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COURT OF APPEALS DIVISION I
STATE OF WASHINGTON
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COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re the Personal Restraint Petition of:)
 MARK DAVID MATTSON) No. 58823-1-I
)
) Petitioner's
) Reply
)
)

ACTUAL AND SUBSTANTIAL PREJUDICE

The Respondent's answer to Petitioner's Personal Restraint Petition is that the Department of Correction's (DOC) investigation and denial of petitioner's proposed addresses did not amount "to an error that actually and substantially prejudiced him." Respondent's brief at page 3, Exhibit A.

By Respondent's statements within this brief, it is unequivocal that the DOC's actions are prejudicing petitioner.

Respondent states "No community release plan will be safe enough for an offender like Mr. Mattson." Id. at 4. Respondent then goes on to state "No community release address, absent the one with the 24/7 prison-like monitoring and lock-down would be safe enough to protect the community from Mr. Mattson." Id. at 4. Finally, respondent states "No release address Mr. Mattson submits will be sufficiently safe to satisfy the Department's

community safety concerns. Therefore, the Department properly denied the addresses." Id. at 22.

To say that these statements are prejudicial to the petitioner would be an understatement. If this is indeed the situation in this case, then why should petitioner submit any addresses at all? It would be an absolute waste of everyone's time and expense. In fact, then why would the DOC even have a policy which allows an inmate in the position of petitioner to have this option?

The answer is, it is because the DOC intends the approval of an address, under strict guidelines, that the submission of addresses is available to the inmates.

There is no balancing test on this issue. Public policy favors early release programs and community supervision for sex offenders. This was clearly articulated in In re Dutcher, 114 Wn.App. 755, 60 P.3d 635 (2002).

Early release programs are important prison management tools, which help DOC maintain control over the prison population by providing an incentive for an inmate to conform his behavior to prison rules. Denying earned release credits to every sex offender DOC believes eligible for eventual referral to civil commitment leaves a dangerous class of inmates with little reason to obey prison rules or participate in prison treatment programs.

Further, for two-thirds of those referred by ESRC, no civil commitment proceedings are even initiated. Prison treatment programs may therefore be the best, and perhaps the only, possibility of addressing potential recidivism with these offenders. An inmate whose motivation to engage in treatment programs is the possibility of earning early release credits, but who is ineligible for release because of referral, may well end up in the community without benefit of treatment.

For the same reasons, these offenders may also end up in the community without a release plan. One of the primary purposes of community custody is to protect the public by supervising offenders based on the risk they pose to community safety. A comprehensive release plan helps minimize the risk of reoffense. Offenders referred by ESRC but for whom civil commitment proceedings are not initiated, will reach their final release dates with no release plans whatsoever. These are among the offenders most likely to reoffend.

...

The public would best be served if a sex offender has developed a viable release plan when the time comes for return to the community. The community custody system was designed in part to help an offender become established in the community and minimize the risk to reoffend.

In re Dutcher, 114 Wn.App. at 764-65 (citations omitted).

DOC's early release program for sex offenders contributes to - rather than diminishes - public safety.

Respondent even states that petitioner is past his early release date of July 23, 2005.

If respondent is accurately portraying the DOC's intent, in never approving any of petitioner's submitted addresses, this intent would go against Legislative intent, current case law, and DOC's own updated policies. It is also an error that actually and substantially prejudices petitioner.

If the above is accurate, then why is an officer from the DOC even investigating petitioner's submitted addresses?

Petitioner submitted an address for a private residence in Duvall, Washington. The officer discovered the wife of the sponsor was very angry that their address was submitted because her husband did not clear it with her. Based on that, the

officer denied this address. There appears to be A communication issue between the sponsor and his wife. Did the officer follow up to see if this was cleared up, and that petitioner would be approved for this residence?

The record shows that an officer from the DOC investigated three other addresses submitted by petitioner, before the Duvall address. These other addresses were in areas that were not conducive to petitioner, i.e., there were prostitutes and drug activity in the areas.

If the intent of the DOC was to approve a submitted address from petitioner, then why did the officer not follow up on the Duvall address, which is a private residence, most likely not in a drug area, nor with prostitution activity either?

