise,
12 I'd just allow you to be his counsel. And I've already
13 determined that that's not what I'm going to do. Okay?

14 I will reiterate that I'm looking at whether or not he was
15 terminated by the entity that's responsible to provide, to
16 make those decisions and provide treatment. And so --

17 MR. D. BUFALINI: -- Speaking as a parent and not as an
18 attorney --

19 HEARING EXAMINER: Okay.

20 MR. D. BUFALINI: I can verify Paul's entire day, weekend,
21 both days of that weekend of the 15th, the 14th and the 15th.
22 Because I picked him up both days. We went straight to our
23 home in University Place. He was in my presence both days,
24 all day, both days. He had no access to any drugs at our
25 home that day, either day that weekend.

1 HEARING EXAMINER: Mr. Bufalini, with all due respect, I'm
2 not rehearing the facts about the UA.

3 MR. D. BUFALINI: Well, then I don't understand what I
4 could possibly say that would affect your decision, because
5 he's been found to have violated.

6 HEARING EXAMINER: He was found guilty in a previous
7 hearing of committing an infraction. Okay? And right. And
8 that hearing was already done. There is an appeal process
9 for that hearing. There's an ability to file a PRP for that
10 hearing. And exhaust all, you know, all the appeal process
11 for that hearing.

12 This hearing was remanded based on the, based on the 762,
13 which is different.

14 MR. P. BUFALINI: It was remanded because they didn't offer
15 me counsel.

16 HEARING EXAMINER: They didn't offer you the ability to
17 request counsel. That's what I was told --

18 MR. P. BUFALINI: -- And so, yeah, that wasn't offered to
19 me in the original hearing --

20 HEARING EXAMINER: -- And I know that information, you
21 asked me that information. It's not even necessary for me to
22 know that information. I've done remanded hearings where --

23 MR. P. BUFALINI: -- Well, then I shouldn't ask, I have the
24 right to ask.

25 HEARING EXAMINER: -- Yeah, and I answered you.

1 MR. P. BUFALINI: -- Because technically has there ever
2 been a reason for grounds for dismissal in a situation where
3 my due process was violated? I mean, based on the fact that,
4 well, he wasn't offered his counsel.

5 HEARING EXAMINER: Well, and those are all arguments.
6 That's not a decision point for me. Okay?

7 MR. P. BUFALINI: -- But I think my dad was just getting
8 into the --

9 HEARING EXAMINER: -- I think the --

10 MR. P. BUFALINI: -- history as far as, like, what he --

11 HEARING EXAMINER: -- Okay. So if you want to ask him a
12 question about your adjustment then we can call him back
13 during the adjustment phase. And he can, you know, if you
14 ask him to, he can testify to how you were adjusting when you
15 were at work release. And during these social visits --

16 MR. P. BUFALINI: -- So you don't want to hear it right
17 now? You don't want him to talk about that?

18 HEARING EXAMINER: There are three phases to the hearing --

19 MR. P. BUFALINI: -- Okay. So the only questions I can ask
20 are regarding my whether or not I was revoked from treatment
21 class, right?

22 HEARING EXAMINER: You can ask questions that are not
23 leading. So there's no leading questions allowed. But you
24 can ask him questions and I'll decide whether, I mean --

25 MR. P. BUFALINI: -- I don't understand what you mean by

1 that --

2 HEARING EXAMINER: -- the CCO will have an opportunity to
3 make an objection. Well, a leading question would be, for
4 example, "Hey, Dad, would you tell him that I blah blah blah
5 blah." That's a leading question. Those aren't allowed.

6 MR. P. BUFALINI: I don't know what to say at this point.

7 MR. D. BUFALINI: I don't know, I wouldn't know what to
8 volunteer relative to a hearing that is simply to determine
9 whether or not he violated. Because there's been a finding
10 that he violated. So I'm just really perplexed that the
11 scope of today's hearing or whether you have any discretion
12 at all in light of the fact that --

13 HEARING EXAMINER: -- Well, there again, I'm not in a
14 position to be cross-examined about the process.

15 What I will tell you is I am, allegedly two actions
16 occurred. One that he gave a positive UA. And another that
17 he was terminated from treatment. Those aren't one action.
18 Those are two actions. And they may be related. But that's
19 not one action. Those are two very distinct actions.

