

No. \_\_\_\_\_

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

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IN RE PERSONAL RESTRAINT PETITION OF

**ISAIAH E. PRESTON,**  
PETITIONER.

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**PERSONAL RESTRIANT PETITION**

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A. IDENTITY AND STATUS OF PETITIONER

Isaiah E. Preston (hereinafter “Preston”) was convicted of Rape in the Second Degree committed in Lewis County (Case No. 01-1-00069-6) in October 2000, when he was a juvenile.

Mr. Preston (DOC #832646) is currently incarcerated at Stafford Creek Correctional Center in Aberdeen, Washington.

B. FACTS

Mr. Preston was born on June 12, 1984.

On October 21, 2001, he was convicted in Lewis County Superior Court of Rape in the Second Degree committed on October 16, 2000; *i.e.*, when Preston was 17 years old. Preston was sentenced to 280 months in prison. *See* Judgment and Sentence attached as Appendix A.

Because Mr. Preston was a juvenile when he committed his crime, he is eligible for a parole hearing after serving 20 years. Mr. Preston wrote to the ISRB asserting that the ISRB should apply “earned early release” time toward the 20 year minimum and inquiring when they calculate his eligibility for a parole hearing. The ISRB responded that they interpret the law to require a juvenile-inmate to serve 20 years of “flat time” before he can request a parole hearing. *See* Correspondence attached as Appendix B.

If “good time” is applied to the 20 year term, Mr. Preston would be eligible for a hearing after 17 years or in November 2017.

C. ARGUMENT

*Introduction*

RCW 9.94A.730 provides that a juvenile convicted of a crime other than aggravated murder is entitled to a parole hearing “after serving no less than twenty years of total confinement.”

The question posed in this petition for is whether that 20 year term can be reduced by earned early release. Mr. Preston contends the answer is “yes.” The ISRB disagrees. At the time he was sentenced, a person convicted of a Class A felony or sex offense was entitled to earn good time for no more than 15% of the sentence. Resolution of this issue will determine whether Mr. Preston is eligible for a parole hearing in 2017 or 2020—a difference of three years.

*The Statute is Ambiguous and Must Be Read in Mr. Preston’s Favor*

The critical statutory language provides that an individual is entitled to a parole hearing “after serving no less than twenty years of total confinement.” RCW 9.94A.370(1).

While the statute sets a minimum term, it does not expressly provide whether that minimum term can be reduced by earned early release credits. For almost all crimes, the term of incarceration can be reduced by good time.

The Legislature certainly knows how to write a statute that sets a minimum term which cannot be reduced by good time. In fact, this Court

can look to other provisions in the same bill that created parole eligibility for juveniles convicted of crimes other than aggravated murder in order to find an example. The new statutory scheme expressly provides that a juvenile who is eligible for resentencing on an aggravated murder conviction must serve a 25 year term which cannot be reduced by good time. RCW 9.94A.590(1)(e); (2).

It also would have been simple to place the 20 year term at issue in the section defining mandatory minimum terms (RCW 9.94A.590(2)), which all expressly prohibit the reduction of that minimum term by good time. (“During such minimum terms of total confinement, no offender subject to the provisions of this section is eligible for ...earned release time.”).

The fact that the Legislature did not repeat the language from that statutory section suggests they meant something different. *State v. Tracer*, 173 Wn.2d 708, 272 P.3d 199 (2012).

“[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.” The “plain meaning” of a statutory provision is to be discerned from the ordinary meaning of the language at issue, as well as from the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole. If after that examination, the provision is still subject to more than one reasonable interpretation, it is ambiguous. If a statute is ambiguous, the rule of lenity requires us to interpret the statute in favor of the defendant absent legislative intent to the contrary.”

