

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

May 12, 2020

In the Matter of the Personal Restraint of

No. 54558-6

FRED JIMMY BEEMAN,

UNPUBLISHED OPINION

Petitioner.

GLASGOW, J.—Fred Jimmy Beeman seeks relief from personal restraint imposed as a result of his 2017 plea of guilty to first degree internet viewing of depictions of a minor engaged in sexually explicit conduct. Beeman timely filed a motion for relief from judgment in the trial court. The trial court transferred this motion to this court under CrR 7.8(c) to be considered as a personal restraint petition. RCW 10.73.090(1) and (3)(a). We deny his petition.

Beeman was convicted in 2012 of two counts of indecent liberties and one count of first degree possession of depictions of a minor engaged in sexually explicit conduct. *See* J. & Sentence, Clark County No. 11-1-00840-1. While he was serving a term of community custody on those convictions, in August 2016, the State charged Beeman with four counts of first degree internet viewing of depictions of a minor engaged in sexually explicit conduct.

According to Beeman’s trial counsel, Beeman was concerned that pleading guilty to the August 2016 charges would affect the good time credit he had earned while serving his 2011 sentence. Beeman’s trial counsel states that during a hearing, when the deputy prosecuting attorney was asked whether a plea of guilty on the August 2016 charges would affect the good time credit on the 2011 sentence, he reportedly said that “the entry of the plea shouldn’t affect anything with [the Department of Corrections (Department)].” Personal Restraint Pet., App. B, Decl. of Sean

Downs. Beeman declares that the deputy prosecuting attorney said that “he didn’t believe [the plea of guilty] would affect my good time.” *Id.*, App. B, Decl. of Fred Beeman.

In June 2017, Beeman agreed to plead guilty to a reduced charge of one count of first degree internet viewing of depictions of a minor engaged in sexually explicit conduct. *See* J. & Sentence, Clark County No. 16-1-01658-8. The trial court sentenced Beeman to 63 months of confinement. The judgment and sentence made no mention of the 2011 conviction, other than to include it in Beeman’s criminal history.

On August 22, 2017, the Department found Beeman guilty of violating the community custody conditions imposed in his 2011 sentence by having a criminal law violation proved by the 2017 plea of guilty. The Department revoked his community custody, returned him to total confinement to serve the remainder of his 2011 sentence, and revoked the 316 days of good time credit that he had earned on the 2011 sentence.

Beeman now argues that by revoking his good time credit on the 2011 sentence, the Department breached the plea agreement on the 2016 charges. He asserts that the deputy prosecuting attorney made a material representation that the 2017 plea of guilty would not affect his good time credit on the 2011 sentence, on which he relied. He asserts that the action of the Department should be imputed to the State. Thus, he contends he is entitled to specific performance of the plea agreement through ordering the Department to restore his good time credit on the 2011 sentence.

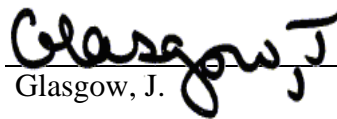
But Beeman fails to cite any controlling authority for any of his contentions. The deputy prosecuting attorney’s opinion—that he did not think the 2017 plea of guilty would affect the good time credit on the 2011 sentence—was not a material representation on which Beeman could rely. The issue was not addressed in the plea agreement. Beeman does not show that the action of the

Department, in revoking his good time credit on the 2011 sentence, could constitute a breach of the plea agreement, an agreement to which the Department was not a party. And he fails to show that this court has the authority to order the Department to restore the good time credit on the 2011 sentence in the guise of specific performance of the 2017 plea agreement.

Beeman also argues that the Department's August 22, 2017 revocation of his good time credit on his 2011 sentence violates double jeopardy because the Department had already found him guilty on July 25, 2016 and August 24, 2016, of violating his community custody conditions for the same conduct. But he does not show that the violations were the same or that double jeopardy would apply to them. And any such double jeopardy claim is not pertinent to his requested relief of specific performance of his 2017 plea agreement.

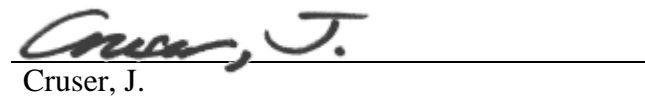
Beeman does not show any grounds for relief from personal restraint. We therefore deny his petition.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


Glasgow, J.

We concur:


Worwick, P.J.


Cruiser, J.