Respondent states in the response brief that "In April of 2006, Mr. Mattson submitted an address of the Mack House in Arlington. ... It does not appear from the available record that the DOC has yet determined whether this address was disapproved. It is likely this address will be denied based on the DOC's recent amendments to the DOC policy 350.200."

First, to address the approval/non-approval of the Mack House address. Petitioner had been informed, through his Mother, in a letter dated June 7, 2006, that he had been approved by the Mack House, and that Mrs. Mack needed to know when petitioner was being released, so that she could insure a bed space. This information was included in petitioner's Memorandum In Support of Petition, of his Personal Restraint Petition.

It appears that the DOC officer takes between 30-60 days to either approve or deny an address, from reviewing the recent investigations of petitioner's submitted addresses.

Yet, respondent wishes the court to believe that there has been no determination of approval/non-approval of the Mack House address, after six months?

Petitioner finds this fact a bit hard to accept, based on the investigating officer(s) past performance.

Second, in response to respondent's statement of the likeliness of the Mack House address being denied, based on the DOC's recent amendments to DOC policy 350.200, respondent states: "The Department's investigation and ultimate rejection of the addresses proposed by Mr. Mattson is consistent with Washington case and statutory law." Respondent's brief at page 11, Exhibit A.

Yet, respondent offers no legal authority whatsoever in support of this argument. See State v. Hoffman, 116 Wn.2d 51, 71, 804 P.2d (1991) ("Arguments not supported be relevant citation of authority need not be considered by this court.")(citations omitted).

Finally, after respondent's dissertation in quoting from Greenholtz, Hufford, Board of Regents, Morrissey, and Wolf, respondent states "... the DOC has provided all procedural due process protections owed to Mr. Mattson." Respondent's brief at page 17, Exhibit A.

Plaintiff is not arguing this point, and in fact agrees with respondent, on the fact that DOC has provided the procedural due process protections due to petitioner.

Petitioner's claim is that offering due process protections and following through with these protections is an entirely different issue. It is crystal clear from the statements made by respondent referenced on pages 1-2, that the DOC has no intention on approving any address that petitioner submits.

The reasoning is that petitioner may be considered for civil commitment, and that he meets sexually violent predator criteria.

But, as stated in Dutcher, for two-thirds of those referred by ESRC, no civil commitment proceedings are even initiated. Those are pretty great odds. Plus, the DOC has in place, strict guidelines for approving addresses, under applications such as this one.

Petitioner believes he has demonstrated an error that has clearly prejudiced him, not only in his Personal Restraint Petition, but without a doubt, by respondent's response.

CONCLUSION

Find that DOC has purposefully, just gone through the motions of reviewing submitted addresses without any intent to approve any. Further, order DOC to approve a submitted address, when it conforms to its policy. It would appear from the record that one or two of the addresses indeed fit these requirements.

OATH OF PETITIONER

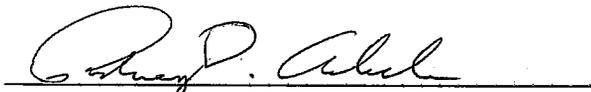
STATE OF WASHINGTON)
) ss:
COUNTY OF SNOHOMISH)

After being first duly sworn, on oath, I depose and say:
That I am the petitioner, that I have read the memorandum,
know its contents, and I believe the memorandum is true.



MARK D. MATTSON

SUBSCRIBED AND SWORN to before me this 1st day of NOVEMBER,
2006.



Notary Public in and for the State of Washington. *Snohomish County*
My Commission ends: *7/28/2010*



EXHIBIT "A"

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

In re the Personal Restraint Petition of:

MARK DAVID MATTSON

Petitioner.

RESPONSE OF THE
DEPARTMENT OF
CORRECTIONS

Respondent, the Department of Corrections (Department or DOC), responds to Mr. Mattson's personal restraint petition pursuant to RAP 16.9. Mr. Mattson is a recidivist sex offender who was convicted of rape and indecent liberties committed against children. He claims the DOC improperly denies his proposed release addresses because it is considering referring him to civil commitment as a sexually violent predator. Mr. Mattson's claim fails because he meets sexually violent predator criteria. The DOC investigated every address he submitted but found it inadequate because of the location and/or surrounding environment of the addresses and the dangerousness Mr. Mattson poses to the community.