20 Also, you know, infraction, that's what I'm looking at is
21 whether or not the latter of those two occurred. Resulting
22 in committing a 762.

23 MR. D. BUFALINI: Well --

24 HEARING EXAMINER: -- So again, I mean --

25 MR. D. BUFALINI: Well, all of us here know those things

1 occurred.

2 HEARING EXAMINER: Well, that's, we're in the evidentiary
3 phase. And that's what I'm looking at right now. I have not
4 made a finding thus far. And he called you during the
5 evidentiary phase. He can ask you questions and you can
6 testify to those questions as I've stated.

7 So do you have any other questions for your dad?

8 MR. P. BUFALINI: So at the point when we get to the third
9 phase that's when I can call him and he can give his story
10 about where I was and what his outlook on it was --

11 HEARING EXAMINER: -- So let me tell you

12 MR. P. BUFALINI: -- as far as your sentencing portion of
13 it?

14 HEARING EXAMINER: So let me tell you the phases again.
15 The first phase is the administrative, where I go over and
16 review the paperwork. It was during that portion of the
17 phase I found that you were properly served, that you had all
18 of the information. I told you about your appeal rights and
19 so on and so forth.

20 Then we moved to the evidentiary phase. I took your plea.
21 You pled not guilty. Called CCO Dean, testified to the
22 evidence that the State provided to me. And then after the
23 State goes, then you go. And that's where we're at now.

24 If I find you guilty of this infraction, we'll proceed to
25 the third and final phase of this hearing, which is the

1 dispositional phase. It consists of two parts, adjustment.
2 I want to know how you were adjusting at the work release.
3 Both you and the CCO can tell me that and you can call a
4 witness. And I want to talk and then I'll ask you both, both
5 sides for a recommendation. I'll consider those elements in
6 my decision.

7 MR. P. BUFALINI: So during that phase, okay, once you've
8 found me guilty, during that phase you have an option of not
9 revoking my DOSA? That's a question I can ask, right?

10 HEARING EXAMINER: Sure.

11 MR. P. BUFALINI: Okay. There's an option where you can
12 decide to decide, "Okay, I'm not going to revoke his DOSA,"
13 based on the fact, you know, whatever that we're going to get
14 into. So there's an option there?

15 HEARING EXAMINER: -- So the discretion is and that's what
16 I spoke to last week --

17 MR. P. BUFALINI: -- Because when I signed that thing it
18 strictly, it states clearly on there that it's a contract
19 and --

20 HEARING EXAMINER: -- What thing? What thing?

21 MR. P. BUFALINI: -- In which it says you are -- what did
22 it say, Dad?

23 MR. D. BUFALINI: Subject to.

24 MR. P. BUFALINI: You're subject to.

25 HEARING EXAMINER: Okay.

1 MR. P. BUFALINI: What I find that to believe is it's a
2 possibility.

3 HEARING EXAMINER: Are you talking -- well, nothing, I
4 mean, so here's how I'm going to answer that. I think the
5 statute is clear that if somebody is terminated from
6 treatment, that the statute says the Department will
7 reclassify the offender to serve out the remaining portion of
8 their DOSA.

9 But nothing in this process, I don't know what I don't
10 know. So I'm not going to ever pin myself into a corner that
11 there is no circumstance where I can't go outside beyond
12 that. A good example is in the preliminary phase. I look at
13 whether or not they provided your judgment and sentence. If
14 they didn't do that, the law is still the same behind the
15 scenes. But if the Department made a critical error then my
16 decision isn't always going to be to go forward with the
17 hearing. You see what I'm saying?

18 So I'm never going to pin myself into a corner on that
19 issue. But the statute regarding that is what it is, okay.
20 I'm not going to box myself into a corner. I haven't taken a
21 recommendation from the State. I haven't taken a
22 recommendation from you. I am not going to jump ahead --

23 MR. P. BUFALINI: -- Can't you see where I just feel like
24 this is just, we're just doing this for procedural matters?
25 I mean, I have never seen somebody not get their DOSA

1 revoked.

