

NO. 79841-9

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE PERSONAL RESTRAINT PETITION OF:

AMEL W. DALLUGE

**RESPONSE OF THE DEPARTMENT OF CORRECTIONS TO
PETITIONER'S MOTION FOR DISCRETIONARY REVIEW**

ROBERT M. MCKENNA
Attorney General

Donna H. Mullen, WSBA # 23542
Assistant Attorney General
Criminal Justice Division,
P.O. Box 40116
Olympia, WA. 98504-0116
(360) 586-5129

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2001 APR - 2 P 2:43
COR

TABLE OF CONTENTS

I. IDENTITY OF RESPONDENT1

II. DECISION1

III. ISSUE PRESENTED FOR REVIEW.....1

IV. STATEMENT OF THE CASE1

 A. BASIS OF CUSTODY.....1

V. ARGUMENT4

 MR. DALLUGE’S PETITION FAILS TO MEET ANY
 OF THE REQUIREMENTS FOR DISCRETIONARY
 REVIEW.....4

VI. CONCLUSION6

TABLE OF AUTHORITIES

Rules

RAP 13.5..... 1, 4, 5
RAP 16.14..... 5

I. IDENTITY OF RESPONDENT

Respondent is the Washington State Department of Corrections (Department or DOC).

II. DECISION

Respondent requests that this Court deny Petitioner's motion for discretionary review seeking review of the February 21, 2007, Unpublished Decision entered by the Washington State Court of Appeals, Division III. Appendix A.

III. ISSUE PRESENTED FOR REVIEW

Does Mr. Dalluge's Motion for Discretionary Review fail to meet any of the requirements governing acceptance of review under RAP 13.5(b)?

IV. STATEMENT OF THE CASE

A. BASIS OF CUSTODY.

At the time he filed his personal restraint petition, Petitioner, Amel W. Dalluge, was on community custody status under the jurisdiction of the DOC pursuant to two valid convictions in Grant County. On June 2, 2003, Mr. Dalluge was found guilty of Escape from Community Custody. Exhibit 1 to Response of the Department of Corrections (hereinafter "DOC Response"). He was sentenced to 90 days confinement with credit for time served and 12 months of community custody. *Id.* at 7-8.

Subsequently, on January 15, 2004, Mr. Dalluge was found guilty by jury trial of one count of Violation of the Uniform Controlled Substances Act - Possession of Methamphetamine. Exhibit 2 to DOC

Response. He was sentenced to 12 months plus one day and 9-12 months of community custody. Id. at 8.

Mr. Dalluge completed his prison term and was released on September 17, 2004, to his community custody term. Exhibit 3 to DOC Response.

At the time he filed his personal restraint petition, Mr. Dalluge was in jail custody pending new charges. Mr. Dalluge has two future convictions from Grant County. On December 8, 2005, Mr. Dalluge was found guilty of Assault in the Third Degree – Law Enforcement Officer. Exhibit 4 to DOC Response. Mr. Dalluge was sentenced to 35 months confinement and a community custody range of 9-18 months. Id. at 7-8.

In addition, Mr. Dalluge was convicted by jury trial (joined with Cause No. 05-1-00755-1) of Malicious Mischief in the First Degree (Count I) and Possession of a Weapon by a Person Serving a Sentence in a Local Correctional Institution (Count II). Exhibit 5 to DOC Response. Mr. Dalluge was sentenced to 29 months confinement on Count I and 12 months confinement on Count II, the terms to run concurrently with each other and Cause No. 05-1-00755-1.

B. FACTS.

While in the Grant County Jail pending other new charges, Mr. Dalluge was charged and found guilty of Assault in the Third Degree and Malicious Mischief in the First Degree/Possession of a Weapon by a Person Serving a Sentence in a Local Correctional Institution. Exhibit 2 and 4 to DOC Response; Exhibit 7 to DOC Response at 2. Apparently,

Mr. Dalluge broke windows, a phone, and barricaded a door, requiring a response team and the next day, while in restraints, spit into the face of a correctional officer. Exhibit 10 to DOC Response at 7-8.

A community custody hearing was held on February 28, 2006. Exhibit 8 to DOC Response. At that time, Mr. Dalluge had three felony charges pending. In Grant County, he had pending charges for Possession of a Controlled Substance and Assault in the Second Degree, and in Adams County, he had a pending charge for Malicious Mischief in the Second Degree. Id. at 2. The DOC alleged that Mr. Dalluge committed the following violations: (1) failing to obey all laws by committing Malicious Mischief on or about 10/8/05; and (2) failing to obey all laws by committing an assault on a law enforcement officer on or about 10/9/05. Id. Mr. Dalluge pleaded not guilty to the violations. Id. He argued (1) because he was in jail, the DOC had no jurisdiction and (2) because he was in jail as a pre-trial detainee and, thus, not on supervision, his conditions to obey all laws did not apply. Id. at 3. The Hearing Officer found Mr. Dalluge guilty of the violations, sanctioning him to 60 days confinement with credit for time served since 2/28/06 and to report to DOC within 1 business day of release and weekly for 4 weeks. Id. at 4; Exhibit 9 and 10 to DOC Response.

On August 18, 2006, Mr. Dalluge filed a personal restraint petition with the Washington Court of Appeals, Division Two. His petition presented essentially three issues: (1) that the DOC does not treat all persons who commit community custody violations equally; (2) that he

was not on community custody status when the violations occurred, because community custody tolls when the offender is in jail for a new offense; and (3) the Department failed to include in the notice of violation a specific policy that Mr. Dalluge violated. See Appendix 1 at 1.

