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STATE OF WASHINGTON
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Division I
State of Washington
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Case #: 1045808

NO. _____

COA NO. 86750-4-I

WASHINGTON STATE SUPREME COURT

ON APPEAL FROM THE WASHINGTON COURT OF APPEALS

DIVISION ONE

RONALD BUZZARD JR.,

Appellant,

V.

KING COUNTY PROSECUTOR, ISRB

Respondent(s),

PETITION FOR REVIEW

RAP 13.4 (b)(1-4)

Ronald Buzzard Jr.

#846650, TRU, D515

P.O. Box 888

Monroe, WA. 98272

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I. IDENTITY OF APPELLANT

Ronald Buzzard Jr., Appellant, herein Pro Se timely files this Petition for Review.

II. CITATION TO COURT OF APPEALS DECISION

Buzzard's direct appeal was denied on July 28, 2005. He timely filed a Motion for Reconsideration on August 13, 2025, which was then denied August 21, 2025, without a hearing. Buzzard timely files his Petition for Review.

III. ISSUES PRESENTED FOR REVIEW

1. Is review appropriate under RAP 13.4(b)(1) where the Court of Appeals decision conflicts with that of the Martin decision? The Court of Appeals erred and abused their discretion in failing to reach the merits of his King County Prosecutor arguments, as they were the first respondent in this petition, that they violated Rcw 71.09.025(1)(a), which they failed to file "three months prior to release." The statute which includes "mandatory language" of the word "shall" creates a "mandatory duty" was able to be filed in a Mandamus petition, This Petition should be granted under RAP 13.4(b)(1) since the Court of Appeals decision conflicts with the Supreme Court decision in In re Det. of Martin, This issue should be accepted for review under RAP 13.4(b)(3) due to this due process violation. This issue should be accepted for review under RAP 13.4(b)(4) since the "petition involves an issue of substantial public interest that should be determined by the Supreme Court."

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2. The Court of Appeals erred and abused their discretion in failing to reverse on the fact that Buzzard did prove that the ISRB had a "mandatory duty" to release him under RCW 9.95.420(3), and review should be granted under RAP 13.4(b)(1) and (4).

IV. STATEMENT OF THE CASE

Buzzard was found releasable by the ISRB in August 2023. His release address was approved, and his release address was approved for November 13, 2023. 3½ weeks before his release the King County Prosecutor put him in for a Forensic Psychological Evaluation (hereinafter FPE), under RCW 71.09. Due to this referral by the Prosecutor, the ISRB suspended his release date. Buzzard was advised by FPE counsel from OPD-office of Public Defense to NOT participate in the FPE since he had already been found releasable, and there was no new file materials. Buzzard had a follow-up .420 hearing after the FPE in February 2024. The ISRB substituted their discretion for that of the FPE Evaluator, who never spoke to Buzzard and only went on the lies in his files. They then rescinded Buzzard's release, and added another 48 months to his minimum term.

The Prosecutor violated RCW 71.09.025(1)(a), which has "mandatory language" of the word "shall" which created an automatic "mandatory duty". Section (1)(a) requires an FPE be filed "three months prior to release." The King County Prosecutor violated the Legislative intent, and mandatory language, thus, they violated the "mandatory duty" in the statute.

V. ARGUMENT

1. GROUNDS AGAINST RESPONDENT, KING COUNTY PROSECUTOR,

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SHOULD BE GRANTED UNDER RAP 13.4(b)(1)(3)(4)

Is review appropriate under RAP 13.4(b)(1) where the Court of Appeals decision conflicts with that of the Martin decision?

This Supreme Court ruled in In re Det. of Martin, 163 Wn.2d 501, 182 P.3d 951 (2007), that the FPE had to be filed "three months prior to release" under RCW 71.09.025(1)(a), thus, should be GRANTED review under RAP 13.4(b)(1); based on the Martin decision, and immediate release as relief, NOT a new .420 board hearing which would just end up with another release denial excuse.

Statutory construction is a question of law we review de novo. In re Pers. Restraint of Parejo, 5 Wn.App.2d 558, 572, 428 P.3d 130 (2018)(citing In re Pers. Restraint of Martin, 163 Wn.2d at 506. We strictly construe statutes curtailing civil liberties to their terms. In re Det. of Swanson, 115 Wn.2d 21, 31, 793 P.2d 962, 804 P.2d 1 (1990). We "must avoid unlikely, absurd, or strained results" when interpreting statutes. In re Det. of Coppin, 157 Wn.App. 537, 552, 238 P.3d 1192 (2010). We look first to the plain language of the statute. State V. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). If the plain language is subject to only one interpretation, our inquiry ends. Armendariz, 160 Wn.2d, at 110.