2 HEARING EXAMINER: Okay.

3 MR. P. BUFALINI: And it's so amazing to me based on the
4 fact that I have never been in trouble in 26 months of
5 incarceration, ever. This is 11 days out to my release date
6 I'm going to get --

7 HEARING EXAMINER: -- Okay --

8 MR. P. BUFALINI: -- and then based on that I'm still going
9 to lose my DOSA --

10 HEARING EXAMINER: -- Okay. I haven't even made that
11 decision.

12 MR. P. BUFALINI: Okay.

13 HEARING EXAMINER: I haven't even found you guilty.

14 MR. P. BUFALINI: All right.

15 HEARING EXAMINER: So again, we're getting ahead. Do you
16 have any --

17 MR. P. BUFALINI: -- So, Dad, I'll talk to you, I'll call
18 you back.

19 MR. D. BUFALINI: All right. And yeah. So the next
20 hearing when will that be?

21 MR. P. BUFALINI: There is no other hearing. This is it.

22 HEARING EXAMINER: At this point I have no, I don't see a
23 scenario. But again, I don't know what I don't know, that
24 this hearing won't be concluded today.

25 MR. D. BUFALINI: So this is the Phase 3 is happening

1 today, too?

2 HEARING EXAMINER: It would. We'd go right into it.

3 MR. P. BUFALINI: And shortly.

4 MR. D. BUFALINI: Well, then, you know, I would offer
5 testimony that relates specifically to my son's behaviors
6 after he was released from OCC and placed in Progress House
7 work release. And that apparently be relevant to your
8 decision today.

9 HEARING EXAMINER: So he's got a opportunity to ask you a
10 question. Again, I really am not at, in a position or am I
11 willing to just allow you, you know, a free microphone to --

12 MR. P. BUFALINI: -- Can I ask --

13 HEARING EXAMINER: -- No, you can ask him questions. I've
14 given your Dad, David, a lot of latitude during the course of
15 this hearing.

16 MR. D. BUFALINI: Paul, ask me what I observed during the
17 months you were in Progress House.

18 HEARING EXAMINER: Yeah, I'm not going to allow you to tell
19 him what question he's to ask you.

20 MR. P. BUFALINI: I just heard what he was going to say.
21 What did you observe when I was in Progress House? I heard
22 what he said.

23 MR. D. BUFALINI: Well, what I observed when you were in
24 Progress House was we took every opportunity for social
25 visits when you became eligible. So every weekend I would

1 pick you up at the designated time at Progress House, return
2 you at the designated hour at Progress House.

3 During all of those visits we went straight to our home in
4 University Place. We never left. We never had any visitors
5 there. We never stopped anywhere as I returned you to
6 Progress House. We were never late in getting back to
7 Progress House.

8 I never observed you using any drugs in our home. We never
9 had any visitors to our home. You had no access to any drugs
10 at our home. And we were together the entirety of those days
11 from start to finish. And you never used drugs in my
12 presence. And again, never had access to any drugs in my
13 presence.

14 I know that you were working full-time. You spoke to me
15 that you enjoyed your work very much building the cabinets.
16 I can't think of the name of the company. As far as I know,
17 you never missed a day of work. As far as I know, you were
18 never late returning to Progress House from work. Or late
19 arriving on the job.

20 And I was excited that you were working and earning a wage
21 finally in a job that you enjoyed. Your attitude was great.
22 You spoke frequently as the days got closer to your
23 completion of the program how excited you were to have made
24 it that far without any violations or infractions of any
25 kind. That you were excited to be done with the program and

1 start a new life for yourself. You were looking forward to
2 continuing to work at the cabinet shop, because there was an
3 opportunity for full-time work going forward there as you
4 understood it. Or at least as you told me. And you were
5 looking forward to finally being able to support yourself and
6 get your own place to live. Begin developing a career and a
7 resume for your work.

8 I never saw any indication at all that you ever took any
9 drugs of any kind. And having lived through your addiction
10 for 10 years or so leading up to that point, and having
11 observed you under the influence of drugs of many kinds, I
12 can state unequivocally, you were never visibly under the
13 influence of any drugs of any kind.

14 I would say that I was absolutely stunned when you called
15 that evening, thinking that you would put your personal
16 freedom at risk with only two weeks or three weeks left in
17 the program. I just simply refuse to believe, Number One,
18 that you were that stupid. Or Number Two, that you would
19 jeopardize two more years of your freedom for a pill of some
20 kind.

21 Again, I would have no idea where you would even access it.
22 And so I had serious questions. I do recall when you called
23 that evening so upset that I asked you to ask them to give
24 you another test. And as far as I know you did and you were
25 refused that right.

