

**IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON**

IN THE MATTER OF THE PERSONAL RESTRAINT OF:	)	No. 60670-1-1
	)	
	)	DIVISION ONE
	)	
MELVIN C. WARNESS,	)	UNPUBLISHED OPINION
	)	
Petitioner.	)	FILED: December 21, 2009

**Per Curiam.** Petitioner Melvin Warness has filed a personal restraint petition challenging the Department of Corrections' (DOC) determination that he was ineligible for transfer to community custody in lieu of earned early release from his incarceration following conviction of a sex offense. Warness was determined to have raised a nonfrivolous issue and counsel was appointed. RAP 16.11(b). Consideration of the petition was thereafter stayed pending in In re Pers. Restraint of Mattson, No. 81324-8 in our state Supreme Court. The stay has now been lifted as Mattson has been decided. In re Pers. Restraint of Mattson, 166 Wn.2d 730, 743, 214 P.3d 141 (2009).

Warness's contentions derive from the proposition that the DOC has violated its statutory mandate under RCW 9.94A.728(2) and improperly deprived him of a constitutionally protected limited liberty interest in early release to community custody based on good prison behavior. His arguments are grounded in this court's decisions in In re Pers. Restraint of Dutcher, 114 Wn. App. 755, 60 P.3d 635 (2002), In re Pers.

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Restraint of Liptrap, 127 Wn. App. 463, 111 P.3d 1227 (2005), and In re Pers. Restraint of Mattson, 142 Wn. App. 130, 172 P.3d 719 (2007). Our Supreme Court's opinion in Mattson, however, reversed this court's opinion in that case and further disapproved of the reasoning in Dutcher and Liptrap on which Warness relies. 166 Wn.2d at 742-43. We therefore deny Warness's petition.

For the court:

Dwyer, A.C.J.  
Becker, J.  
Cox, J.