

SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON

2008 SEP 26 P 3: 38

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Here the Personal Restraint Petition of:

JAY PULLMAN,

Petitioner,

DEPARTMENT OF
CORRECTIONS'
RESPONSE TO
PULLMAN'S MOTION
FOR RELEASE ON
PERSONAL
RECOGNIZANCE

Respondent, the Department of Corrections (DOC) opposes Pullman's motion for release on personal recognizance.

1. Pullman's Procedural Arguments Lack Merit

As discussed in DOC's Supplemental Brief, the procedures provided by DOC when determining Pullman's ineligibility for 50 percent earned early release time were reasonable and lawful. The factual predicate for recalculating Pullman's risk level to RMB (and the loss of his eligibility for 50 percent time) was that DOC accounted for several infractions Pullman committed in DOC custody. Pullman received adequate process in connection with all those past infractions. DOC Supp. Br. at 8-9, and appendices 13, 14, 15, 19, 20, 21, 22. *See generally* DOC Supplemental Brief 15 - 22. Due process does not require the relitigation of the past infractions, as suggested by Pullman. DOC Supp. Br. at 18.

When DOC recalculated his risk level to RMB and determined he was ineligible for earned early release time at the 50 percent rate, DOC

gave Pullman several notices and opportunities to be heard regarding the recalculation of his eligibility for 50 percent time. Pullman relies on an inaccurate description of the process he received. Pullman argues his process was a letter in July 2006, after the fact, summarizing the reasons for ineligibility and telling him he could review records. Pullman Supp. Br. at 16. As shown in DOC's Supplemental Brief at 15-20, the DOC changed Pullman to Risk Management level RMB in March 2006 when he was transferred to the Olympic Corrections Center. Pullman was promptly notified of ineligibility for 50 percent time, it was explained to him, and the DOC officer even discussed the development with Pullman's mother. DOC Supp. Br., Appendix 25A, page 1; Appendix 8, page 7. Additional processes included:

- On April 7, DOC staff again discussed the ineligibility determination with Pullman and he was told it was "appealable to the supt at our facility." Appendix 25A, page 2.
- On April 13, Superintendent Brunson responded to Pullman's "letter and reviewed the documentation" and determined that the RMB was the proper risk classification. Appendix 25B.
- On April 25, a "facility risk management team" met to review Pullman's RMB risk classification; Pullman waived his right to appear at that classification meeting. Appendix 25A, p 5.

All of this notice and hearing occurred before and in addition to the letter of July 2006. Where due process applies to the facts here, Pullman received notice of his ineligibility and received opportunities to be heard.

2. **Even If Pullman Could Show DOC Denied Due Process When Removing 50 Percent Time, He Shows No Harm And No Basis For Immediate Release**

Even if there were a procedural deficiency in the notice and opportunity to be heard, that is no reason for release.

Pullman's core argument is that he should have been heard in advance of DOC's determination of ineligibility. As noted above, Pullman's arguments overlook the notice and input contemporaneous with DOC's determination. Moreover, DOC's determination had no immediate effect on Pullman's liberty because regardless of DOC determination and timing of notifying and hearing from Pullman, his earliest possible release date was far in the future. This case is not like a situation where a fixed and imminent release date is revoked.

Pullman's arguments also beg the question of what he would have shown had he been heard in February rather than in March, April, and May. He argues that hypothetically an offender could challenge the DOC's premise that an offender was guilty of infractions. But Pullman offers nothing to show that his infractions do not exist, or that DOC's records are inaccurate. *See* DOC Supp. Br. at 22-23. Thus, Pullman

offers no showing that DOC actually erred by determining he is in the higher RMB risk level and ineligible for 50 percent credits. At best, his arguments suggest that he should have received additional process, not that there was a substantively incorrect decision by the DOC. Even if he could have shown a substantively incorrect decision by DOC, immediate release would not be the appropriate remedy. Rather, the correct remedy would be additional process. *See generally In Re PRP of Higgins*, 152 Wn.2d 155, 165-66, 95 P.3d 330 (2004) (alleged error in hearing that revoked good time credit remedied by giving inmate additional process).