I. BASIS OF CUSTODY

Mr. Mattson is in the Department's custody pursuant to a King County conviction for indecent liberties by forcible compulsion. Exhibit 1, Declaration of Lynda K. Jones, Attachment A, Judgment and Sentence, State v. Mattson, King County Superior Court Cause No. 98-1-09413-0

SEA. The court sentenced him to 120 months confinement. Id. at 4. He is past his earned early release date of July 23, 2005. Exhibit 2, Declaration of Karen Thompson, Attachment A, Offender Based Tracking Database (OBTS) Legal Face Sheet, at 1. His sentence expires in November of 2008. Id.

II. STATEMENT OF THE CASE

Mr. Mattson was initially sentenced to life without parole for this crime. In 2003, his sentence was overturned and he was re-sentenced to 120 months of confinement. Exhibit 2, Attachment B, Offender Chrono Report, p. 6, entry dated 7/15/2003; Exhibit 1, Attachment A. He has submitted several proposed release addresses for DOC consideration, but it denied all of them.

III. STANDARD OF REVIEW

In order to obtain collateral relief, a petitioner has a burden of proving an alleged error caused him actual and substantial prejudice. In re Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990); In re Rice, 118 Wn.2d 876, 884, 828 P.2d 1086, cert. denied, 506 U.S. 958 (1992). Furthermore, this is a “threshold” burden if the inmate has had a previous or alternative avenue for obtaining state judicial review of the challenged decision. In re Cashaw, 123 Wn.2d 138, 148-49 (1994).

Allegations unsupported by citation to authority, facts, or persuasive reasoning cannot sustain this burden of proof. Cook, 114 Wn.2d at 813-14; In re Gronquist, 138 Wn.2d 388, 396, 978 P.2d 1083 (1999). A petitioner must present evidence that is more than speculation, conjecture, or inadmissible hearsay. Gronquist, 138 Wn.2d at 396 (citing Rice, 118 Wn.2d at 886); see also In re Williams, 111 Wn.2d 353, 365, 759 P.2d 436 (1988).

After establishing the appropriateness of collateral review, a petitioner still has the ultimate burden of proof. The petitioner must show the existence of an error, and must show by a preponderance of the evidence that he or she was prejudiced by the asserted error. Cook, 114 Wn.2d at 814. If the petitioner fails to meet this burden, he is not entitled to relief.

IV. ISSUE PRESENTED

Did Department's investigation and denial of Mr. Mattson's proposed addresses amount to an error that actually and substantially prejudiced him?

V. ARGUMENT

A. **DOC INVESTIGATED AND DENIED MATTSON'S PROPOSED ADDRESSES BASED ON THE RISK HE POSES TO COMMUNITY AND HIS CRIME HISTORY.**

Mr. Mattson cannot show the Department's investigation and subsequent denial of his release addresses amounted to an error that

actually and substantially prejudiced him. The Department investigated every address Mr. Mattson proposed, but denied all of them because of their location, criminal environment and the risk to community Mr. Mattson poses as a sex offender meeting sexual violent predator criteria. The Department protects the community safety, as RCW 72.09.340 mandates, by rejecting Mr. Mattson's release addresses. No community release plan will be safe enough for an offender like Mr. Mattson. He is a dangerous sexual recidivist who, by his own admission, committed dozens of charged and uncharged sexual crimes against vulnerable children who were strangers to him. In 2003 and 2005 forensic psychologist found Mr. Mattson to be meeting sexually violent predator criteria. No community release address, absent the one with the 24/7 prison-like monitoring and lock-down would be safe enough to protect the community from Mr. Mattson. There will always be too great a risk, with any other less-restrictive placement, that Mr. Mattson would escape and rape or sexually assault yet another child.

