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I. IDENTITY OF PARTY

1.1 COMES NOW Kevin Shawn Robinson, Pro Se, and pursuant to RAP 10.10, respectfully submits this statement of additional grounds for review.

II. ASSIGNMENT OF ERROR

2.1 The trial court abused its discretion when it ruled that the only avenue of redress for appealing a DOC sanction was through DOC and not the court.

2.2 The trial court erred in denying the motion on the merits as the defendant had already exhausted the administrative appeal process.

2.3 The trial court erred in accepting the findings of facts and conclusion of law because the court did not have jurisdiction over the subject matter, and there was a legal basis for review in relation to the DOC sanction, as it was an illegal sanction pursuant to WAC Rule 137-30-080, governing the department of corrections to sanction an offender to serve the remainder of his prison term on the findings that the offender had been subject to three community custody violation full hearings, where in this case it was the defendant's first DOC violation full hearing.

III. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

3.1 Did the trial court abuse its discretion when it ruled that the only avenue of redress to appeal a DOC sanction is through the department of corrections? (RP pg. 1 @ lines 22-25).

3.2 Did the trial court err in failing to address the motion on the merits on account of the department of corrections administrative appeal process having been already exhausted by the defendant, and yet the court still denied

motion with instruction to go through the already exhausted appeal process?
(RP pg. 1 @ lines 22-25).

3.3 Did the trial court err in accepting the findings of facts and conclusions of law, parading the oral ruling that the court has over the subject matter, and that there was no legal basis to review the sanctions issued by the department of corrections? (CP 48).

IV. STATEMENT OF THE CASE

4.1 On May 8, 2008 the appellant plead guilty to 1) identity theft 2°, 2) Poss. stolen property 2°- cause no. 07-1-01160-6, and to 3) VUCSA delivery of meth, 4) Poss. of firearm 1°- Cause No. 08-1-00410-1.

4.2 The appellant was sentenced to a total of 90 months for both cause numbers ran concurrently.

4.3 The appellant was released on May 9, 2013 and begin to serve a 12 month sentence of community custody.

4.4 On January 12, 2014 the appellant was arrested and charged with a VUCSA possession- Cause No. 14-1-00109-5.

4.5 On February 10, 2014 the department of corrections served Mr. Robinson with a doc violation containing 10 allegations.

4.6 This was the first time Mr. Robinson had ever been served a doc violation in writing by the department.

4.7 On February 12, 2014 the department conducted Mr. Robinsons first doc violation full hearing, and subsequently found him guilty of 9 out of 10 allegations.

4.8 The hearing officer imposed a sanction of a CCP return/terminate

pursuant to WAC Rule 137-30-080, which calculated to 878 days, with 89 days credit time served, for a total of 789 days to serve in prison.

4.9 On or about February 17, 2014 Mr. Robinson appealed the doc sanction on statutory grounds as an illegal sanction.

4.10 On March 10, 2014 the department denied Mr. Robinsons appeal.

4.11 On March 17, 2014 Mr. Robinson appealed that decision to the second and final level.

4.12 On April 23, 2014 the hearings and violations administrator denied Mr. Robinsons appeal, affirming the decision of the appeals panel.

4.13 The administrative remedies at this point had been completely exhausted

4.14 On May 18, 2014 Mr. Robinson filed a motion for relief from judgment, order, or proceeding pursuant to CrR 7.8(b), and declaratory and injunctive relief pursuant to RCW 7.24.010 and RCW 7.24.080.

4.15 On July 7, 2014 Superior Court of Cowlitz County denied the motion on the sole grounds that it was a DOC matter, and that the defendant to take up the matter with the department, despite the fact that the defendant had already exhausted state remedies.

4.16 Mr. Robinson, having standing to complain, and feeling himself aggrieved, timely appeals.

V. ARGUMENT AND LAW

ABUSE OF DISCRETION

5.1 The trial court abused its discretion when it ruled that the only avenue of redress to appeal a doc sanction is through the department of corrections.

5.2 Despite the record showing the appellant had already exhausted state remedies, the courts conclusion that Mr. Robinson had to take up this matter with DOC is in error.

5.3 There are two cases similar to Mr. Robinsons in regards to taking doc sanctions to the courts. See State v. Madsen, 153 Wn. App. 471, 228, P.3d, 24 (2009); In re. Flint, 174 Wn. 2d 539, 277 P.3d 657 (2012).

