

FILED
SUPREME COURT
STATE OF WASHINGTON
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No. 99383-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

WARREN MATTHEW HELZER,

Petitioner

On Appeal from Pierce County Superior Court
The Hon. Gretchen Leanderson, Presiding
The Hon. Thomas Felnagle, Presiding (ret.)

REPLY TO ANSWER TO PETITION FOR REVIEW

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A. ISSUE IN REPLY

1. Is Mr. Helzer's challenge to the increase of his sentence from a determinate 130 months in prison followed by community placement to an indeterminate life sentence under the authority of the Indeterminate Sentence Review Board ("ISRB") moot?

B. FACTS RELEVANT TO ISSUE IN REPLY

In 2010, the superior court sentenced Mr. Helzer to a determinate sentence of 130 months in prison to be followed by lifetime community placement with the Department of Corrections ("DOC"). CP 25, 69. Nearly a decade later, right before Mr. Helzer was to be released from prison, the superior court changed the sentence to a minimum term of 130 months in prison with a maximum of "up to life subject to the ISRB." CP 375. The change from a determinate sentence of 130 months to an indeterminate sentence of life with a minimum term of 130 months is the subject of the appeal and petition for review in this case.

In the *State's Answer (Answer)* to Mr. Helzer's *Petition for Review*, the State argues that the case is "moot" because Mr. Helzer has been released from prison after serving the minimum term. *Answer* at 7-8.

Mr. Helzer submits this reply, strictly “addressing only the new issues raised in the answer.” RAP 13.4(d).¹

C. ARGUMENT IN REPLY

The State argues that because Mr. Helzer has been released from the prison portion of the sentence, the appeal is moot. The State misunderstands the procedural basis for Mr. Helzer’s release and the jeopardy Mr. Helzer continues to face due to the change to his sentence structure.

Under the judgment that was originally imposed on Mr. Helzer in 2010, he had a determinate sentence of 130 months followed by community placement with DOC. CP 25, 69. If Mr. Helzer violated the conditions of community placement, under former RCW 9.94A.628, *a*

¹ RAP 13.4(d) provides in part:

A party may file a reply to an answer only if the answering party seeks review of issues not raised in the petition for review. A reply to an answer should be limited to addressing only the new issues raised in the answer. A party filing any reply to an answer must serve the reply to the answer on all other parties. A reply to an answer should be filed within 15 days after the service on the party of the answer

court could impose a maximum sentence for each violation of sixty (“60”) days in a jail.²

In contrast, under the changes to the judgment imposed in 2019, Mr. Helzer was released from prison only under the authority of the ISRB. CP 381. *See* RCW 9.95.420. Under current law, if there is a violation of community custody, *the ISRB, not a court*, would have jurisdiction over the violation, and that agency has the authority to sanction a violation by revoking Mr. Helzer’s release and returning him to prison for the rest of his life. *See* RCW 9.94A.6332(4) (“If a sex offender was sentenced pursuant to RCW 9.94A.507, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.”); RCW 9.95.435(1) (“If an offender released by the board under RCW 9.95.420, 10.95.030(3), or 9.94A.730 violates

² The dates of the offenses in this case were between 11/10/01 and 6/23/05. CP 173. Former RCW 9.94A.628, in effect during this time frame, provided in part:

If the offender violates any condition of postrelease supervision, a hearing may be conducted in the same manner as provided in RCW 9.94A.634. Jurisdiction shall be with the court of the county in which the offender was sentenced. However, the court may order a change of venue to the offender's county of residence or where the violation occurred, for the purpose of holding a violation hearing.

After the hearing, the court may order the offender to be confined for up to sixty days per violation in the county jail. . . .

Emphasis added.

any condition or requirement of community custody, the board may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (2) of this section.”).

As the State argues, a case is moot if a court can no longer grant effective relief. *Answer* at 8 (quoting *State v. Cruz*, 189 Wn.2d 588, 597, 404 P.3d 70 (2017)). This case is not moot because the Court can still grant effective relief by insuring that Mr. Helzer is not subject to lifetime jurisdiction by the ISRB that can, in a non-judicial proceeding, send him back to prison for the rest of his life if there is a violation of the terms of community custody (which include many vague and unconstitutional conditions).

Under the original judgment, Mr. Helzer was not under the authority of the ISRB and was not in danger of being returned to prison for the rest of his life. He would have a hearing before a court, not the ISRB, and his jeopardy would only be up to 60 days in jail. After the superior court changed the judgment in 2019, Mr. Helzer now faces severe jeopardy – the prospect of administrative revocation and imprisonment for

life. This increase in the sentence and the jeopardy faced by Mr. Helzer is what violates double jeopardy and due process of law under the Fifth and Fourteenth Amendments to the United States Constitution and article I, sections 3 and 9, of the Washington Constitution.

The case is not moot. This Court can reverse the decision of the superior court and Mr. Helzer will no longer be under the jurisdiction of the ISRB with the danger of being imprisoned for life. The State's arguments should be rejected.³

D. CONCLUSION

The Court should accept review and reverse.

DATED this 25th day of May 2021.

Respectfully submitted,

s/ Neil M. Fox
WSBA No. 15277
Attorney for Petitioner

³ If the State agrees that Mr. Helzer should not be under the supervision of the ISRB and is not in jeopardy of being imprisoned for life upon a violation, the State should agree to the entry of an order memorializing this position.

CERTIFICATE OF SERVICE

I, Neil Fox, certify and declare as follows:

On May 25, 2021, I served a copy of this REPLY TO ANSWER TO PETITION FOR REVIEW on counsel for the Respondent by filing this pleading through the Portal.

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

Dated this 25th day of May 2021, at Seattle, Washington.

s/ Neil M. Fox

WSBA No. 15277

Attorney for Petitioner

LAW OFFICE OF NEIL FOX PLLC

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Transmittal Information

Filed with Court: Supreme Court
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The following documents have been uploaded:

- 993831_Answer_Reply_20210525152457SC450709_6042.pdf
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