*State v. Jacobs*, 154 Wash.2d 596, 600–01, 115 P.3d 281 (2005) (alteration in original) (citations omitted) (quoting *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wash.2d 1, 9–10, 43 P.3d 4 (2002)). “The rule of lenity is applied only when the Legislature's intent is lacking.” *In re Pers. Restraint of Bowman*, 109 Wash.App. 869, 875–76, 38 P.3d 1017 (2001). “[T]he rule of lenity applies to the SRA [Sentencing Reform Act] and operates to resolve statutory ambiguities, absent legislative intent to the contrary, in favor of a criminal defendant.” *In re Pers. Restraint of Sietz*, 124 Wash.2d 645, 652, 880 P.2d 34 (1994).

Because the statute, read as a whole, is ambiguous, this Court must read it in a light favorable to Mr. Preston.

*The Doctrine of Constitutional Avoidance Requires a Favorable Reading, Too.*

Retroactive reduction of earned release time violates the *ex post facto* clause of the federal constitution. *In re Smith*, 139 Wn.2d 199, 208, 986 P.2d 131, 135 (1999). See also, *Lynce v. Mathis*, 519 U.S. 433 (1997). This is true even when a statute reducing earned release creates some new avenues for early release. *Weaver v. Graham*, 450 U.S. 24, 34-36 (1981).

There is no reason to believe that the legislature intended to create these constitutional and statutory conflicts. Nowhere does the statute state that offenders have lost their earned early release credits. Presumably, the legislature understood that the parole board, and later the ISRB, has always

taken earned early release credit into account when calculating the date at which offenders are entitled to parolability hearings. See, e.g., *Matter of Powell*, 117 Wn.2d 175, 204, 814 P.2d 635, 649 (1991) (after SHB 1457 required the Board to make minimum terms commensurate with SRA guidelines, prisoners argued that this abrogated their early release credit; Supreme Court confirmed that such credit would continue to reduce their minimum terms).

D. CONCLUSION AND PRAYER FOR RELIEF

Based on the above, this Court should grant the PRP and order appropriate relief.

DATED this 21<sup>st</sup> day of January, 2015

Respectfully Submitted:

/s/Jeffrey E. Ellis

Jeffrey E. Ellis #17139

*Attorney for Mr. Preston*

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Received & Filed  
LEWIS COUNTY, WASH  
Superior Court

JAN 04 2002

By Nettle Jungers, Clerk *JW*  
Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR LEWIS COUNTY

STATE OF WASHINGTON, Plaintiff,  
  
vs.  
  
ISAIAH E. PRESTON,  
Defendant.  
  
SID:WA19167515  
FBI:  
DOB:06/12/1984  
DOC#:

No. 01-1-69-6

JUDGMENT AND SENTENCE (JS)

PRISON

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer, Manek Mistry, and deputy prosecuting attorney, Joshua Quentzel, were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on October 25, 2001  
by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
I	RAPE IN THE SECOND DEGREE	9A.44.050	10/16/2000

as charged in the original ~~complaint~~ Information, *lesser included charge.*

- Additional current offenses are attached in Appendix 2.1
- A special verdict/finding for use of a firearm was returned on Count(s) \_\_\_\_\_, RCW 9.94A.125, .310
- A special verdict/finding for use of a deadly weapon other than a firearm was returned on Count(s) \_\_\_\_\_, RCW 9.94A.125, .310
- A special verdict/finding of sexual motivation was returned on Count(s) \_\_\_\_\_, RCW 9.94A.127

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- The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400): NONE.
- This case involves Kidnapping in the First Degree, Kidnapping in the Second Degree, or Unlawful Imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9a.44.130
- The court finds that the offender has a chemical dependency that has contributed to the offense(s).RCW9.94A.120.
- The crime charged in Count(s) \_\_\_ involves domestic violence.
- Other current convictions listed under different cause numbers used in calculating the offender score are: \_\_\_\_\_

**2.2 CRIMINAL HISTORY (RCW 9.94A.360) Prior convictions constituting criminal history for purposes of calculating the offender score are:**