Mr. Mattson is a recidivist sex offender. In 1985 he was convicted of raping a six-year old girl. Exhibit 1, Attachment C, Draft File Review for EPRSC, dated 11/05/2003. He was released in 1988. Exhibit 2, Attachment A, at 2 (Movement Date and Type column). In 1998 he was

convicted for an attempted rape of a 15-year old girl. Exhibit 1, Attachment C. This is the sentence he is serving now.

Mr. Mattson apparently lacks empathy to the victim of his most recent sex crime. According to the chronological records compiled by DOC staff,

Although he indicated feeling bad for previous victims, he didn't about his most recent one. He referred to her as a 'little bitch' who lied on the stand.

Exhibit 2, Attachment B, Chrono Report at 3, entry dated 6/27/2000 (emphasis added).

In 2003, the Department's End of Sentence Review Committee reviewed his sentence and designated him a level 3 (highest risk) sex offender with RMA (highest risk) classification because of his crimes against vulnerable victims who were also strangers. Id. at 6, entry dated 11/6/2003.

In 2003, DOC referred Mr. Mattson for forensic evaluation to determine whether he met sexually violent predator ("SVP") classification criteria to be referred to civil commitment. Id. at 7, entry dated 11/10/2003. Mr. Mattson refused to participate in the evaluation. Id. at 7, entry dated 11/14/03. Forensic evaluator Dr. Judd concluded Mr. Mattson met SVP criteria. Id. at 8, entry dated 11/17/2003. Exhibit 3, Declaration of Alex Kostin, Attachment A, Civil Commitment Clinical Evaluation,

dated 11/17/2003. The report concluded Mr. Mattson was convicted of a crime of sexual violence, that in addition to the two convictions he self-reported he sexually abused 50 to 60 additional victims (girls from 3 to 10); he had a history of arrests for sexual and non-sexual crimes; and he had been unsuccessfully treated twice for sexual deviancy and substance abuse. Id. at 4. Report also concluded he suffered from mental abnormality as defined in RCW 71.09.020, i.e. he met sexually violent predator criteria. Id. at 5. It also stated that, as result of this abnormality, Mr. Mattson was likely to engage in predatory acts of sexual violence if not confined to a secure facility. Id. at 8.

In 2005, Dr. Judd composed an updated forensic psychological evaluation re-affirming his opinion Mr. Mattson met SVP criteria. Id. at 11, entry dated 8/9/2005, see also, Exhibit 3, Attachment B, Civil Commitment Clinical Evaluation, dated 8/9/2005. This was a much more detailed report based on Dr. Judd's review of more than 2000 pages of discovery and Dr. Judd's conducting clinical interview with Mr. Mattson. Id. at 102. During the interview, Mr. Mattson provided chilling details about his crimes. He explained that he sexually offended 38 "young, slim, vulnerable looking females." Id. at 5. The reason he chose this age group was because it was an "opportunity to get sexual satisfaction with an age group that was less likely to know the difference between right and

wrong.” Id. He typically was hunting down “single children in residential areas.” Id. Once he had a child, he would masturbate in front of her, ejaculate, force the child to fondle him, or would force the child to fellate him. Id. He victimized strangers to minimize the probability of being caught. Id. He attacked six to seven children after being released from serving his 1985 sentence. Id. at 6. He also has a long history of exhibitionism, voyeurism, making obscene phone calls, soliciting prostitutes and occasionally forcing them to perform unwanted sexual acts. Id. at 6. He also had a long history of abusing drugs and alcohol. Id. at 7. The treatment he received was unsuccessful. Id. at 7-8. Dr. Judd concluded Mr. Mattson met sexually violent predator criteria as described in RCW 71.09.020, and that he had a history of pedophilic arousal and a high probability of recidivism. Id. at 19.

In 2005, Mr. Mattson submitted his first proposed address, Franklin Apartments in Seattle. Exhibit 2, Attachment B, at 9, entry dates 3/22/2005. DOC investigated and denied it because the address put him at the risk to reoffend, as it was a high drug and prostitution area. Id. entry dated 5/126/2005.