Buzzard argues that RCW 71.09.025(1)(a)'s mandatory language created a mandatory duty with the use of the word "shall", making it a mandatory duty for the King County Prosecutor to file for the FPE "three months prior to release." Since they ~~failed~~ filed for the FPE three weeks

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before Buzzard's release they violated the controlling decision in Martin and the mandatory language and plain language of the statute, RCW 71.09.025 (1)(a), "shall refer the person ... three months prior to release," requiring relief.

The plain and unambiguous language of RCW 71.09.025(1)(a) prohibits the King County Prosecutor from filing for an FPE less than "three months prior to release."

Review should be GRANTED under RAP 13.4(b)(3) since it was a violation of due process for the Prosecutor to violate their "mandatory duty" set forth by the Legislative intent through the "mandatory language" that automatically created a "mandatory duty" with the use of the word "shall" in RCW 71.09.025(1)(a), in violating the legislative and statutory intent of this statute the Prosecutor violated Buzzard's due process rights under the 5th and 14th Amendments, and Wash. Const. Art. I §§ 3, 22.

Review should be GRANTED under RAP 13.4(b)(4) because the "petition involves an issue of substantial public interest that should be determined by the Supreme Court." Buzzard argues it is an epidemic of dozens of guys being put in for FPE's, that will not be civilly committed, but the ISRB is using it to keep their numbers up, job security for them, and to keep guys illegally and unconstitutionally incarcerated past their minimum term sentences. They are conspiring with prosecutors and the ESRC to keep sex offenders illegally and unconstitutionally incarcerated past their release dates. Thus, the petition involves an interest of substantial public interest that must be determined by the Supreme Court.

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2. REVIEW SHOULD BE GRANTED UNDER RAP 13.4(b)(1)(2)(3)(4) SINCE BUZZARD PROVED THE ISRB HAS A MANDATORY DUTY TO RELEASE HIM

Buzzard argues that the "mandatory language" in the use of the word "shall" in RCW 9.95.420(3)(a), "shall" order the offender released" created an automatic "mandatory duty" making Mandamus the appropriate remedy because Buzzard has proven that a mandatory duty exists.

Buzzard further argues that Division One just ruled in favor of James Day on 9/2/2025, on the exact same issue and he won, Thus, Division One's opinion conflicts with its own decisions and requires relief and review should be accepted under RAP 13.4(b)(2), and conflicts with Supreme Court decisions of Dodge and McCarthy requiring review to be accepted under RAP 13.4(b)(1), he must be given the same relief as he is "similarly situated" under the Equal Protection Clause. U.S. Const. Amends. 14.

Here, as the ISRB acknowledged, the court's analysis in Dodge regarding RCW 9.94A.730 is instructive in interpreting RCW 9.95.420 the governing statute for Day's releasability -- given the similarity of the statutes. In re Pers. Restraint of James Day, No. 85705-3-I (DIV. I, 2025) (decided 9/2/2025). Both statutes contain a presumption of release and require the ISRB to release the offender under "appropriate" "affirmative and other conditions" unless it finds by a preponderance of the evidence that "despite such conditions" the offender is more likely than not to reoffend. RCW

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9.94A.730(3); RCW 9.95.420(3); Day, at *10. Thus, RCW 9.95.420, like RCW 9.94A.730 "places a limit on the ISRB's discretion" in making release decisions. Dodge, 198 Wn.2d at 844; see also In re Pers. Restraint of McCarthy, 161 Wn.2d 234, 239-40, 241, 164 P.3d 1283 (2007)("RCW 9.95.420(3) creates a limited liberty interest by restricting the Board's discretion and establishing a presumption that offenders will be released to community custody upon the expiration of their minimum sentence"). We therefore conclude that Dodge governs our analysis here, applying Dodge, determine that the ISRB abused their discretion in deciding to release Day.

Buzzard argues the Dodge and Day cases further prove that the ISRB abused their discretion and reversal and release is required. Buzzard argues this Court should Order him released because reversal for a new .420 hearing will just cause an additional 3-5 month delay for another hearing, and then up to 6 weeks for a decision which they will just find another excuse not to release him. Buzzard requests immediate release.

VI. CONCLUSION

Buzzard requests this Court reverse the Court of Appeals decision, Order the FPE be STRICKEN from his record due to the illegality surrounding it, Buzzard be Ordered immediately released. Buzzard be GRANTED costs, and attorney's fees for his time under the lodestar standard of $125 per hour for his time since he has over 20 years experience as a paralegal for all motions and briefs in this case.

Ronald W Buzzard

Filed this 4th day of September, 2018.

Ronald Buzzard Jr.