5.4 In short, those two cases presented a question of law regarding an ex post facto question on whether a doc sanction statute could be applied to the offenders when their convictions were committed before the statute was in effect.

5.5 What distinguishes the appellants case from those two is that there doc violation full hearings had exceeded three or more already, as in this case, it was Mr. Robinsons first doc violation full hearing.

5.6 Mr. Robinson brought his motion to the Cowlits County Super Court under the authority of CrR 7.8(b), and with cited case law in part III-LEGAL AUTHORITY AND JURISDICTION, citing Toliver v. Olsen, 109 Wn. 2d 607, 609, 746 P.2d 809 (1987), "The Supreme Court, Court of Appeals, and Superior Court have concurrent jurisdiction in habeas corpus proceedings wherain post conviction relief is sought".

5.7 A motion in the trial court under CrR 7.8(b) is the functional equivalent of a personal restraint petition in the court of appeals. In re. Becker, 143 Wn. 2d 491, 499, 20 P.3d 409 (2001).

5.8 In addition to that authority Mr. Robinson brought his notion under the statutory authority of declatory and injuntive relief, RCW 7.24.010 and RCW 7.24.080.

5.9 Where there is a history of cases being brought to a trial court regarding doc sanctions, i.e. State v. Madsen, 153 Wn. App. 471, 228, P.3d (2009), in the form of a CrR 7.8(b) motion, the appellant argues then that his CrR 7.8(b) motion was appropriately brought before the court, and was ripe for a ruling on the merits, therefore the court abused its discretion in denying the motion and saying the only avenue of redress was through the department of corrections.

ADMINISTRATIVE APPEAL ALREADY EXHAUSTED

5.10 One has to assume that the court failed to even read the appellants motion as they ruled he had to take it up with DOC, to go through the appropriate procedures to appeal his sanctions from DOC.

5.11 The appellant provided evidence with his CrR 7.8(b) motion that he had already exhausted state remedies. This is in CP 25-108, specifically exhibits 1 through 7 attached to the original motion.

5.12 Despite the fact that Mr. Robinson had already exhausted his administrative appeal process, the trial court denied his motion, telling him that he had to through the appropriate procedures to appeal his sanctions from DOC.

5.13 The court failed to recognize this, and has consequently wasted an enormous amount of time and Washington State resources in refusing to rule the motion on the merits.

LEGAL BASIS TO REVIEW SANCTIONS

5.14 In the findings of facts and conclusions of law it states that the court has no jurisdiction in this matter, and that there is no legal basis to review the sanctions by the department of corrections.

5.15 There can be no question that the Cowlitz County Superior Court had jurisdiction over the subject matter, See State v. Madsen, 153 Wn App. 471, 228 P.3d (2009); See also Toliver v. Olsen, 109 Wn. 2d 607, 609, 746 P.2d 809 (1987).

5.16 Personal restraint petitions are modern versions of ancient writs, most prominently habeas corpus, that allow petitioners to challenge the lawfulness of confinement. In re. Coats, 173 Wn. 2d 123, @ 128, 267 P.3d 324 (2011). A motion in a trial court under CrR 7.8(b) is the functional equivalent of a personal restraint petition in the court of appeals. In re. Becker, 143 Wn. 2d 491, 499, 20 P.3d 409 (2001).

5.17 Statutorial law for habeas corpus is found in RCW 7.36. Under RCW 7.36.010-WHO MAY PROSECUTE WRIT, "Every person restrained of his or her liberty under any pretense whatever, may prosecute a writ of habeas corpus to enquire into the cause of the restraint, and shall be delivered therefrom when illegal."

5.18 RCW 7.36.040-WHO MAY GRANT WRIT, "Writs of habeas corpus may be granted by the supreme court, court of appeals, or superior court, or by a judge of such courts, and upon application the writ shall be granted without delay".

5.19 The only valid question that would disqualify Mr. Robinson's CrR 7.8(b) motion is if it were deemed frivolous and without merit.

5.20 Rather than rule on the motion to determine if it was frivolous and without merit, the judge instead demonstrated ignorance of the law, and even tried to erroneously define the CrR 7.8(b) motion as a motion for reconsideration with additional information. (RP 1 @ lines 18-20).