In June of 2005, Mr. Mattson submitted an address of Georgia Inn in Seattle. Id. at 9. The DOC investigated and denied the address because investigating officer found that the residence was in the middle of a “a

very well known prostitution area.” Approving that residence would have put Mr. Mattson into a high risk situation. Id. at 10, entry dated 7/27/2005.

In August of 2005, Mr. Mattson submitted an address of Boylston Hotel in Seattle. Id. at 11, entry dated 8/2/2005. The investigating officer observed drug buys and prostitution activity in the area around the hotel. Id. Based on these observations and Mr. Mattson’s prior history with prostitution, Department denied the address. Id. at 11, entry dated 8/25/2005.

In September of 2005, Mr. Mattson submitted an address for private residence in Duvall, Washington. Id. at 12, entry dated 9/29/2005. The investigating officer discovered the wife of the sponsor was very angry that their address was submitted because her husband did not clear it with her. Based on that, the officer denied placement. Id. at 12.

In April of 2006, Mr. Mattson submitted an address of the Mack House in Arlington. Id. at 13, entry dated 4/19/2006. It does not appear from the available record that the DOC has yet determined whether this address was disapproved. It is likely this address will be denied based on the DOC’s recent amendments to the DOC Policy 350.200.

The DOC has a policy that outlines a referral process for offenders sentenced to community placement. Exhibit 4, DOC Policy Directive

350.200. Pursuant to the policy, it is the offender who has primary responsibility to identify an appropriate residence for his community custody plan. The DOC's role is to provide information and resources to facilitate the offender's timely identification of appropriate resources in the community. Specifically, the policy provides that six months prior to an offender's early release date a facility Community Corrections Counselor (facility CCO) assesses the resources available to help the offender transition to the community. Id. at Section I.C. At this time, the CCO must ask the offender a series of questions, including whether the offender has a release address. Id. at attachment labeled "Transition Process Offender Discussion Guide."

Once the offender has selected a residence, the counselor "identifies" this residence through the referral process by completing the "Community Release Plan Packet" (CRPP). Id. at Section VII. The CCO works with an offender to develop the most appropriate release plan, taking into consideration the offender's past compliance with supervision requirements, the offender's risk management level, and all notes that are on file regarding the offender's behavior while in prison. Id. at Section VI.

The CCO documents individuals, activities, programs, services, and needed resources that will mitigate the offender's risk to do harm. Id.

at Section VI.G. The CCO also documents the proposed release address, any verified employment, and means of transportation to the release residence. Id. If the offender is a sex offender, dangerously mentally ill, or has been assessed at risk management level A, the facility CCO also will give great weight to the concerns of victim safety. Id. at Section VII.1.a, at 9. Mr. Mattson is both a sex offender and he has RM-A risk management classification.

A field CCO is then assigned to investigate the actual conditions at the address that the offender has proposed. Id. at Section VII.3. The CCO must visit the proposed residence and assesses the degree of risk for victims and potential victims of similar age or circumstances. The field CCO must inform the proposed sponsor (usually the person living at the proposed address) of the offender's criminal history and conditions of release. Id. at Section VII.3.d

In addition to identifying the residence, the inmate must identify the sponsor's relationship to the offender and the sponsor's date of birth. Id. at attachment labeled "Offender Accountability Plan with Transition Plan Procedure." This further illustrates the central role that an offender must play in relying on his own resources in the community in order to assist the counselor in identifying an appropriate residence.

In June of 2006, the Department issued new directives related, inter alia, to the investigation of release plans of sex offenders identified as sexually violent predators (SVPs). Exhibit 5, June 8, 2006, Sex Offender Directive. These directives replace a portion of DOC policy 350.200. The directives provide that when making a decision whether to approve the plan of an offender identified as sexually violent predator the DOC makes a decision based on its assessment of public safety risk. Id. at 1. DOC would not deem sufficiently safe any proposed community release plan of an inmate evaluated by an expert and determined to meet civil commitment criteria as a sexual predator. Id. at 2.

The Department's investigation and ultimate rejection of the addresses proposed by Mr. Mattson is consistent with the Washington case and statutory law.

