

No. 87717-3

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Carl Williams,
Petitioner,

v.

State of Washington,
Respondent.

From the Superior Court for Clark County
Clark County Superior Court Cause No. 07-1-00326-6

Reply to Response to In re Personal Restraint of Carl Williams

Petitioner:

Carl Williams, pro se

312782 4-B65
Stafford Creek Corrections
191 Constantine Way
Aberdeen, WA 98520

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I. IDENTITY OF PETITIONER

Carl Williams, pro se, is the petitioner on this matter.

II. ISSUES PRESENTED

- A. Whether this petition is untimely.
- B. Whether this petition is a successive collateral attack.
- C. Whether this petition is frivolous.

III. ARGUMENT AND AUTHORITIES

1. This court should consider this petition on its merits because the petitioner has shown a fundamental defect in the Clark County good-time policy, and these allegations appear to be of first impression for this court

a. This petition should not be considered time barred because it is an attack, not on the judgment and sentence, but on the county jail's good-time certificate. If an inmate has no other means of obtaining judicial review he may file a Personal Restraint Petition. See *Dutcher*, 114 Wn.App. at 758. This petition does not require the exceptions as outlined in RCW 10.73.100 because it is not an attack on the judgment and sentence. Assuming, arguendo, that this court finds this petition untimely, these allegations are of constitutional magnitude to justify the need for review. Furthermore, the States comment indicating that these allegations are merely a "technical misstatement that had no actual effect on the rights of the petitioner"; Response to Personal Restraint Petition

(Response) at 6, is misplaced. This reflects the States view that the possibility of 23 days of additional incarceration is not a liberty interest to be had by an individual. This is exactly what is constitutionally protected. See the instant PRP for argument.

b. “Although lack of good cause is a valid basis for the Supreme Court to dismiss a successive Personal Restraint Petition where the same relief is sought under RAP 16.4 (d), where the petitioner raises a new issue, the only procedural bar at the Supreme Court level is abuse of the writ.” *In re Personal Restraint of Perkins*, 143 Wn.2d 261 n.7, 19 P.3d 1027 (2001) (quoting *In re Personal Restraint of Stoudmire*, 141 Wn.2d 342, 5 P.3d 1240 (2000)). “However, (a)buse of the writ only occurs if the petitioner was represented by counsel throughout post-conviction proceedings.” *Perkins* at n.5 (quoting *In re Personal Restraint of Jeffries*, 114 Wn.2d 485, 492, 789 P.2d 731 (1990)). This court “recognized that interests in finality and economy are outweighed by constitutional error which actually prejudices the petitioner.” *In re Personal Restraint of John Haverty*, 101 Wash.2d 498, 681 P.2d 263 (1984) (quoting *In re Hews*, 99 Wash.2d 80, 660 P.2d 263 (1983)).

The petitioner is not seeking “similar relief” as the State points out. Response at 8. The State concedes that the petitioner has raised a new issue. Response at 9. The petitioner was not represented by counsel on the previous PRP and is pro se on the instant PRP. The petitioner has overcome the burden of proof that this court should review this PRP.

c. This PRP is not frivolous. The petitioner has shown that he will be incarcerated for an additional 23 days simply because he was convicted in Clark County. Had he been convicted in Snohomish, Pierce, or Ferry Counties he

would have received a one-third credit for good-time. This is a clear violation of the Fourteenth Amendment equal protection clause.

The State does not dispute that equal protection requires that persons similarly situated receive like treatment. Response at 10. The 9th Amendment: the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The State has mistakenly relied on *Fogle*, 128 Wn.2d at 59, (Response at 11). That case is not squarely presented with these current issues. *Fogle* was challenging the difference between the Department of Corrections and the county jails. *Fogle* should not control this case as this court pointed out in its response to the petitioners previous PRP (No. 83685-7).

The State is accurate by stating that the county jails should implement a good-time policy to control prisoners. Response at 14. As the R.C.W. is written, it appears that the Legislatures intent is to allow an inmate to receive the maximum good-time credits allowed in the R.C.W. unless he or she does not follow the behavioral policies previously promulgated by the controlling agency. The Legislature did recognize that an inmate could lose some or all of his or her good-time credits so therefore could not set a minimum allowance. However, the county policy should not be allowed to reduce the amount of good-time afforded by former RCW 9.94A.728 without due process.

Furthermore, the Clark County good-time policy should be considered void as it is in direct violation of former RCW 9.94A.728 by allowing certain inmates to receive a 15% credit when the RCW clearly indicates they are only to receive 10% maximum.

The State is mistaken by concluding that the Pierce County and Clark County policies are the same. Response at 15, footnote 4. As far as good-time reduction, the Pierce County policy mirrors the RCW while the Clark County's policy does not.

IV. Conclusion

For reasons shown above and arguments presented in the current Personal Restraint Petition, the petitioner has shown actual prejudice, a complete miscarriage of justice and this court should review this petition de novo.

Respectfully submitted this 30 of October, 20 12



Carl Williams

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

CARL WILLIAMS,

Petitioner.

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) Declaration of Service
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I declare that on 30 day of October, 2012, a true copy of Reply to Response to In re Personal Restraint of Carl Williams was sent to the following persons via first class mail, deposited in the mails of Stafford Creek Corrections Center, postage prepaid, in a envelope addressed as follows:

Washington State Supreme Court Temple of Justice PO Box 40929 Olympia, WA 98504	Prosecuting Attorney Office PO Box 5000 Vancouver, WA 98666
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I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 30 day of October, 2012



Carl Williams
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