3. Mr. Pullman's Affidavit Miscalculates His Early Release Dates

Finally, Mr. Pullman's math is wrong. He contends his early release date based on 50 percent time would be in November 2008. This is off by almost three months. As shown below, an early release date using 50 percent time is in February 2009, not this November.

a. Release Date Using 33 Percent

The DOC's current early release date under 33 percent early release time is calculated as follows. Mr. Pullman's combined sentences are 3,392 days long.¹ He received combined credit for 27 days of jail

¹ Commitment AD is 5 years, 11 months, and 15 days long. DOC Supp. Br. Appendix 8, at 2, middle ("5Y11M15D"). This is 2,175 days long. Commitment AE is 3 years, 4 months, and zero days long. *Id.* This

good time and jail time served on commitment AD and 352 days of jail good time and jail time served on commitment AE. Appendix 8, at 2, right side (“JAIL 27”; “JAIL 352”). Subtracting the 27 days and the 352 days from the 3,392-day sentence leaves 3,013 days remaining to serve in the DOC’s custody.

With his eligibility for 33 percent early release credits, he would have to serve at least two-thirds of this, but that assumes he did not lose any early release credits. Two-thirds of 3,013 is 2,008.66. Based on the records before the Court, Mr. Pullman has so far lost 45 days of good time, which he lost on April 21, 2005, for “failing to program.” DOC Supp. Br. Appendix 8, at 6, middle. He also failed to earn 10.17 days of earned time. *Id.* at 6, middle. Adding lost good time of 45 days and lost earned time of 10.17 days to the minimum prison term of 2,008.66 days results in 2,063.83 days.

Mr. Pullman’s start date in the DOC’s custody on his first commitment is March 16, 2004. Appendix 11, left (“TIME START DATE”). Adding 2,064 days (rounded up) to the time start results in an initial early release date (after serving both sentences) of November 9, 2009. However, after Mr. Pullman began serving his DOSAs, he served

is 1,217 days long. Combined, the post-revocation sentence is 3,392 days long.

234 days on an unrelated cause. Appendix 11, left (“OUT TIME + WICKERT”). This does not count toward his revoked DOSA sentences and must be added to the initial early release date. Adding 234 days of “*Wickert*” time to his initial early release date of November 9, 2009, results in an adjusted possible early release date of July 1, 2010. Appendix 8, at 1, upper right (“ADJ. : 07/01/2010”).

b. Early Release at the 50 Percent Rate

Again, one starts with 3,013 days to serve in the DOC’s custody. Under eligibility for 50 percent early release credits, he would have to serve at least one-half of this. One-half of 3,009 is 1,506.5 days in the DOC’s custody. Adding lost good time of 45 days and lost earned time of 10.17 days back into his prison term of 1,506.5 days results in 1,561.67 days.

Adding 1,562 days (rounded up) to the time start of March 16, 2004, results in an initial early release date of June 25, 2008. Adding the 234 days of *Wickert* time to his initial early release date of June 25, 2008, results in an adjusted possible early release date of February 14, 2009. This is almost three months later than the November 20, 2008, date Mr. Pullman recites in his motion.

Thus, even assuming this Court would preemptively order early release on 50 percent time, that date is almost three months after the oral argument.

4. **Conclusion**

The Court should deny Mr. Pullman's motion for release.

RESPECTFULLY SUBMITTED this 26th day of September, 2008.

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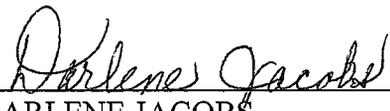
CERTIFICATE OF SERVICE

I certify that I served a copy of the DEPARTMENT OF CORRECTIONS' RESPONSE TO PULLMAN'S MOTION FOR RELEASE ON PERSONAL RECOGNIZANCE on all parties or their counsel of record as follows:

US Mail Postage Prepaid

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EXECUTED this 26th day of September, 2008 at Olympia, Washington.



DARLENE JACOBS