Mr. Mattson cannot have an expectation of being released prior to the expiration of his sentence. There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence. Greenholtz v. Nebraska Penal and Correctional Complex, 442 U.S. 1, 7 (1979). "Decisions of the Executive Branch, however serious their impact, do not automatically invoke due process protection; there simply is no constitutional guarantee that all executive decisionmaking must comply with standards that assure error-free

determinations.” Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 7, 99 S. Ct. 2100, 60 L. Ed. 2d 668 (1979) (holding that no hearing is necessary when parole board interviews offender and denies parole after subjective determination of offender’s readiness for release).

Procedural due process claims require (1) a deprivation of a constitutionally protected liberty or property interest, and (2) a denial of adequate procedural protections. Hufford v. McEnaney, 249 F.3d 1142, 1150 (9th Cir. 2001). The Fourteenth Amendment's Due Process Clause extends only to those governmental actions that deprive one of a life, liberty, or property interest of constitutional magnitude. Board of Regents v. Roth, 408 U.S. 564, 569- 70, 92 S. Ct. 2701, 33 L. Ed.2d 548 (1972). Due process “is flexible and calls for such procedural protections as the particular situation demands.” Morrissey v. Brewer, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972) (citations omitted). “The function of legal process, as that concept is embodied in the Constitution, and in the realm of fact-finding, is to minimize the risk of erroneous decisions. Because of the broad spectrum of concerns to which the term must apply, flexibility is necessary to gear the process to the particular need; the quantum and quality of the process due in a particular situation depend

upon the need to serve the purpose of minimizing the risk of error.”
Greenholtz, 442 U.S. at 13.

In Greenholtz, the United States Supreme Court held that there is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence. Greenholtz, 442 U.S. at 7. The offender in Greenholtz had been denied parole after the parole board interviewed him without a hearing. The offender claimed that the parole-determination provision in his case was similar to the Nebraska statute involved in Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974), that granted good-time credits to inmates. Greenholtz, 442 U.S. at 12. In Wolff, the Supreme Court held that due process protected the inmates from the arbitrary loss of the statutory right to credits because they were provided subject only to good behavior. The Court held that the statute created a liberty interest protected by due process guarantees.

In rejecting offender Greenholtz’s argument that he was entitled to a hearing like that required by the Supreme Court in Wolff, the Supreme Court began by analyzing the extent of the constitutional protections due to offenders in parole determinations. The Court found that constitutional protections were due: “We can accept respondents’ view that the expectancy of release provided in this statute is entitled to some measure

of constitutional protection.” Id., 442 U.S. at 12. However, the Court explained, “[m]erely because a statutory expectation exists cannot mean that in addition to the full panoply of due process required to convict and confine there must also be repeated, adversary hearings in order to continue the confinement.” Id., 442 U.S. at 14.

The Court then assessed whether it was wise policy to place burdensome procedural requirements on states with parole systems. The Court contrasted the fact-based determination of the disciplinary hearing in Wolff, on one hand, with the subjective prediction of future behavior in Greenholtz’s parole eligibility interview, on the other hand. Greenholtz, 442 U.S. at 13. “Like most parole statutes, it vests very broad discretion in the Board. No ideal, error-free way to make parole-release decisions has been developed; the whole question has been and will continue to be the subject of experimentation involving analysis of psychological factors combined with fact evaluation guided by the practical experience of the actual parole decision makers in predicting future behavior.” Id. The Court held that states need to have freedom to experiment with various procedures for parole determinations. Id. “If parole determinations are encumbered by procedures that states regard as burdensome and unwarranted, they may abandon or curtail parole.” Id.

Finally, the Court determined that the procedures already in place in that case provided enough protections to reduce the likelihood of errors, and a full hearing was not necessary. Id., 442 U.S. at 14-15. The parole board would interview the offender and examine the inmate's file. Id. The review would include "consideration of what the entire record shows up to the time of the sentence, including the gravity of the offense in the particular case. The behavior record of an inmate during confinement is critical in the sense that it reflects the degree to which the inmate is prepared to adjust to parole release." Id., 442 U.S. at 15. The parole board also reviewed the type of residence, neighborhood or community in which offender planned to live; the adequacy of the offender's parole plan; and the offender's family status and whether he or she had relatives who displayed an interest in him or her or whether he or she had other close and constructive associations in community. Id., 442 U.S. at 17.