1 So the whole thing just was shocking. And frankly
2 unbelievable that you had been clean for so long and had
3 progressed so far. Unlike anything I had ever seen since
4 your addiction started.

5 And I just am saddened by the prospect that you're going
6 to, you know, have to spend two more years of your life
7 incarcerated for, based on a UA that according to the
8 manufacturer yields preliminary results only. And should be
9 sent off to a lab for verification. When two years of your
10 freedom is at stake, that evidence has to be preserved. And
11 that --

12 HEARING EXAMINER: -- Okay. Hey, stop. Stop. Stop.

13 MR. D. BUFALINI: -- and --

14 HEARING EXAMINER: -- Stop. You're going outside. I think
15 I've give you a lot of latitude and you just went above and
16 beyond the question he asked.

17 MR. D. BUFALINI: -- I'm going to --

18 HEARING EXAMINER: I'm going to stop you right there, okay.
19 Just, we're getting back into the UA.

20 MR. D. BUFALINI: Well, I said what I wanted in terms of my
21 observations.

22 HEARING EXAMINER: Okay. And I think that's relevant. And
23 I will tell you that I find your testimony believable and
24 credible regarding that. I mean, we both know you weren't
25 with him all the time. I'm not making any judgment on the

1 UA. But I think to what you spoke to, Mr. Bufalini, I have
2 no reason to believe you're not telling me the truth there.
3 Do you have any questions --

4 MR. D. BUFALINI: -- And I would just say I was with him
5 all the times on those Saturdays and Sundays.

6 HEARING EXAMINER: Right. Right.

7 MR. P. BUFALINI: When I peed dirty it was 10 minutes after
8 he dropped me off.

9 HEARING EXAMINER: So do you have any questions?

10 MR. SHUMATE: The CCO does not at this time.

11 HEARING EXAMINER: Okay. So any other questions?

12 MR. P. BUFALINI: Will you call Ms. Soliz, please, Dad?

13 HEARING EXAMINER: Okay. This is also not an opportunity
14 for that conversation to occur. So this, I explained the
15 process. I'm thinking, well, it doesn't really matter
16 whether or not this is really for the dispositional phase or
17 not.

18 Are you planning on calling your dad anymore during the
19 course of this hearing?

20 MR. P. BUFALINI: No.

21 HEARING EXAMINER: Okay. All right. Thank you. Did you
22 have any more questions for him right now?

23 MR. P. BUFALINI: No.

24 HEARING EXAMINER: Okay. Thank you. That does conclude
25 your time and testimony.

1 MR. D. BUFALINI: Thank you for giving me the opportunity.
2 I appreciate it.

3 HEARING EXAMINER: You're welcome. Have a nice day. Thank
4 you. Okay. So can we call the work release back?

5 MR. P. BUFALINI: This is so hard for me, man.

6 MR. SHUMATE: Yeah, this is Loren at the Hearings Unit.
7 CCO Dean, please. Thank you.

8 Hi, this is Loren again. We're ready to go if you are.
9 I'll put you on speaker. Thank you, ma'am.

10 HEARING EXAMINER: Okay. This is Paul Ockerman. Who do we
11 have on the phone?

12 MS. DEAN: This is CCO Kelly Dean.

13 HEARING EXAMINER: Okay, Ms. Dean, you're still under oath.
14 Do you understand that?

15 MS. DEAN: Correct.

16 HEARING EXAMINER: Okay. So I took testimony from Mr. Paul
17 Bufalini's dad, David Bufalini. And it was, I guess, trying
18 to focus on the UA. I'm not hearing the UA. I'm hearing
19 whether or not he committed the 762.

20 He gave me a, I'll read you some of the information. That
21 he took every opportunity for social visit with his son.
22 Straight to his house. Never left, never stopped, never
23 late. Never observed Paul, his son, use any drugs. He was
24 proud he was working full-time. Never missed a day of work.
25 Excited making, earning a wage. No indication that drugs

1 were taken. Never visibly under the influence of drugs.

2 And I found his testimony credible and believable regarding
3 the statements that he made. Do you have any questions for
4 me, CCO?