Appellant, Pro Se

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The DOC Facility Name is Monroe Correctional Complex
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The Case Number is 867504
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RONALD BUZZARD, JR., Appellant, v. INDETERMINATE SENTENCE REVIEW BOARD, Respondent.	No. 86750-4-I DIVISION ONE UNPUBLISHED OPINION

COBURN, J. — Ronald Buzzard Jr. appeals the dismissal of his petition for a writ of mandamus to the Indeterminate Sentencing Review Board (Board) requesting that the superior court order reinstate his date of scheduled release. Because Buzzard fails to show that the Board has a mandatory duty to act, he fails to meet his burden to support the issuing of a writ of mandamus. Accordingly, we affirm.

FACTS

In 2002, Ronald Buzzard pleaded guilty to rape of a child in the first degree. He was granted a sentence under Washington's Sex Offender Sentencing Alternative (SSOSA), but that was revoked in April 2003, leaving him to serve a minimum term of 123 months with the maximum term of life. In 2016, the Board ordered his release to community custody. About four years later, the Board revoked his release. In 2021, the Board extended his term by 24 months following a releasability hearing under RCW

9.94A.420.[1] [2]

In August 2023, the Board found Buzzard conditionally releasable subject to approval of an offender release plan. Buzzard was later scheduled for a November 13, 2023 release date. Prior to Buzzard's release, King County Prosecuting Attorney's Office notified the Board that they would be initiating a self-referral for a Forensic Psychological Evaluation (FPE) to determine if Buzzard qualifies as a sexually violent predator pursuant to RCW 71.09. The Board then suspended Buzzard's release and scheduled a new releasability hearing for February 2024 to consider the FPE results.

In November 2023, Buzzard petitioned for a writ of mandamus against the Board requesting Snohomish County Superior Court to reinstate his November 13, 2023 release date.[3] The Board moved to dismiss the petition arguing that Buzzard failed to demonstrate that the Board had a mandatory legal duty to grant his release, and that Buzzard failed to use the correct adequate alternative action of a personal restraint petition (PRP). The court agreed and dismissed Buzzard's petition.

Buzzard appeals.

DISCUSSION

Buzzard contends that the superior court erred when it dismissed his writ of mandamus. Specifically, he argues that his mandamus should have been granted because the statutory term "shall" in RCW 9.95.420(3)(a) required the Board to release

[1] This Court recently affirmed the dismissal of a similar mandamus action brought by Buzzard following the ISRB's extension of his term by 24 months. Buzzard v. Indeterminate Sentence Rev. Bd., No. 38930-8-III, slip op. at 7 (Wash. Ct. App. Feb. 13, 2024) (unpublished), https://www.courts.wa.gov/opinions/pdf/389308_unp.pdf.

[2] Former RCW 9.94A.420 was recodified as RCW 9.94A.599 pursuant to 2001 c 10 § 6.

[3] Buzzard refiled his petition in January 2024 after the first petition was dismissed without prejudice for insufficient service of process.

him.[4] We disagree.

An applicant for a writ of mandamus must establish three elements for a writ to issue: "(1) the party subject to the writ is under a clear duty to act; (2) the applicant has no 'plain, speedy and adequate remedy in the ordinary course of law'; and (3) the applicant is 'beneficially interested.'" Eugster v. City of Spokane, 118 Wn. App. 383, 402, 76 P.3d 741 (2003) (citations omitted) (quoting RCW 7.16.170). The burden of establishing these elements is on the petitioner. Colvin v. Inslee, 195 Wn.2d 879, 894, 467 P.3d 953 (2020).

Writs of mandamus are subject to two different standards of review. Cost Mgmt. Servs., Inc. v. City of Lakewood, 178 Wn.2d 635, 648, 310 P.3d 804 (2013). Which standard of review applies depends upon the issue examined on appeal. Id. at 649. If the alleged error deals with the trial court's determination that the statute specifies a duty that the person must perform, the issue is a question of law. River Park Square, LLC v. Miggins, 143 Wn.2d 68, 76, 17 P.3d 1178 (2001). Questions of law are reviewed de novo. Id.

But a trial court's determination that there exists a plain, speedy, and adequate remedy at law is reviewed for an abuse of discretion. Cost Management, 178 Wn.2d at 649. A court abuses its discretion if its decision is manifestly unreasonable or rests on untenable grounds or untenable reasons. State v. Rohrich, 149 Wn.2d 647, 654, 71

[4] Buzzard also raises additional arguments that (1) the King County Prosector violated RCW 71.09.025(1)(a), Buzzard's right to due process by filing the untimely request of an FPE referral, the Board's actions which violated his constitutional rights to due process; and (2) that Buzzard's due process rights under the federal and state constitutions were violated because he was not brought before a judge for a probable cause determination upon the filing of an SVP petition. The only order subject to this appeal is the March 7, 2024 decision of the superior court dismissing the mandamus petition. None of these arguments explain how the Board had a clear duty to act. Accordingly, we decline to address these issues.