At the parole board's initial interview, an inmate was permitted to "appear before the Board and present letters and statements on his own behalf." Id., 442 U.S. at 15. The Court found that the inmate was thereby "provided with an effective opportunity, first, to insure that the records before the Board are in fact the records relating to his case; and, second, to present any special considerations demonstrating why he is an appropriate candidate for parole." Id. "Since the decision is one that must be made

largely on the basis of the inmate's files, this procedure adequately safeguards against serious risks of error and thus satisfies due process.”

Id.

If the parole board denied parole, it communicated “the reason for its denial as a guide to the inmate for his future behavior.” Id. However, the parole board did not necessarily specify the particular “evidence” in the inmate's file or at his interview “on which it rested the discretionary determination that an inmate was not ready for conditional release.” Id. The Court found this acceptable: “To require the parole authority to provide a summary of the evidence would tend to convert the process into an adversary proceeding and to equate the Board's parole-release determination with a guilt determination.” The statute in that case contemplated, “and experience has shown, that the parole-release decision is, as we noted earlier, essentially an experienced prediction based on a host of variables.” Id., 442 U.S. at 15-16.

Ultimately, the Court held that the parole denial interview procedures in Greenholtz were all that due process requires: “The Nebraska procedure affords an opportunity to be heard, and when parole is denied it informs the inmate in what respects he falls short of qualifying for parole; this affords the process that is due under these circumstances. The Constitution does not require more.” Id., 442 U.S. at 16. “There is no

constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence. . . . [T]he conviction, with all its procedural safeguards, has extinguished that liberty right: “[G]iven a valid conviction, the criminal defendant has been constitutionally deprived of his liberty.” Id., 442 U.S. at 7 (citations omitted).

Here, as in Greenholtz, the DOC has provided all procedural due process protections owed to Mr. Mattson. The general rule in the State of Washington is that no offender serving a sentence imposed pursuant to the Sentencing Reform Act shall be entitled to release from prison before expiration of his or her maximum sentence. Former RCW 9.94A.150 (1998)¹ (“No person . . . shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows . . .”). The main exception to the rule against early release is found in former RCW 9.94A.150(1) (1998),² under which the term of the offender’s sentence “may be reduced by earned early release time” in accordance with procedures that are developed and promulgated by the correctional agency having jurisdiction over the offender.

¹ Currently RCW 9.94A.728

² RCW 9.94A.728(1).

Unlike other SRA offenders, offenders subject to community placement are excluded from the program allowing early release based on earned early release credits. The community placement act was unequivocal in expressing this exclusion. Laws of 1988, chapter 153, § 3, p. 617 (amending former RCW 9.94A.150(1)). In effect, a community placement offender does not actually receive earned early release credits and has no right to early release based upon good conduct or performance in prison. Id.; RCW 9.94A.728(2).

Instead of earned early release, the Legislature specified that community placement offenders may only become “eligible” for a transfer to community custody status. Id. This transfer under the second subsection of the statute was to be “in lieu of” early release under the first subsection of statute. Hence, community placement offenders are expressly exempt from the first subsection of the statute. Laws of 1988, chapter 153, § 3, p. 617 (amending former RCW 9.94A.150(1)).

The concept of “community placement” was created in 1988 when the Legislature enacted Substitute House Bill 1424. Laws of 1988, chapter 153, §§ 1-3. The Legislature created this new form of supervision for certain high risk offenders, including persons convicted of violent offenses and sex offenses. Laws of 1988, chapter 153, § 2, p. 614

(amending former RCW 9.94A.120(8)). Community placement was defined as that:

period during which the offender is subject to the conditions of community custody and/or post release supervision, which begins either upon completion of the term of confinement (post release supervision) or at such time as the offender is transferred to community custody in lieu of earned early release. Community placement may consist of entirely community custody, entirely post release supervision, or a combination of the two.

