

FILED
 Apr 28, 2016
 Court of Appeals
 Division I
 State of Washington

NO. 74711-8-1

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

In re the Personal Restraint Petition of:

DAVID JOSEPH PEDERSON,

Petitioner.

RESPONSE OF THE
 DEPARTMENT OF
 CORRECTIONS

COMES NOW the Respondent, Washington State Department of Corrections (DOC), by and through its attorneys, ROBERT W. FERGUSON, Attorney General, and CANDIE DIBBLE, Assistant Attorney General, and respectfully submits the following response to the Personal Restraint Petition (Petition) of David Pedersen.

I. STATEMENT OF THE CASE

Petitioner David Pedersen, DOC #356650, is currently in the custody of the DOC, incarcerated at the Washington State Penitentiary in Walla Walla, Washington. Pederson asserts his constitutional rights are being violated because the prison mailroom is confiscating and censoring his incoming mail under the First Amendment and Sixth Amendment. Petition at 2-26. Petition, Memorandum of Law at 35-48. Pederson also makes allegations of First Amendment and Fourteenth Amendment constitutional violations related to the denial of exercise and amount of “basic necessities” he is provided limiting his access to writing paper and pens. Petition at 26-31. Petition, Memorandum of Law at 28-34. Through

this Petition, among other things, Hawkins asks the Court to dictate how the DOC reviews incoming mail, provide all inmates with outdoor exercise, declare the \$10.00 indigent rate as “unlawful,” and order the DOC to implement a “meaningful grievance program.” Petition at 33-34.

II. ISSUES PRESENTED

Whether the Petition should be dismissed because the relief Pederson is seeking is best addressed in a civil rights action pursuant to 42 U.S.C. § 1983?

III. ARGUMENT

A. Standard of Review

The burden of proof in demonstrating the existence of a restraint under RAP 16.4 lies with the Petitioner; it is not incumbent on the DOC to disprove a petitioner’s conclusory allegations. Under RAP 16.4, a prisoner is under “restraint” if the petitioner is confined, and the “restraint” is unlawful only if the conditions or manner of the “restraint” violated the Constitution or the laws of Washington, or other grounds exist to challenge the legality of the restraint. RAP 16.4(b); RAP 16.4(c)(6)-(7).

B. Pedersen’s Claims Are Not Appropriately Raised Through a Personal Restraint Petition

Under RAP 16.4, relief by way of a personal restraint petition will be granted only if other remedies which may be available are inadequate. RAP 16.4(d) states:

The appellate court will only grant relief by a personal restraint petition if other remedies which may be available to petitioner are inadequate under the circumstances...

Personal restraint petitions are generally limited to a restraint that is unlawful because a civil or criminal decision was entered without jurisdiction, a conviction violated federal or state constitutional principles, material facts exist which require a new criminal or civil trial, a significant change in the law has occurred, other grounds exist for collateral attack on a civil or criminal judgment, conditions of restraint are illegal, or other grounds exist to challenge the legality of restraint. RAP 16.4(c)(1-7). Personal restraint petitions are not designed to provide a duplicative cause of action where one is already available.

Pedersen makes multiple constitutional claims alleging violation of his free speech rights and due process claims related to the censorship of his incoming mail under both the federal and state constitutions. Pedersen also makes constitutional claims related to his access to outdoor exercise and ability to receive indigent supplies. Petition at 30-31.

All issues raised by Pedersen have been decided by the courts through proper civil rights complaints. For instance, the courts have set forth the standards for inmate First Amendment and due process claims regarding the review and withholding of inmate mail. Inmates have “a First Amendment right to send and receive mail.” *Witherow v. Paff*, 52 F.3d 264, 265 (9th Cir. 1995) (per curiam). However, inmates’ mail is not

protected against prison staff inspection or perusal. *Wolff v. McDonnell*, 418 U.S. 539, 575 (1974) (“freedom from censorship is not equivalent to freedom from inspection or perusal”). “Withhold[ing] delivery of [inmate mail] must be accompanied by minimum procedural safeguards.” *Sorrels v. McKee*, 290 F.3d 965, 972 (9th Cir. 2002) (citations omitted).

Therefore, such claims are properly resolved through a 42 U.S.C. § 1983 action where procedure exists to develop the record, resolve controversies, and fully investigate the claim through the full spectrum of litigation, which is not available here through this Petition. Accordingly, Pedersen’s Petition should be dismissed so that he may pursue more appropriate avenues of remedy.

IV. CONCLUSION

For all of the above reasons, DOC respectfully requests Pedersen’s Personal Restraint Petition be dismissed.

RESPECTFULLY SUBMITTED this 18th day of April, 2016.

ROBERT W. FERGUSON
Attorney General



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CERTIFICATE OF SERVICE

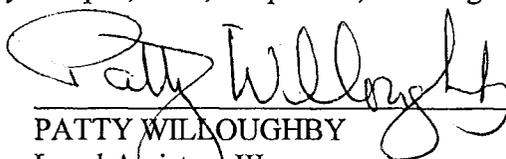
I certify that I served all parties, or their counsel of record, a true and correct copy of Response of the Department of Corrections by US Mail

Postage Prepaid to the following addresses:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 28th day of April, 2016, at Spokane, Washington.



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