The Chief Judge dismissed the petition finding that Mr. Dalluge's first claim was "too conclusory to state a claim sufficient to support relief from personal restraint." Appendix 1 at 2. The Chief Judge then held that Mr. Dalluge's argument, that he was not subject to community custody conditions while being held pre-trial in jail because community custody "tolled," was without merit. The Chief Judge determined that Mr. Dalluge failed to cite any authority to support his proposition that tolling means an offender is not subject to the conditions of supervision and, such an argument, would lead to absurd results. Finally, the Chief Judge determined that Mr. Dalluge received adequate notice of the alleged violations. Appendix 1 at 2.

Mr. Dalluge timely filed a motion for discretionary review.

V. ARGUMENT

MR. DALLUGE'S PETITION FAILS TO MEET ANY OF THE REQUIREMENTS FOR DISCRETIONARY REVIEW.

RAP 13.5(A)(b) states that the considerations that govern the acceptance of discretionary review following dismissal of a personal restraint petition by the Court of Appeals are set out in rule 13.4(b). RAP

16.14(c). RAP 13.5(b) provides that discretionary review will be accepted by the Supreme Court only:

- (1) if the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) if the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
- (3) if a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) if the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Here, the Washington Court of Appeals properly determined that Mr. Dalluge's claims were either conclusory or without merit.

Mr. Dalluge's motion fails to meet any of the considerations outlined for acceptance of discretionary review. The Court of Appeals decision is not in conflict with any decision of the Supreme Court or any other Court of Appeals. Further, Mr. Dalluge cannot demonstrate any state or federal constitutional violation nor any issue of substantial public interest. This Court should determine that there is no basis for acceptance of the motion for discretionary review.

///

///

///

///

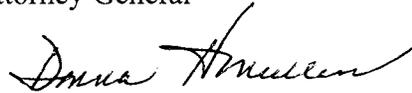
///

VI. CONCLUSION

Respondent, the Department of Corrections, respectfully requests this Court dismiss Mr. Dalluge's motion for discretionary review.

RESPECTFULLY SUBMITTED this 2nd day of April, 2007.

ROBERT M. MCKENNA
Attorney General

A handwritten signature in cursive script, appearing to read "Donna H. Mullen".

DONNA H. MULLEN, WSBA #23542
Assistant Attorney General
Criminal Justice Division
P.O. Box 40116
Olympia, WA 98504-0116
(360) 586-1445

CERTIFICATE OF SERVICE

I certify that I served a copy of the **RESPONSE OF THE DEPARTMENT OF CORRECTIONS TO PETITIONER'S MOTION FOR DISCRETIONARY REVIEW** on all parties or their counsel of record as follows:

- US Mail Postage Prepaid
- United Parcel Service, Next Day Air
- ABC/Legal Messenger
- State Campus Delivery
- Hand delivered by _____

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2007 APR -2 P 2:43
BY _____

TO:

AMEL W. DALLUGE
C/O GRANT COUNTY JAIL
PO BOX 37
EPHRATA, WA 98823

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

EXECUTED this 2nd day of April, 2007 at Olympia, WA.


DAWN R. WALKER

APPENDIX A

RECEIVED

FEB 26 2007

ATTORNEY GENERAL'S OFFICE
CRIMINAL JUSTICE DIV - OLYMPIA

FILED

FEB 21 2007

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

In the Matter of the Personal Restraint)
of:)

No. 25432-1-III

AMEL W. DALLUGE,)
)
Petitioner.)

ORDER DISMISSING PERSONAL
RESTRAINT PETITION

Amel W. Dalluge seeks relief from personal restraint imposed as a result of a finding by a Department of Corrections' hearing officer that he had violated the conditions of his community custody. The latter was part of his sentence under Grant County cause number 02-1008626 for the offense of escape from community custody. Exhibit 10, page 3. The violations occurred when Mr. Dalluge assaulted a law enforcement officer and damaged property while he was being held in jail on subsequent charges.

In this petition, Mr. Dalluge contends (1) the Department of Corrections does not treat all persons who commit community custody violations equally. (2) He was not on community custody when the alleged violations occurred because community custody tolls when the offender is in jail for a new offense. *See* RCW 9.94A.625(3). And, (3) the Department failed to include in its notice of violation the specific policy that Mr. Dalluge violated.

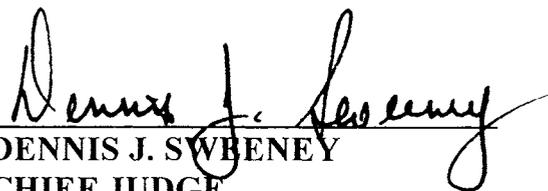
No. 25432-1-III
PRP of Dalluge

Mr. Dalluge's first contention is too conclusory to state a claim sufficient to support relief from personal restraint. *See In re Pers. Restraint of Cook*, 114 Wn.2d 802, 813-14, 792P.2d 506 (1990). As for his second contention, tolling is an administrative procedure which prevents the offender from getting credit against community custody at the same time he is being held on a separate offense. Mr. Dalluge cites no authority for the proposition that tolling means the offender is not subject to the conditions of community custody. And, such an argument would lead to the absurd result that an offender who was subject to a no-contact order as a condition of his community custody, could contact his victims while he was in jail.

Finally, Mr. Dalluge received adequate notice of the alleged violations. The Department has attached as Exhibit 14 to its response a copy of the "community custody notice of allegations" signed by Mr. Dalluge on February 23, 2006. The notice clearly states that Mr. Dalluge "[fail[ed] to obey all laws, by committing malicious mischief, on or about 10/8/05" and "by committing an assault on a law enforcement officer on or about 10/9/05."

Accordingly, the petition is dismissed pursuant to RAP 16.11(b).

DATED: February 21, 2007


DENNIS J. SWBENEY
CHIEF JUDGE