CRIME	DATE OF SENTENCE	SENTENCING CRT (COUNTY & STATE)	DATE OF CRIME	ADULT OR JUVENILE	TYPE OF CRIME
Att. Kidnapping 2 <sup>nd</sup> w/ sexual motivation	6/17/99	King County, WA	12/6/98	J	V-S
Att. Kidnapping 2 <sup>nd</sup> w/ sexual motivation	6/17/99	King county, WA	12/26/98	J	V-S
Att. Kidnapping 2 <sup>nd</sup> w/ sexual motivation	6/17/99	King ounty, WA	12/26/98	J	V-S
Theft 1 <sup>st</sup> Degree	6/17/99	King county, WA	1/29/98	J	NV

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement. RCW 9.94A.360
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360): NONE.
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520: \_\_\_\_\_

**2.3 SENTENCING DATA:**

COUNT	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENTS *	TOTAL STANDARD RANGE	MAXIMUM TERM
I	9	XI	210 - 280 months	-----	210 - 280 months	LIFE

\*(F) Firearm, (D) Other Deadly Weapon, (V) VUCSA, (VH) Veh. Hom, See RCW 46.61.520

- Additional current offense sentencing data is attached in Appendix 2.3.

**2.4**  **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence above the standard range for Count(s)\_\_\_\_\_. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142): \_\_\_\_\_

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [ ] as follows: \_\_\_\_\_

**III. JUDGMENT**

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 [ ] The Court DISMISSES Counts \_\_\_\_\_

3.3 [ ] The defendant is found NOT GUILTY of Counts \_\_\_\_\_

**IV. SENTENCE AND ORDER**

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

\$ TBD Restitution to:

JASS CODE

\$ \_\_\_\_\_ Restitution to:

RTN/RJN

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_  
(Name and Address—address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Victim assessment RCW 7.68.035

CRC \$ \_\_\_\_\_ Court costs, including: RCW 9.94A.030, 9.94A.120, 10.01.160, 10.46.190

Criminal filing fee \$ 110.00 FRC

Witness costs \$ \_\_\_\_\_ WFR

Sheriff service fees \$ 335.60 SFR/SFS/SFW/WRF

Jury demand fee \$ JFR

Other \$ 19.03

PUB \$ TBD Fees for court appointed attorney RCW 9.94A.030

WFR \$ TBD Court appointed defense expert and other defense costs RCW 9.94A.030

FCM/MTH \$ — Fine RCW 9A.20.021; [ ] VUCSA fine deferred due to indigency RCW 69.50.430

CDF/LDI/FCF \$ — Drug enforcement fund of Lewis County RCW 9.94A.030

NTF/SAD/SDI

CLF \$ — Crime lab fee [ ] deferred due to indigency RCW 43.43.690

EXT \$ — Extradition costs RCW 9.94A.120

\$ — Emergency response costs (Veh Aslt, Veh Homicide, \$1000 max) RCW 38.52.430

\$ 1,000 Other costs for: Incarceration in the Lewis County Jail. RCW 9.94A.145

[X] In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145

\$ \_\_\_\_\_ TOTAL RCW9.94A.145

[X] The above total does not include all restitution or other legal financial obligations, which may be set

by later order of the court. An agreed restitution order may be entered. RCW 9.94A.142. A restitution hearing:

shall be set by the prosecutor

is scheduled for \_\_\_\_\_

RESTITUTION. Schedule attached, Appendix 4.1.

Restitution ordered above shall be paid jointly and severally with: -

NAME of other defendant      CAUSE NUMBER (Victim name) (Amount \$)RJN

\_\_\_\_\_

The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Rate to be determined by the Community Corrections Officer commencing 90 days post release. RCW 9.94A.145

The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73

4.2  HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

DNA TESTING. The defendant shall have a blood sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.3 The defendant shall not have contact with R.L.H. (dob 9.22.82) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for LIFE years.

Domestic Violence Protection Order or Anti-Harassment Order attached as Appendix 4.4.

