

FILED  
COURT OF APPEALS  
DIVISION II

NO. 39212-7-II

WASHINGTON STATE COURT OF APPEALS, DIVISION II

09 JUNE 10 PM 1:53  
Personal Restraint Petition of  
STATE OF WASHINGTON

BY  
ERIC SHERIDAN FLINT

CERTIFICATE OF SERVICE

I certify that I mailed  
copies of Pets Reply  
to Donna Malten  
AGS Office  
6/7/09  
Signed

PETITIONER'S RESPONSE BRIEF

83815-1

DOC has argued in their response that *"Because the DOC is statitorily mandated under RCW 9.94A.737(2) to return an offender to prison to serve the remainder of his sentence where the offender is found guilty at a third community custody hearing, Mr. Flint's claim is without merit."* If the court will look at ESSB 5288, you will see that RCW 9.94A.737 has, in fact, been expired *"Sections 1, 3, and 13 expire August 1, 2009."* ESSB 5288, sec. 19, pg. 47. Then, if you'll continue on to Section 20, you'll see that the RCW has, in fact, been expired retroactively, *"This act applies retroactively and perspectivevly regardless of whether the offender is currently on community custody or probation with the department, currently incarcerated with a term of community custody with the department, or sentenced after the effective date of this section."* ESSB 5288, sec. 20, pg. 47.

This clear legislative intent of application and expiration in ESSB 5288 cancels out DOC's argument that *"Mr Flint alleges that the DOC does not have the authority to revoke his earned early release time and anction him to total confinement for the remaining portion of his sentence."* In re PRP Eric Flint, pg. 6. Now that the Washington State Legislature has clearly RETOACTIVELY EXPIRED the RCW that I am confined pursuant to, it does indeed show that the DOC does not have the authority to continue the revocation of my earned early release any time after August 1, 2009, the date that RCW 9.94A.737 expires<sup>1</sup> retroactively. *"A void judgement must be vacated whenever the lack of jurisdiction comes to light."* Mitchell v. Kitsap County, 59 Wash. App. 177, 180-181, 797 P.2d 516 (1990).

In my opinion, with RCW 9.94A.737 expiring retroactively as of August 1, 2009, the sanction that I am being confined pursuant to (RCW 9.94A.737(2)) loses all jurisdiction over me and removes

<sup>1</sup> Expire: A coming to an end; esp. a formal termination on a closing date.

DOC's authority to hold me since they are now holding me in confinement pursuant to an RCW and, in turn, a sanction that doesn't exist any more.

In DOC's response, they have stated that pursuant to *In re Lopez*, 126 Wn. App. 891, 894-95, 110 P.3d 764, (2005) "...the inmate is entitled to relief if he can show that a decision 'was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington.'" RAP 16.4(c)(2). And that "*A showing that a governmental agency has failed to comply with its own rules or regulations is sufficient.*" *In re Cashaw*, 123 Wn.2d 138, 147-48, 866 P.2d 8 (1994). With DOC's argument being only that "*The DOC has authority under RCW 9.94A.737(2) to sanction Mr. Flint to return to prison to serve the remaining portion of his sentence.*" *In re Flint*, pg. 6, and now the unquestionable retroactive expiration of the RCW that DOC is using as their argument having taken effect on August 1, 2009, I am of the opinion that DOC does NOT have the authority under RCW 9.94A.737(2) (effective until August 1, 2009) to continue to rvoke my earned time and keep me in confinement.

I believe that I have shown that my current confinement is being "*imposed...in violation of the...laws of the State of Washington.*" RAP 16.4(c)(2). And I also believe that I have followed the ruling in *Cashaw* by introducing the fact that RCW 9.94A.737 has been expired retroactively pursuant to ESSB 5288, sections 19-20 and therefore "*show[ing] that a governmental agency has failed to comply with its own rules or regulations*" *Cashaw*, 123 Wn2d at 147-48. In *Cashaw* and as noted by DOC in their response, that is "sufficiant".

I am still requesting to be released from confinement.

