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SUPREME COURT  
STATE OF WASHINGTON  
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NO. 79841-9

**SUPREME COURT OF THE STATE OF WASHINGTON**

In re the Personal Restraint Petition of:

AMEL DALLUGE,

Petitioner.

MOTION TO DISMISS  
PETITION AS MOOT

**I. IDENTITY OF MOVING PARTY**

The Respondent, the Department of Corrections, by and through its attorneys, ROBERT M. MCKENNA, Attorney General, and JOHN J. SAMSON and DONNA H. MULLEN, Assistant Attorneys General, asks this Court for the relief designated in Part II of this motion.

**II. STATEMENT OF RELIEF SOUGHT**

Amel Dalluge filed a personal restraint petition alleging he is under the unlawful restraint of a 60-day sanction imposed by the Department of Corrections for his October 2005 violations of community custody. The petition is moot since the sanction challenged by Dalluge's petition expired no later than April 29, 2006, before Dalluge filed his petition. Respondent moves to dismiss the petition as moot since Dalluge is not under the allegedly unlawful restraint.

### III. FACTS RELEVANT TO MOTION

In September 2004, Dalluge was released from confinement, and began serving two terms of community custody. As authorized by RCW 9.94A.720 and 9.94A.715, the Department imposed a condition of community custody requiring Dalluge to "obey all laws." Exhibit 13.<sup>1</sup> While on community custody, Dalluge was arrested on unrelated charges and detained in the Grant County jail. While in the jail, Dalluge committed acts in October 2005 that resulted in new convictions for assault, malicious mischief, and possession of a weapon by a person serving a sentence in a local correctional institution. Exhibits 4 and 5.

After learning of the new convictions, the Department of Corrections charged Dalluge with having violated the "obey all laws" condition. Exhibits 7 and 14. The Department held a violation hearing on February 28, 2006. Exhibit 8. The hearing officer found Dalluge guilty, and sanctioned him to 60-days of confinement, with eligibility for one-third off the sanction for good time. Exhibits 8 and 9. The hearing officer ordered the sanction to start on February 28, 2006, with credit for time served since that date. Exhibits 8 and 9.

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<sup>1</sup> The Department submitted the referenced exhibits in the court of appeals along with the response to the personal restraint petition. The Department identifies the exhibits as they were numbered in the court of appeals.

The sanction ran concurrently with the time Dalluge served in jail pending trial for unrelated criminal charges in Adams and Grant counties. Dalluge finished serving the sanction while detained in jail pending trial on those criminal charges. Even without any reduction of the sanction for good time, the 60-day sanction would have expired on April 29, 2006.

Dalluge is not currently confined as a result of the violation sanction. Dalluge is now confined as a result of the sentence imposed for his conviction of assault in the third degree in *State v. Dalluge*, Grant County Cause No. 05-1-00755-1. Exhibit 4. Dalluge also has to serve a future sentence of confinement imposed for his assault conviction in *State v. Dalluge*, Grant County Cause No. 06-1-00012-1.

In August 2006, after serving the 60 day sanction, Dalluge filed his personal restraint petition challenging the sanction. *See* Personal Restraint Petition. In response, in addition to addressing the merits of the petition, the Department argued the petition was moot since Dalluge had already served the sanction during his pretrial confinement on an unrelated charge. *See* Response to Petition, at 8-13. The Chief Judge dismissed the petition, without determining if the petition was moot. *See* Order Dismissing Personal Restraint Petition. The Commissioner denied Dalluge's motion for discretionary review, but this Court granted Dalluge's motion to modify, and granted review, on July 11, 2007.

#### IV. GROUNDS FOR RELIEF AND ARGUMENT

An appellate court may grant relief on a personal restraint petition where the petitioner is under a “restraint” as defined in RAP 16.4(b), and that restraint is unlawful for one or more reasons defined in RAP 16.4(c). RAP 16.4(a); *In re Burton*, 80 Wn. App. 573, 585, 910 P.2d 1295 (1996). The only relief available in a personal restraint petition proceeding is relief from the unlawful restraint. *In re Sappenfield*, 138 Wn.2d 588, 595, 980 P.2d 1271 (1999). Any remedy other than removal of the unlawful restraint is beyond the scope of relief of a personal restraint petition. *Id.*