4.4 OTHER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4.5 **CONFINEMENT OVER ONE YEAR.** The defendant is sentenced as follows:

(a) **CONFINEMENT.** RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

280 Months on count I \_\_\_\_\_ Months on count IV  
\_\_\_\_\_ Months on count II \_\_\_\_\_ Months on count V  
\_\_\_\_\_ Months on count III \_\_\_\_\_ Months on count VI

Actual number of months of total confinement ordered is: \_\_\_\_\_  
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

The sentence herein shall run consecutively with the sentence in cause number(s) \_\_\_\_\_ but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.400  
Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: AS OF OCT. 25, 2001

4.6 **COMMUNITY CUSTODY** is ordered as follows:

Count I for a range from 36 to 48 months;  
Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;  
Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;

or for the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A for community placement offenses -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at Department of Corrections-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by the Department of Corrections; (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections. The residence location and living arrangements are subject to the prior approval of the Department of Corrections while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The defendant shall not consume any alcohol.

Defendant shall have no contact with: known drug users/traffickers as defined by CCO, \_\_\_\_\_

Defendant shall remain  within  outside of a specified geographical boundary, to wit: \_\_\_\_\_

The defendant shall participate in the following crime related treatment or counseling services: \_\_\_\_\_

The defendant shall undergo an evaluation for treatment for  domestic violence  substance abuse  mental health  anger management and fully comply with all recommended treatment.

The defendant shall comply with the following crime-related prohibitions: refrain from use of controlled substances not lawfully prescribed by a licensed medical practitioner, submit to random UA's as directed by CCO

Other conditions may be imposed by the court or Department during community custody, or are set forth here: Appendix 4.6 - 'Additional Conditions of Community Custody'; incorporated by reference.

- 4.7  **WORK ETHIC CAMP.** RCW 9.94A.137, RCW 72.09.410. The court finds that defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.
- 4.8 **OFF LIMITS ORDER (known drug trafficker)** RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: \_\_\_\_\_

#### V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.145 and RCW 9.94A.120(13).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030
- 5.4 **RESTITUTION HEARING.**  
 Defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200
- 5.6 **FIREARMS. YOU MUST IMMEDIATELY SURRENDER ANY CONCEALED PISTOL LICENSE AND YOU MAY NOT OWN, USE OR POSSESS ANY FIREARM UNLESS YOUR RIGHT TO DO SO IS RESTORED BY A COURT OF RECORD.** (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

Cross off if not applicable:

- 5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), you are required to register with the sheriff of the county

of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier.

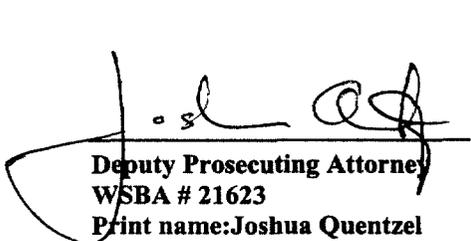
Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 14 days after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report in person to the sheriff of the county where you are registered on a weekly basis if you have been classified as a risk level II or III, or on a monthly basis if you have been classified as a risk level I. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.

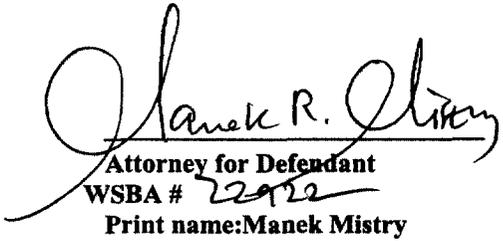
If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

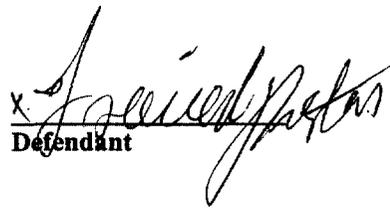
5.8 OTHER: Any bond/bail previously posted is hereby exonerated, \_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: 1/4/2002.

  
JUDGE Print name:  
Richard C Brosey

  
Deputy Prosecuting Attorney  
WSBA # 21623  
Print name: Joshua Quentzel

  
Attorney for Defendant  
WSBA # 22922  
Print name: Manek Mistry

  
x. Francis P. [unclear]  
Defendant

Translator signature/Print name: \_\_\_\_\_  
I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the \_\_\_\_\_ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

CAUSE NUMBER of this case: 01-1-69-6

I, \_\_\_\_\_, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action, now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_.