5.21 The underlying legal basis that Mr. Robinson presented in his motion

among other legal theories, was that the sanction imposed by the department was an illegal sanction.

5.22 Pursuant to WAC Rule 137-30-080(3) it states that the department may sanction an offender to serve out the remainder of his prison term if he has been found to have violated his terms of supervision at a third consecutive full hearing.

5.23 In addition to WAC Rule 137-30-080, there are several related statutory laws corresponding to this WAC Rule, namely RCW 9.94A.737(2), "...The department shall adopt rules creating a structured violation process that includes presumptive sanctions, aggravating and mitigating factors, and definitions for low level violations and high level violations".

5.24 The state will attempt to rely on RCW 9.94A.633(2)(a) to justify the CCP return sanction on Mr. Robinson's first violation full hearing. This statute conflicts with WAC Rule 137-30-080 and RCW 9.94A.737, as there is no adopted rules creating a structured violation process, and therefore RCW 9.94A.633 is prima facie evidence of unconstitutional delegation of legislative power.

5.25 A delegation of legislative power may be justified if two requirements are met. First, it can be shown that the legislature has provided standards which in general terms defines what is to be done and the administrative body that is to do it. Second, procedural safeguards exist to control arbitrary action and abuse of discretion. *Barry & Barry, Inc., v. Dep't of Motor Vehicles*, 81 Wn. 2d 155, 159, 500 P.2d 540 (1972); *State v. Crown Zellerbach Corp.*, 92 Wn. 2d 294, 900, 602 P.2d 1172 (1979).

5.26 The first prong of this two prong test is met, but the second prong

is not satisfied, as no procedural safeguards exist to control arbitrary administrative action and abuse of discretion. This is even more evident when the department has an already established rule, that it has to be an offenders 3rd violation full hearing, before such a sanction can be imposed, (WAC Rule 137-30-080), and that rule relates to a statute that orders the department to adopt rules and create a structured violation process, (RCW 9.94A.737(2)), and the department chooses to disregard the procedural safeguards already in effect and that exist to control arbitrary administrative action and abuse of discretion.

5.27 The appellant submits to the court that this is the very definition of arbitrary action and abuse of discretion, and is prima facie evidence of unconstitutional delegation of legislative powers.

5.28 The appellant asserts that administrative regulations/procedures qualify as "Laws of the State of Washington", as that term is defined in RAP 16.4. "General references to laws of the state... not only include within their scope Washington statutes, but generally also reach administrative regulations". In re. Foklund, 139 Wn. 2d 166 (1999); See also In re. Cashaw, 123 Wn. 2d 138, 148-49, 666 P.2d 8 (1994).

5.29 The only administrative regulation in the entire Washington Administrative Code relating to a CCP return/terminate sanction is found in WAC Rule 137-30-080. That regulation says it cannot be imposed until a third violation full hearing.

5.30 The court looks no further than the plain language of a facially unambiguous administrative regulation. Cogle v. Dep't of Labor & Indus., 142 Wn. 2d 801, 807, 16 P.3d 583 (2001). A regulation is unambiguous if it

is susceptible to one reasonable interpretation after considering the entire statutory scheme, including related regulations. Wash. Cedar & Supply Co., 137 Wn. App. @ 599-600, 154 P.3d 287 (2007); Dep't of Labor and Indus. v. Gongyin, 154 Wn. 2d 38, 45, 109 P.3d 816 (2005). The goal in interpreting an administrative regulation is to "achieve a harmonious total statutory scheme and avoid conflicts between different provisions". Wash. Cedar & Supply Co., 137 Wn. App. @ 599-600, 154 P.3d 287 (2007).

5.31 When considering the entire statutory scheme of this WAC Rule, one looks to RCW 9.94A.737, and then compares it to RCW 9.94A.633. There is no way to avoid conflict between the different provisions. One has existing procedural safeguards to control administrative arbitrary action and abuse of discretion, the other one does not.

5.32 Where two criminal statutes, when read together, are susceptible to more than one reasonable, but irreconcilable, interpretation, the rule of lenity applies. Under that rule the court must strictly construe the statutes in favor of the defendant. In re. Kindberg, 97 Wn. App. @ 294, 903 P.2d 684.