5 MS. DEAN: No, I don't.

6 HEARING EXAMINER: Okay. Is there any other evidence --

7 MS. DEAN: -- Not on my half, no.

8 HEARING EXAMINER: Any other statements or evidence you
9 would like to make?

10 MR. P. BUFALINI: No.

11 HEARING EXAMINER: Okay. So weighing the evidence I have
12 in front of me the major infraction reports. I have the
13 substance abuse disorder discharge summary and continued care
14 plan. It looks like it was authored by Mr. Aplin. And
15 Mr. Aplin, I reviewed this document. And I note that it says
16 in the beginning, you verbalized seeking a program that could
17 provide substantive information in the way of instruction as
18 to how you could prepare to live in the community. And PDOSA
19 never makes excuse for situation minimally was willing to
20 learn a different way.

21 It is apparent, however, that PDOSA had not developed the
22 motivation or desire to stay away from drugs and drug
23 activity. He says you made little progress in attitude,
24 demeanor and efforts towards recovery. That you did not
25 follow the verbal determination to go straight and sober.

1 In group you struggled to fully engage in treatment
2 process. That you did not complete outpatient treatment OP.
3 Had six groups remaining.

4 MR. P. BUFALINI: All those statements are because I got a
5 dirty UA.

6 HEARING EXAMINER: Mm-hmm.

7 MR. P. BUFALINI: Yeah.

8 HEARING EXAMINER: And it says that you were terminated on,
9 reason for discharge terminated on 12/15/16. Okay.

10 So as I noted earlier that treatment component, the
11 treatment providers are the entity that make the
12 determination of whether to retain you in treatment or not.
13 It's clear to me that they have terminated you based on the
14 evidence presented to me, based on the testimony of CCO Dean.

15 And, therefore, I'm going to find that you committed the
16 762 by failing to complete or were administratively
17 termination [sic] from DOSA substance abuse treatment program
18 on or about 12/15/16. For the mentioned reasons, I'm going
19 to find you guilty. Let me make a note.

20 So we're going to move to the third and final phase of the
21 hearing. It's the dispositional phase. The first part is
22 adjustment. CCO Dean, can you provide an adjustment?

23 MS. DEAN: Mr. Bufalini arrived here on 8/10/16. He
24 started work on 8/25 at Founder's Choice. Mr. Bufalini had
25 no major infractions. He had no behavior issues to speak of.

1 Every time I talked to him he was please and thank you. He
2 turned in all his paperwork on time. I have no complaints
3 about his adjustment to here at work release.

4 Was an easy keeper and did what he needed to do until the
5 positive UA, which caused him to be removed from Progress
6 House.

7 HEARING EXAMINER: Okay. Thank you. How do you think you
8 did, you were doing there? Well, is there any contract staff
9 that?

10 MS. DEAN: No, we had our monthly staff meeting and they're
11 still doing their components of that.

12 HEARING EXAMINER: Okay. It's not mandatory. Okay. Thank
13 you.

14 How do you think you were doing at work release? You've
15 already given me some of that, but I'm willing to hear
16 anything you want --

17 MR. P. BUFALINI: -- I was just doing everything I needed
18 to do.

19 HEARING EXAMINER: Okay. Anything else?

20 MR. P. BUFALINI: No.

21 HEARING EXAMINER: Okay. So and I'll take into
22 consideration your Dad's testimony was, I would put it more
23 in the adjustment bucket. But it's all, you know, relative
24 to the hearing. So what's the State's recommendation?

25 MS. DEAN: Per policy and procedure I have to recommend his

1 DOSA be revoked.

2 HEARING EXAMINER: Okay. And, Mr. Bufalini, what do you
3 recommend?

4 MR. P. BUFALINI: I just, I want an opportunity to complete
5 my DOSA. I've done, I've done everything I could to
6 adequately follow the rules and do every class I ever had to
7 do with an open mind and a willingness to change. And I
8 just, I want an opportunity to live my life. I don't want to
9 do two more years in prison.

10 HEARING EXAMINER: Okay. For DOSA there's a lot riding on
11 it. There's a lot riding on the treatment component of it.
12 And I know on 8/31/16 the Department notified you that
13 "Effective immediately if you fail to complete or are
14 administratively terminated from your court-ordered substance
15 abuse treatment," which you were in, "You will be subject to
16 mandatory revocation to complete the unexpired term of your
17 prison DOSA sentence per RCW 9.94A.662(3)."