Clerk of said County and State, by: \_\_\_\_\_,  
Deputy Clerk

**IDENTIFICATION OF DEFENDANT**

SID No. WA19167515

Date of Birth: 06/12/1984

FBI No.

Local ID No.

PCN No.

Other:

Alias name, SSN, DOB:

Race:

Asian/Pacific  
Islander

Black/African-  
American

Caucasian

Ethnicity:

Hispanic

Sex:

Male

Native American

Other: \_\_\_\_\_

Non-  
Hispanic

Female

**FINGERPRINTS** I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints

and signature thereto. Clerk of the Court: S. Tyler, Deputy Clerk. Dated: 1/4/02

DEFENDANT'S NAME: IALIAH E. PRESTON

DEFENDANT'S SIGNATURE: Ialiah E. Preston

Left four fingers taken simultaneously

Left  
Thumb

Right  
Thumb

Right four fingers taken simultaneously



SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF LEWIS

STATE OF WASHINGTON,  
Plaintiff,

v.  
ISAAH E. PRESTON,  
Defendant.

No. 01-1-69-6

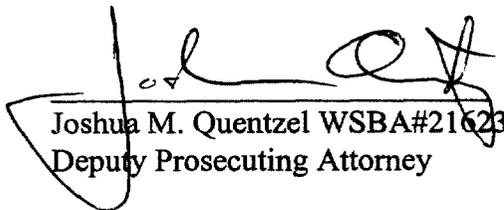
**ADDITIONAL CONDITIONS OF COMMUNITY  
CUSTODY**

APPENDIX 4.6 TO JUDGMENT AND SENTENCE

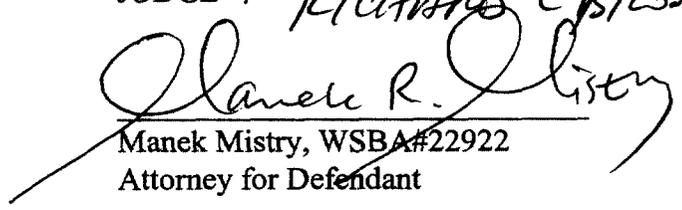
The following are additional conditions of community custody ordered in this Judgment & Sentence:

1. ~~Successfully~~ participate in psychosexual therapy with a certified treatment provider for 36 months or until graduated by treatment provider;
2. Abide by all rules and requirements set by treatment provider;
3. The defendant shall not reside over night where minors are present without prior approval of Community Corrections Officer or therapist;
4. The defendant shall not participate in youth programs or frequent places where children are known to congregate.
5. The defendant shall not consume or possess alcohol;
6. Provide urine specimens for random urinalysis at direction of Community Corrections Officer or therapist;
7. ~~Submit to polygraph and penile plethysmograph testing as directed by Community Corrections Officer or therapist;~~
8. The defendant shall not possess or control firearms or dangerous weapons;
9. The defendant shall not possess or view pornographic material, as defined by Community Corrections Officer and/or therapist, or enter establishments where pornography is sold or is available.

Dated this <sup>4</sup> ~~11<sup>th</sup>~~ day of ~~MARCH, 2001~~ <sup>JANUARY 2002</sup>

  
Joshua M. Quentzel WSBA#21623  
Deputy Prosecuting Attorney

  
JUDGE ~~Richard C. Brosey~~

  
Manek Mistry, WSBA#22922  
Attorney for Defendant

The Law Offices of  
**ALSEPT & ELLIS, LLC**  
621 SW Morrison St., Suite 1025  
Portland, OR 97205  
1-888-712-3115 ✕ [JeffreyErwinEllis@gmail.com](mailto:JeffreyErwinEllis@gmail.com)

October 23, 2014

Indeterminate Sentence Review Board  
4317 Sixth Avenue SE  
PO Box 40907  
Olympia, WA 98504-0904  
*Sent via email*

RE: Isaiah Preston, DOC # 832646  
Request for Review Hearing Pursuant to SSB 5064

Members of the Board:

Our office represents Mr. Preston. On his behalf, we would like to request a review hearing pursuant to Section 10 of 2SSB 5064.