Former RCW 9.94A.030(5)³ (1999) (emphasis added). Hence, the community placement period need not consist of any early release time whatsoever. Such time is not an entitlement.

Thus, while the DOC is prohibited from releasing Mr. Mattson based upon earned early release credits, it does have the discretionary authority to consider him for a transfer to community custody under the community placement program that the DOC was authorized to develop by former RCW 9.94A.150(2) (1998).⁴ See also former RCW 9.94A.120(9)(a)(ii) (1998).⁵ As a part of this program, the offender's "residence location and living arrangements are subject to the prior approval of the department of corrections while in community placement or community custody." Exhibit 1, at 5. The DOC's program also

³ Currently RCW 9.94A.030(7).

⁴ Currently RCW 9.94A.728(2).

⁵ Currently RCW 9.94A.705.

provides for advance notification of release to law enforcement officials, victims and witnesses. Former RCW 9.94A.155.⁶

Protection of the public is the Department's paramount goal in evaluating the proposed release addresses of Mr. Mattson. RCW 72.09.340 requires DOC to make all decisions regarding release plans based on its assessment of public safety risk:

In making all discretionary decisions regarding release plans for and supervision of sex offenders, the department shall set priorities and make decisions based on an assessment of public safety risks.

(Emphasis added).

Dr. Judd, psychologist and forensic consultant evaluated Mr. Mattson twice. See above. Both times Dr. Judd concluded Mr. Mattson met sexually violent predator criteria.

Mr. Mattson currently has a highest risk classification (RMA) and Level III offender category because he was convicted of committing twice, sexual crimes against vulnerable children who were strangers to him. Exhibit 2, Attachment B, at 6, entry dated 11/6/03.

Because Mr. Mattson meets the sexually violent predator criteria, DOC considers referring him to civil commitment. Exhibit 2, Attachment B, at 8. The prosecuting attorney's office would not decide whether to

⁶ Currently RCW 9.94A.612.

initiate civil commitment proceedings until shortly before his sentence expires in 2008.

Department complies with this Court's decisions of In re Dutcher, 114 Wash. App. 755 (2002) and In re Liptrap, 127 Wash. App. 463 (2005). In Dutcher, this Court held the Department could not refuse to accept for investigation community release plans submitted by a sex offender who was also considered for civil commitment referral as a sexual predator. Dutcher, 114 Wash. App. at 760, 765. The Department complies with Dutcher, because it allows Mr. Mattson to submit release plans, and it investigates every plan that Mr. Mattson submits. See, e.g. Exhibit 2, Attachment B, at 9, entry dated 3/22/2005 (Department specifically noted that Mr. Mattson "can submit an address due to the Dutcher decision").

The Department also complies with In re Liptrap. In Liptrap, this Court determined the Department erred when it instructed its staff not to approve or deny the proposed released plans of sex offenders who have not undergone sexually violent predator forensic psychological evaluation. Liptrap, 127 Wash. App. at 468. This is not an issue in this case, because Mr. Mattson was first determined to meet sexually violent predator criteria for civil commitment in November of 2003. Exhibit 2, Attachment B, at

8, entry dated 11/17/2003. He started submitting his release addresses in 2005. Id. at 9, entry dated 3/22/2005.

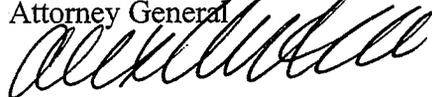
Mr. Mattson is not an ordinary sex offender. He is a repeat sex offender who committed sex crimes against children who were strangers to him. The forensic psychologist diagnosed him as meeting sexually violent predator criteria. The DOC appropriately denied, after investigation, his release addresses, because it is guided by its most important goal, protection of community. No release address Mr. Mattson submits will be sufficiently safe to satisfy the Department's community safety concerns. Therefore, the Department properly denied the addresses.

V. CONCLUSION

Based on the foregoing, the Respondent respectfully asks that the Court deny Mr. Mattson's petition and dismiss this case with prejudice.

RESPECTFULLY SUBMITTED this 23 day of October, 2006.

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