18 Again, this hearing was not about the UA. This hearing was
19 about whether or not you committed the 762. And in doing so
20 I found you guilty. Or I should say I found you guilty of
21 committing it.

22 And, you know, there's no compelling reason for me or
23 argument that I can see making to go outside of the
24 requirements that you entered into when you entered into
25 DOSA.

1 MR. P. BUFALINI: Not when I entered into DOSA that wasn't
2 part of the DOSA contract.

3 HEARING EXAMINER: Well, I'm not sure what you mean by
4 that.

5 MR. P. BUFALINI: That was three months, that was a few
6 months to my release date. When I signed the DOSA paper --
7 it doesn't matter.

8 HEARING EXAMINER: -- Okay. I would like to respond to
9 that. Because the clarification came out after, the statute
10 didn't change, I don't believe, since you entered DOSA.

11 MR. P. BUFALINI: All right.

12 HEARING EXAMINER: Okay. So I going to, I'm going to based
13 on all of the facts stated in this hearing today, I am going
14 to revoke your DOSA.

15 MR. P. BUFALINI: Big surprise.

16 HEARING EXAMINER: Your start date will be determined by
17 DOC records.

18 MR. P. BUFALINI: Can I go now?

19 HEARING EXAMINER: No. I mean, you have the right to waive
20 your appearance here. And if you want to exercise that
21 right, you can do so. So I'm not going to tell you you can't
22 go now. So that choice is yours I guess.

23 MR. P. BUFALINI: What do I need, what else do I need to
24 do?

25 HEARING EXAMINER: I was going to ask you to sign this.

1 Hold on a second. I do need to make a couple more notes. I
2 don't want to make those after you sign it.

3 MS. DEAN: Can I just say something to Mr. Bufalini?

4 HEARING EXAMINER: Yeah, go ahead, please.

5 MS. DEAN: Mr. Bufalini, if after you get another chance to
6 come back to work release, I would hope that you would
7 strongly consider it. Because you did do well while you were
8 here. But I wouldn't just blow off work release again due to
9 this, because you did do really well.

10 MR. P. BUFALINI: Thank you. I don't think I'm eligible to
11 come back there.

12 MS. DEAN: You can.

13 MR. P. BUFALINI: Yeah? On this same, on the same cause
14 number?

15 MS. DEAN: Mm-hmm. You just have to put in for it when you
16 get closer down the line.

17 HEARING EXAMINER: I'd ask you to sign that right there.

18 MS. DEAN: There's just no promises. But I just wouldn't
19 blow it off.

20 MR. P. BUFALINI: All right.

21 HEARING EXAMINER: Okay. Any other questions? Do you have
22 any questions for the work release? A lot of people want to
23 ask --

24 MR. P. BUFALINI: -- Thank you, Ms. Dean.

25 HEARING EXAMINER: -- A lot of people want to ask about

1 their stuff.

2 MR. P. BUFALINI: No.

3 HEARING EXAMINER: Okay. So I'm going to disseminate our
4 paperwork real quick. You have seven days in which to file
5 an appeal if you choose to do so. So just so you know there
6 is three pages and they're numbered 1 out of 3. And so and
7 I'm going to hand you your copies. There you go.

8 MR. SHUMATE: When you go in here you can't have legal
9 paperwork in your cell. And I've already put on here it goes
10 to the law library. So it's put on call out and you can go
11 up there and review your stuff.

12 HEARING EXAMINER: That concludes this hearing. It's 9:56
13 a.m.

14 MR. SHUMATE: Hold on. Hold on.

15 HEARING EXAMINER: I'm going off the record. Goodbye,
16 Ms. Dean.

17 MR. SHUMATE: I want you to see me put it in the envelope
18 and seal it in front of you. Please do not step behind me.

19 HEARING EXAMINER: CCO Dean? I'm going to hang up. Okay.

20 MS. DEAN: (No audible response).

21 HEARING EXAMINER: I don't know if she's still there or
22 not. Okay. That concludes this matter. It's 9:57.

23 (March 1, 2017 hearing concluded)

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C E R T I F I C A T E

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STATE OF OREGON)
)
COUNTY OF CLACKAMAS)

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IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of July, 2017.

Catherine Leschi Wilcox

Catherine Leschi Wilcox



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