As a result of prior correspondence, it is my understanding that the Board is requiring petitioners to serve 20 years of flat time prior to requesting a hearing, without consideration for earned release time. With all due respect, we believe this to be an erroneous application of the new legislation.

At the time of his offense, Mr. Preston was entitled to earn early release time under former RCW 9.94A.150. Retroactive reduction of earned release time violates the ex post facto clause of the federal constitution. *In re Smith*, 139 Wn.2d 199, 208, 986 P.2d 131, 135 (1999). *See also, Lynce v. Mathis*, 519 U.S. 433, 117 S. Ct. 891, 137 L. Ed. 2d 63 (1997). This is true even when a statute reducing earned release creates some new avenues for early release. *Weaver v. Graham*, 450 U.S. 24, 34-36, 101 S. Ct. 960, 967, 67 L. Ed. 2d 17 (1981).

Further, abrogating Mr. Preston's earned release time would raise issues of equal protection and due process. An offender whose behavior is abysmal would come before the Board just as soon as one whose behavior is exemplary for no articulable reason and with no due process.

There is no reason to believe that the legislature intended to create these constitutional and statutory conflicts. Nowhere does the statute state that offenders have lost their earned early release credits. Presumably, the legislature understood that the parole board, and later the ISRB, has always taken earned early release credit into account when calculating the date at which offenders are entitled to parolability hearings. *See, e.g., Matter of Powell*, 117 Wn.2d 175, 204, 814 P.2d 635, 649 (1991) (after SHB 1457 required the Board to make minimum terms commensurate with SRA guidelines, prisoners argued that this abrogated their early release credit; Supreme Court confirmed that such credit would continue to reduce their minimum terms).

I appreciate your thoughtful consideration. If you agree with our position, could you please inform me of what date you have calculated when Mr. Preston will be eligible for a release hearing. If you have any questions or would like to discuss this further with me, please do not hesitate to contact me.

Sincerely,

s/Jeffrey Ellis  
Attorney for Mr. Preston

cc: Isaiah Preston



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS  
INDETERMINATE SENTENCE REVIEW BOARD  
P.O. BOX 40907, OLYMPIA, WA 98504-0907

November 3, 2014

Jeffrey Ellis, Attorney at Law  
Alsept & Ellis, LLC  
621 SW Morrison St, Ste 1025  
Portland, OR 97205

RE: PRESTON, Isaiah – DOC# 832646

Mr. Ellis:

I am in receipt of your letter dated October 23, 2014 regarding Mr. Preston's SSB 5064 eligibility date. Your concerns are noted. However, the Indeterminate Sentence Review Board's (ISRB) current interpretation is that individuals must serve 20 years "flat time" before they are eligible for early release consideration pursuant to SSB 5064. As such, Mr. Preston will be eligible to petition the ISRB for early release consideration on November 22, 2020. However, I would encourage Mr. Preston to contact his prison counselor as he is currently eligible to begin participating in additional programs to assist with preparing him for release consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill Getty".

Jill Getty  
Hearing Investigator

cc: file

**VERIFICATION OF PETITION**

I, Isaiah Preston, verify under penalty of perjury that the attached petition is true and correct and filed on my behalf.

1/17/14 Stafford Creek C.C.  
Date and Place

Isaiah E. Preston  
Isaiah Preston

**ALSEPT & ELLIS LAW OFFICE**

**January 21, 2015 - 1:37 PM**

**Transmittal Letter**

Document Uploaded: 0-prp-Personal Restraint Petition-20150121.pdf

Case Name: In re PRP of Isaiah Preston

Court of Appeals Case Number:

**Is this a Personal Restraint Petition?**  Yes  No

**The document being Filed is:**

Designation of Clerk's Papers  Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion:

Answer/Reply to Motion:

Brief:

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes:

Hearing Date(s):

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other:

**Comments:**

No Comments were entered.

Sender Name: Jeffrey Ellis - Email: [JeffreyErwinEllis@gmail.com](mailto:JeffreyErwinEllis@gmail.com)