“Issues are moot when the court can no longer provide effective relief and only abstract questions remain.” *In re Williams*, 106 Wn. App. 85, 99, 22 P.2d 283 (2001) (citing *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972)); *cf. In re Mines*, 146 Wn.2d 279, 283-84, 45 P.3d 535 (2002). Given that the only remedy available under RAP 16.4 is relief from unlawful restraint, a personal restraint petition is necessarily moot when the petitioner is no longer under the challenged restraint since there is no longer any relief available. In *Spencer v. Kemna*, 523 U.S. 1, 118 S. Ct. 978, 140 L. Ed. 2d 43 (1998), the Supreme Court considered whether a petitioner’s release from confinement rendered moot a federal habeas corpus petition that challenged a provision of the petitioner’s sentence. The Court noted that a petition challenging a

conviction does not become moot simply because the petitioner is released from confinement on that conviction. *Spencer*, 523 U.S. at 7-8. The collateral consequences of the petition are sufficient to prevent the petition from becoming moot. *Id.* However, the Court determined that this conclusion changes where the petition challenges only the sentence or a provision of the sentence (e.g., parole revocation). *Id.* at 8-16. If the petition challenges only the sentence, and does not challenge the underlying conviction, the petitioner's release from the challenged sentence moots the petition. *Id.*; see also *Burnett v. Lampert*, 432 F.3d 996 (9th Cir. 2005) (challenge to parole revocation rendered moot by subsequent parole and reconfinement).

Dalluge's petition is moot. Dalluge finished serving the 60-day sanction prior to filing his personal restraint petition. Any remedy this Court may grant on Dalluge's claim of error would be purely academic. See, e.g., *In re Myers*, 105 Wn.2d 257, 261, 714 P.2d 303 (1986) (parole arguably rendered petition moot, but finding an exception to mootness doctrine); *Lane v. Williams*, 455 U.S. 624, 102 S. Ct. 1322, 71 L. Ed. 2d 508 (1982) (petition moot where challenged sentence had expired). The 60-day sanction expired, and Dalluge is not under the challenged restraint. There is no relief available to Dalluge in this personal restraint petition proceeding. *Sappenfield*, 138 Wn.2d at 595. Since the Court can no

longer provide effective relief under RAP 16.4, the petition is moot. *In re Rebecca K.*, 101 Wn. App. 309, 313, 2 P.2d 501 (2000).

Although Dalluge is and will be confined in prison under separate judgments and sentences, his current and future confinement do not satisfy the restraint requirement for the purposes of the pending personal restraint petition because that confinement is not the subject of the personal restraint petition. “A personal restraint petition is an appropriate procedure only where the petitioner is under a ‘restraint’ resulting from the challenged decision.” *In re the Welfare of M.R.*, 51 Wn. App. 255, 257, 753 P.2d 986, *review denied*, 111 Wn.2d 1002 (1988). Dalluge’s petition does not challenge his current or future confinement in prison. Dalluge’s petition challenges only the 60-day violation sanction. Because Dalluge is no longer under the restraint challenged by his personal restraint petition, he cannot obtain relief under RAP 16.4. *See In re P.S.*, 75 Wn. App. 571, 574-75, 879 P.2d 294 (1994); *In re Huffman*, 34 Wn. App. 570, 572, 662 P.2d 408 (1983).

Even if the Court were to determine the 60-day sanction was unlawful, the Court could not grant any effectual relief in this proceeding. The Court could not relieve Dalluge from restraint since Dalluge is no longer serving the sanction. In addition, any determination in Dalluge’s favor would not affect the duration of his current or future confinement.

The 60-day sanction ran concurrently with, and not consecutively to, Dalluge's pretrial confinement in 2006 on the unrelated felony charges. Any determination that the sanction was unlawful would not affect the validity or duration of the pretrial confinement in 2006, and it would not affect the duration of Dalluge's current or future confinement. The Court simply cannot grant any effectual relief in this personal restraint petition proceeding. Since Dalluge is not under the allegedly unlawful restraint challenged by his petition, there is no longer any relief available under RAP 16.4, and the personal restraint petition is moot.

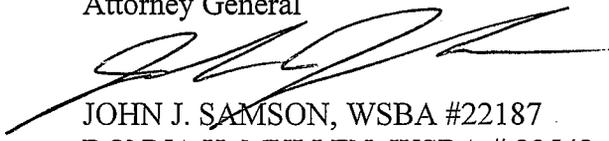
#### V. CONCLUSION

For the reasons set forth above, Respondent respectfully request that the Court dismiss Dalluge's petition as moot.

DATED this 6~~th~~ day of September, 2007.

Respectfully submitted,

ROBERT M. MCKENNA  
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BY RONALD R. CARPENTER

**CERTIFICATE OF SERVICE**

I certify that I served a copy of the <sup>CLERK</sup>MOTION TO DISMISS

PETITION AS MOOT on all parties or their counsel of record as follows:

- Via Facsimile
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TO:

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

EXECUTED this 7<sup>th</sup> day of September, 2007 at Olympia, WA.

  
\_\_\_\_\_  
KATHY JERENZ