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NO. 58823-1-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

In re the Personal Restraint Petition of:

MARK DAVID MATTSON

Petitioner.

RESPONSE TO
PETITIONER'S
SUPPLEMENTAL
BRIEF

FILED
COURT OF APPEALS DIV. #1
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Respondent, the Department of Corrections (Department or DOC), responds to Mr. Mattson's supplemental brief. DOC promptly and thoroughly evaluates Mr. Mattson's proposed plans. DOC denied all of them because none are sufficiently safe to protect the community from Mr. Mattson. Mr. Mattson is an extremely dangerous recidivist pedophile who preys on very young children who are strangers to him. Forensic psychologist evaluated him twice and both times found him to meet sexually violent predator criteria. Under these circumstances, no release address is safe enough to prevent Mattson's high risk of re-offending and protect community from him.

I. ARGUMENT

A. DOC EVALUATED EVERY PLAN MATTSON SUBMITTED AND DENIED THEM BECAUSE OF HIS RISK TO RE-OFFEND AND RISK TO COMMUNITY SAFETY; LIPTRAP AND DUTCHER ARE INAPPLICABLE TO MATTSON.

Department carefully evaluated every plan Mattson submitted and denied them because of his risk to reoffend and risk to community safety.

Mr. Mattson is an extremely dangerous pedophile who committed dozens of charged and uncharged sex crimes against children. Forensic psychologist twice found him meeting sexually violent predator criteria. Since Mattson is such a dangerous offender, the Department correctly denied his plans on the merits. Dutcher and Liptrap are inapplicable, because in this case forensic expert twice found Mattson to meet sexually violent predator criteria, and DOC evaluated and rejected his plans on the merits.

1. Mr. Mattson Meets Sexually Violent Predator Criteria.

RCW 71.09.20 (16) defines “sexual violent predator” as

Any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

(Emphasis added).

Forensic psychiatrist Brian W. Judd, Ph.D., evaluated Mr. Mattson in 2003 and 2005 and twice concluded Mr. Mattson met sexually violent predator criteria.

To summarize the findings of Dr. Judd’s more detailed 2005 clinic evaluation, Mr. Mattson has been committing sexual crimes against children for more than 20 years. Response of DOC, Exhibit 3, Attachment B, at 1. Despite many years of treatment/incarceration, minor girls continue to sexually arouse him. Id. at 5. He readily acknowledged

sexually victimizing 38 minor girls beginning in his early 20's. Id. at 5. He forced them to fellate him, masturbated and ejaculated in their presence. Id. He chose children that were strangers to minimize risk of being caught. Id.

Even after he was treated in Western State Hospital for three years while serving his 1985 conviction for rape of a six year old girl, after release he sexually abused six to seven additional minor girls. Id. at 6. Mr. Mattson also reported, concurrent with sexual assaults, history of exhibitionism to young girls, voyeurism, obscene phone calls to young girls, ejaculating in customers coffee cups, soliciting prostitutes, and forcing unwanted anal intercourse on a prostitute. Id. at 6.

Mr. Mattson failed sexual deviancy treatment numerous times. He was unsuccessfully treated in 1978 and 1980 after his public indecency and indecent exposure convictions. Id. at 7. He was also unsuccessfully treated for sexual deviancy in Western State Hospital for three years (1985-1988). Id. at 6. The staff there concluded he had little empathy or remorse for the victims and had strong feeling of entitlement. Id. at 6. The staff terminated Mattson for his "compulsive need for sexual stimulation." Id. at 8. He tried, unsuccessfully, to get into various sexual deviancy treatment programs on his own. Id. at 7.

As of 2004, Mattson continued to have paraphilic (being attracted to minors particularly girls) patterns of sexual arousal. Id. at 17. His

continuing diagnosis is being a paraphilic, i.e. having “recurrent, intense sexually arousing fantasies, sexual urges or behaviors involving . . . children. . .” Id. at 10.

Dr. Judd’s 2005 assessment showed Mr. Mattson had the highest arousal rate to a seven to nine year-old girls and four to six year-old boys. Id. at 10. Dr. Judd concluded the diagnosis of pedophilia, being sexually attracted to females (paraphilia nonconsent), paraphilia (making obscene phone calls), cannabis dependence, alcohol dependence, exhibitionism, and voyeurism remained current. Id. at 11, 12, 14.

Dr. Judd determined Mr. Mattson was likely to re-offend on a more probable than not basis. Id. at 16.

Based on Dr. Judd’s very thorough evaluation, Mr. Mattson continues to present an extreme danger to community and has a high risk to re-offend, because of his criminal history, his numerous failed sexual deviancy treatments and his pedophilia, continuing paraphilic pattern of sexual arousal, and drug and alcohol dependence.

2. Department Investigated Mattson’s Release Plans and Properly Denied them Because of his Risk to Reoffend and Danger to the Community.

Mr. Mattson’s counsel dismissively describes investigations DOC conducted as a “farce.” Supplemental Brief, at 7. This is incorrect. DOC conducted thorough investigations of every address Mr. Mattson

submitted. Department denied all of them because of the extreme risk Mr. Mattson poses to the community and his criminal history.

