

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re Personal Restraint of)
JAY R. PULLMAN)
)
)
)
)
)
)
)
)
)
_____)

No. 80834-1
PETITIONER'S
RAP 16.15(b) MOTION
FOR RELEASE ON
PERSONAL
RECOGNIZANCE

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2008 SEP -9 PM 4: 54

I. IDENTITY OF MOVING PARTY

COMES NOW the petitioner, by and through the undersigned attorney, and moves this Court for the relief designated below.

II. STATEMENT OF RELIEF SOUGHT

Petitioner Jay Pullman moves this Court to release him on his personal recognizance pending this Court's decision on his personal restraint petition. This motion is based upon RAP 16.15(b), the following facts, and the facts set forth in Mr. Pullman's declaration, which is attached to this motion.

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
08 SEP 15 AM 7: 32
BY [Signature]
CERK
S. CARPENTER

III. FACTS RELEVANT TO MOTION

As grounds for and in support of this motion petitioner avers the following:

Petitioner's Motion
for Release on
Personal Recognizance

Washington Appellate Project
1511 Third Avenue, Suite 701
Seattle, WA 98101
(206) 587-2711

1. Jay Pullman's personal restraint petition is currently pending in this Court. The parties' briefs have been filed and oral argument is scheduled for October 30, 2008.

2. Mr. Pullman is currently incarcerated at McNeil Island Corrections Center pursuant to his 2002 convictions and sentence for delivery of cocaine, possession with intent to deliver cocaine, and bail jumping, and his 2004 conviction for possession with intent to deliver cocaine. As stated in the attached declaration, Mr. Pullman's early release date based on eligibility for 33% earned time is July 1, 2010. His early release date based on eligibility for 50% earned time is November 20, 2008.

3. In his personal restraint petition, Mr. Pullman argues the Department of Corrections (DOC) violated his constitutional due process rights when it raised his risk classification level and revoked his prior eligibility for 50% earned release time, without providing him advance notice and opportunity to be heard. If Mr. Pullman prevails on his petition and is granted a new hearing, his eligibility for 50% earned release time may be reinstated.

Petitioner's Motion
for Release on
Personal Recognizance

Washington Appellate Project
1511 Third Avenue, Suite 701
Seattle, WA 98101
(206) 587-2711

4. Mr. Pullman has significant ties to the community. As stated in his declaration, he has a seven-year old child who lives in Renton, Washington.

IV. ARGUMENT

RAP 16.15(b) provides the appellate court may release a petitioner on personal recognizance before deciding a personal restraint petition, "if release prevents further unlawful confinement and it is unjust to delay the petitioner's release until the petition is determined." The appellate court may direct the release of the petitioner with the conditions of release to be determined by a trial court. RAP 16.15(b).

Mr. Pullman contends it is just to release him on personal recognizance before deciding his personal restraint petition. If Mr. Pullman were still eligible for 50% earned time, his release date would be November 20, 2008, soon after oral argument in this case. As argued in Mr. Pullman's petition, DOC revoked his prior eligibility for 50% earned time in violation of constitutional due process. Further, Mr. Pullman has significant ties to the community.

Petitioner's Motion
for Release on
Personal Recognizance

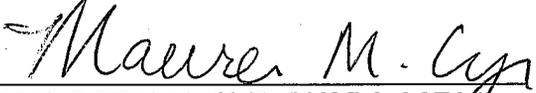
Washington Appellate Project
1511 Third Avenue, Suite 701
Seattle, WA 98101
(206) 587-2711

V. CONCLUSION

For the reasons stated above, Mr. Pullman respectfully requests this Court release him on personal recognizance pending its decision in his case.

DATED this 9th day of September, 2008.

Respectfully submitted,


MAUREEN M. CYR (WSBA 28704)
Washington Appellate Project (91052)
Attorneys for Petitioner

Petitioner's Motion
for Release on
Personal Recognizance

Washington Appellate Project
1511 Third Avenue, Suite 701
Seattle, WA 98101
(206) 587-2711

The Supreme Court of the State of Washington

James Pulliam AKA
Jay Pullman # 845002
Petitioner

)
) Case No.: No. 80834-1
)
)
) DECLARATION
)

RECEIVED

)
) SEP - 2 2008
)

)
Washington Appellate Project

I Jay Pullman, declare under penalty of perjury, under the laws of the State of Washington that the following is a true and accurate Statement:

I Jay Pullman request release on personal recognize pursuant to Washington RAP 16.15(b). I'm a father of a 7yr old child, Jamari Pulliam, who resides in Renton, Washington.

My current release date with 33% earned time is July 1, 2010. November 20, 2008 is my release date with 50% earned time. I had a DOSA sentence with a release date of October 13, 2006 before DOC unconstitutionally changed my release date without notice.

The appellate court agrees that I was reclassified without any advance notice or opportunity to respond. A post-deprivation remedy does not satisfy due process when a pre-deprivation hearing is required. How can I get a fair hearing when there is a built-in bias? If DOC clears me in a new hearing, DOC is in effect admitting I was injured by the lack of a hearing. If a

1 disciplinary hearing denies due process I can recover damages in a federal
2 civil rights action.

3 Legislation has granted DOC discretion to select the appropriate risk
4 management instrument. The inmate is not entitled to the confidential
5 instrument used by the department to conduct the risk assessment. I was
6 denied 5990 because my LSI score was a 41 instead of a 40.

7
8 For the above stated reasons, I respectfully request to be released on
9 personal recognize. I should have been released 2 yrs ago!

10
11
12
13
14
15 Dated this 28th day of August, 2008

16
17 Signed



18 Mc Neil Island

19 Correctional Center

20 P.O Box 881000

21 Steilacoom, WA 88133

DECLARATION OF MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, a true copy of the **Amended Petition for Review** filed under **Supreme Court No. 80834-1** (for transmittal to the Supreme Court) to which this declaration is affixed/attached, was mailed or caused to be delivered to each attorney or party or record for respondents: **Jay Geck; Paul Weisser; Ronda Larson - Assistant Attorneys General**, appellant and/or other party, at the regular office or residence or drop-off box at the prosecutor's office.


MARIA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: September 9, 2008

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2008 SEP -9 PM 4:54