P.3d 638 (2003). A decision is based on untenable grounds or made for untenable reasons if it rests on facts unsupported by the record or was reached by applying the wrong legal standard. Id. A decision is manifestly unreasonable if the court, despite applying the correct legal standard to the supported facts, reaches an outcome that is outside the range of acceptable choices, such that no reasonable person could arrive at that outcome. Id.

A statutory writ is an extraordinary remedy. Walker v. Munro, 124 Wn.2d 402, 407, 879 P.2d 920 (1994). The superior court may issue a writ of mandamus "to compel the performance of an act which the law especially enjoins as a duty resulting from an office." RCW 7.16.160.

"A writ of mandamus can only command what the law itself commands." Colvin, 195 Wn.2d at 893. Where there is no legal requirement for a government official to take a specific action, a writ cannot require it. Id. As a result, "'mandamus may not be used to compel the performance of acts or duties which involve discretion on the part of a public official.'" SEIU Healthcare 775NW v. Gregoire, 168 Wn.2d 593, 599, 229 P.3d 774 (2010) (quoting Walker, 124 Wn.2d at 410)).

Buzzard misconstrues the legislature's use of the term "shall" in RCW 9.95.420(3)(a) as mandating the Board to release Buzzard regardless of a pending FPE. The statute that governs the end of sentence review for sex offenders states,

> (3)(a) Except as provided in (b) of this subsection, no later than ninety days before expiration of the minimum term, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under

> subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

RCW 9.95.420(3)(a) (emphasis added). Under the plain language of the statute, the board has the discretion to consider "other conditions as the board determines appropriate." The Board was aware, prior to Buzzard's scheduled release date, that the King County Prosecutor's Office requested a referral for an FPE to determine if Buzzard qualifies as a sexually violent predator pursuant to RCW 71.09. Nothing in the statute prohibits the Board from determining that it is appropriate to consider the FPE referral and its results prior to Buzzard's release. Moreover, the statue gives the Board great discretion in determining what conditions are appropriate to support release. It follows that mandamus may not be used to compel the performance of acts or duties which involve discretion on the part of the Board. See SEIU Healthcare 775NW, 168 Wn.2d at 599. "[T]he authority to decide when a sex offender is released is vested with the [Board]." Pers. Restraint of Forcha-Williams, 200 Wn.2d 581, 593, 520 P.3d 939 (2022). The Board also cites Buzzard, No. 38930-8-III, slip op. at 5 (while recognizing that the Board had authority to determine whether Buzzard was releasable, concluding that there is nothing in RCW 9.95.420 indicating that the Board had a duty to release Buzzard).[5]

[5] Unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court, but if filed after March 1, 2013, may be cited as nonbinding authorities and may be accorded such persuasive value as the court deems appropriate. GR 14.1.

Buzzard relies on this court's ruling in Dress v. Dep't of Corr., 168 Wn. App. 319, 279 P.3d 875 (2012), in support of his argument. However, his reliance on Dress is misplaced.

In Dress, the superior court sentenced Dress to multiple terms, with the longest being 84 months, to be served concurrently. Id. at 323. The DOC believed that Dress' sentences should be served consecutively prior to a previous superior court sentence from another Washington county. Id. DOC submitted a request to the sentencing court to amend its judgment and sentence to reflect consecutively served terms, but there was no response. Id. Additionally, DOC failed to file a petition to seek appellate review pursuant to RCW 9.94A.585(7) regarding their claim that the judgment and sentence were erroneous within the 90-day window provided by the statute. Id. Over four years later, Dress was informed by the DOC that she would not be released according to the superior court's judgment and sentence timeline, because her sentences were to be run consecutively. Id. at 324. On appeal, this court held that the judgment and sentence were unambiguous as provided by the superior court, and that DOC had no authority to impose a different sentence. Id. at 329. The Dress court granted her writ of mandamus compelling DOC to follow the superior court's original judgment. Dress is inapposite.

The Board also relies on this court's holding in Pers. Restraint of Betts, No. 85906-4-I, slip op. at 4 (Wash. Ct. App. Jan. 16, 2024) (unpublished), https://www.courts.wa.gov/opinions/pdf/859064.pdf. In Betts, we observed that determination of parolability for sex offenders is governed by RCW 9.95.420 and chapter 381-90 WAC, and that "[n]either RCW 9.95.420 nor chapter 381-90 WAC states that a decision of the [Board] cannot be modified once entered." Id.

Buzzard has not established that the Board is under a clear duty to act, as he asserts, to release him as was initially scheduled on November 13, 2023. Because he fails to fulfill the first element necessary for a court to issue a writ of mandamus and all three elements are required, we need not reach the remaining elements. See Est. of McCartney by & through McCartney v. Pierce County, 22 Wn. App. 2d 665, 699, 513 P.3d 119 (2022).

We affirm.

Coburn, J.

WE CONCUR:

Díaz, J.

Birk, J.