Department's initial response and attached exhibits show Department investigated, on the merits, no less than five addresses Mr. Mattson submitted. Response, at 7-8. Department denied these addresses only after its community corrections officers investigated every address but found them inappropriate for release. Id. DOC found the addresses inappropriate because their location put Mr. Mattson at risk to reoffend. Id.

Mr. Mattson labels Department's goal of ensuring community safety as a "mantra" that DOC repeats in this case. Supplemental Brief, at 8. The 2003 and 2005 SVP evaluations demonstrate that extreme danger Mr. Mattson poses to the community and his high risk to reoffend are all too real. Mr. Mattson is not an "ordinary" sex offender. He is a recidivist pedophile with a 20 plus year history of sex crimes against children who failed sexual deviancy treatment multiple times. The sexually violent predator evaluation twice concluded he met the SVP criteria and will likely engage in predatory acts of sexual violence if "not confined in a secure facility." Response, Exhibit 3, Attachment B, at 17-19. The chances of Mr. Mattson obtaining a release address in the community that will be secure enough to prevent him from engaging in predatory acts of sexual violence are non-existent. Two SVP evaluations show Mr. Mattson

is essentially a walking “time bomb.” If he is released to the community, it is only a matter of time before he commits yet another sex crime against a minor child. DOC was absolutely correct when it excluded offenders who, like Mr. Mattson were already evaluated and the expert concluded they met sexually violent predator’s criteria. As his SVP evaluations amply demonstrate, no address, other than secure institutionalized setting, would be safe enough to prevent Mr. Mattson from re-offending.

3. Dutcher and Liptrap are Inapplicable to Mattson.

Dutcher and Liptrap are inapplicable to Mattson. DOC complies with Dutcher by allowing Mattson to submit release addresses and investigating all of them. Response, at 21. Liptrap is factually different from this case and inapplicable. In Liptrap this Court held DOC erred when it did nothing with the release plans of inmates who have not undergone SVP evaluation. Response, at 21. Here, DOC investigated Mattson’s plans he started submitting after he underwent SVP evaluation. Id. Also, Mattson unlike petitioners in Dutcher and Liptrap, is not in a category of inmates referred for a civil commitment hearing, but not evaluated by the forensic expert. He was evaluated twice and found to meet SVP criteria. See above. Finally, in Mattson’s case DOC investigated every plan he submitted and denied it on the merits while in Dutcher and Liptrap, earlier versions of DOC policies prevented submission of, or consideration of, the release plans.

Both Dutcher and Liptrap dealt with sex offenders whom DOC referred for a civil commitment proceeding, but who have not undergone forensic evaluation to determine whether they met sexually violent predator criteria at the time they filed their motions. In re Dutcher, 114 Wash. App. 755, 756-758 (2002); In re Liptrap, 127 Wash. App. 463, 467-468 (2005). The fact that an inmate is referred for possible sexually violent predator commitment proceeding does not mean forensic expert completed his SVP evaluation. As Liptrap makes clear, the forensic evaluation takes place after the inmate is referred, and after the End of Sentence Review Committee (ESRC) sets up his file. Liptrap, 127 Wash. App. at 468. Once the forensic expert conducts the evaluation and it she/he concludes the inmate meets SVP criteria, Department refers inmate for civil commitment proceedings. Id. Neither Mr. Dutcher, nor petitioners in Liptrap were, at the time they filed their petitions, found to meet SVP criteria. In this case, forensic expert twice, in 2003 and 2005, found Mr. Mattson to meet sexually violent predator criteria.

Dutcher and Liptrap are inapplicable for another reason as well. They stand for the proposition that because an inmate is being referred for a possible civil commitment hearing does not justify Department's delay in consideration, or refusal to consider, his release plans. See Liptrap, 127 Wash. App. at 474:

Administrative delay in deciding whether a particular inmate qualifies for a civil commitment referral does not justify delay in consideration of the inmate's release plan, if he has become eligible for transfer to community custody.

(Emphasis added).

See also, Dutcher, 114 Wash. App. at 763 holding that RCW 9.94A.150(2) and its amended versions

clearly contemplate[d] that such decisions [making release eligibility determinations based on public safety concerns] will be based on the merits of a release plan, and nowhere offer[ed] any authority for dispensing with such plans altogether.

DOC, following Dutcher and Liptrap, investigates every plan Mr. Mattson submits. The SVP evaluations make it clear Mr. Mattson, an offender meeting sexually violent predator criteria, has a very high risk to reoffend unless confined in a secure facility. Under the facts of this case, it is impossible to find a community custody release address secure enough to prevent him from re-offending.

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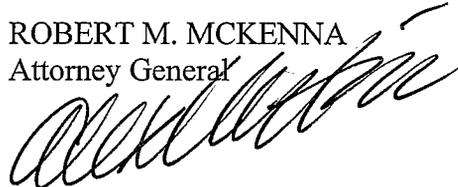
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II. CONCLUSION

Based on the foregoing, the Respondent respectfully asks that the Court deny Mr. Mattson's petition and dismiss this case with prejudice.

RESPECTFULLY SUBMITTED this 8 day of February, 2007.

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CERTIFICATE OF SERVICE

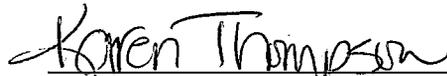
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KAREN THOMPSON