5.33 ~~The rule of lenity between these two statutes would lean towards~~ RCW 9.94A.737, as this statute favors the defendant because a structured violation process, and adopted rules, already exist. And the triggering event for application of RCW 9.94A.737(2) is when a defendant is found to have committed violation(s) of conditions of community custody at a third violation hearing. In re. Flint, 174 Wn. 2d 539, @ 548, (2012).

5.34 The adopted rule as defined in RCW 9.94A.737(2) is non other than WAC Rule 137-30-080, as the plain language of this regulation unambiguously

says the department may return the offender to serve up to the remainder of his prison term if he has been subject to a third violation hearing, and the department found that he had committed the violations.

5.35 Rules of statutory construction apply to administrative rules and regulations, particularly where... they are adopted pursuant to express legislative authority. *State, Dep't of Licensing v. Cannon*, 147 Wn. 2d 41, @ 56, 50 P.3d 627 (2002). Under rules of statutory construction, the court interprets a WAC provision to ascertain and give effect to its underlying policy and intent. *Id.* To determine that intent, the court looks first to the language of the provision. If an administrative rule or regulation is clear on its face, its meaning is to be derived from the plain language of the provision alone. *Id Cannon*, 147 Wn. 2d 41, @ 56, 50 P.3d 627 (2002).

5.36 Among other theories, the appellant submits that this one had the most weight as a legal basis for the court to review the sanction as an illegal sanction.

5.37 Finally, in addition to statutory law and WAC Rule, the appellant also submits to the court that both his felony judgment and sentence @ 5.5, and his statement of defendant to plea of guilty on page 3 @ section (f), orders that he could not be returned to serve the remainder of his prison term, unless he violated conditions of community custody at a third violation hearing, and the department determined he violated those conditions at those three consecutive hearings.

5.38 Mr. Robinson was subjected to only one DOC violation full hearing, and at that hearing the department imposed a OCP return/terminate sanction for the remainder of his term, thus violating the defendants judgment and

sentence, statement of guilty, and is contrary to WAC Rule 137-30-080 and RCW 9.94A.737.

VI. CONCLUSION

6.1 The appellant submits to this court that the trial court abused its discretion in denying the motion, ruling that the only avenue of redress was through the department of corrections, when in fact the motion was properly before the court pursuant to CrR 7.8(b), RCW 7.25.010, and RCW 7.24.080.

6.2 The trial court erred in failing to rule the motion on the merits, as the appellant had already exhausted state remedies, and had no other avenue of redress.

6.3 Finally, the court did have jurisdiction over the subject matter, and the appellant did have a legal basis for review because the sanction was illegal, and a violation of WAC Rule, Statutorial Law, and the defendants felony judgment and sentence and his original plea bargain in his statement of defendant to plea of guilty.

6.4 The appellant asks this court to review the original motion and to rule on it on the merits, and curing the illegal sanction imposed by the department of corrections, giving credit for time served to his existing new prison term.

RESPECTFULLY SUBMITTED THIS 7 day of April, 2015.

Appellant Pro Se,



Kevin Robinson, Doc # 764821
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DECLARATION OF MAILING

GR 3.1

I, Kevin Robinson on the below date, placed in the U.S. Mail, postage prepaid, 1 envelope(s) addressed to the below listed individual(s):

Court of Appeals, DIV. II
David C. Panzoha
Court Clerk
950 Broadway, Suite 300
Tacoma, WA. 98402-4454

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DIVISION II
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STATE OF WASHINGTON
BY DEPUTY

I am a prisoner confined in the Washington Department of Corrections ("DOC"), housed at the Coyote Ridge Correctional Complex ("CRCC"), 1301 N. Ephrata Avenue, Post Office Box 769, Connell, WA 99326-0769, where I mailed said envelope(s) in accordance with DOC and CRCC Policies 450.100 and 590.500. The said mailing was witnessed by one or more staff and contained the below-listed documents.

1. Statement of Additional Grounds
2. _____
3. _____
4. _____
5. _____
6. _____

I hereby invoke the "Mail Box Rule" set forth in General Rule ("GR") 3.1, and hereby declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

DATED this 7 day of April, 2015, at Connell WA.

Signature [Handwritten Signature]