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Washington State
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Division Two

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Personal Restraint of: DAVID PAUL GASVODA, Petitioner.	No. 54855-1-II UNPUBLISHED OPINION

VELJACIC, J. — David Gasvoda seeks relief from personal restraint imposed as a result of his 2019 plea of guilty to attempted second degree rape of a child. Gasvoda argues that he received ineffective assistance of counsel, that he was coerced by the judge into pleading guilty, and that the prosecution violated the plea agreement. He also argues that the trial court erred in ruling that a proposed witness did not qualify as an expert, that excessive bail was imposed before trial, that his punishment is unconstitutional, and that he was subjected to a warrantless search of his car. We conclude that Gasvoda does not show any grounds for relief from personal restraint, and deny his petition.

A. Ineffective Assistance of Counsel

Gasvoda argues that he received ineffective assistance of trial counsel because counsel (1) failed to file a witness list on time; (2) misinformed him that he would earn 15 percent good time credit, when he will only earn 10 percent good time credit, and that he would not have pleaded

guilty if he was correctly informed; (3) did not fully and accurately explain the plea agreement; and (4) did not obtain corrections to errors in the pre-sentence investigation report.

To establish ineffective assistance of counsel, he must demonstrate that his counsel's performance fell below an objective standard of reasonableness and that as a result of that deficient performance, the result of his case probably would have been different. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995); *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). We presume strongly that trial counsel's performance was reasonable, and legitimate strategic decisions do not constitute deficient performance. *State v. Grier*, 171 Wn.2d 17, 42, 246 P.3d 1260 (2011).

Gasvoda presents no competent evidence of deficient performance or of resulting prejudice. His plea of guilty waived his right to challenge any result of a late filing of the witness list. *See In re Pers. Restraint of Teems*, 28 Wn. App. 631, 637, 626 P.2d 13 (1981).

As to the advice regarding good time credit, Gasvoda must show that there is a reasonable probability that, but for the incorrect advice, he would not have pleaded guilty and would have insisted on going to trial. *In re Pers. Restraint of Tricomo*, 13 Wn. App. 2d 223, 237, 463 P.3d 760 (2020). Gasvoda does not meet this burden. He signed the statement on plea of guilty, attesting that it had been explained to him. And he does not demonstrate what errors were in the pre-sentence investigation or how they prejudiced him at sentencing. Gasvoda does not demonstrate he received ineffective assistance of counsel.

B. Alleged Error at Sentencing

Gasvoda claims he was coerced into pleading guilty by the judge taking the plea. Gasvoda argues that the judge told him he was not bound to follow the sentencing recommendations of the parties. Gasvoda contrasts this with the same judge denying Gasvoda's wife's request for a

downward exceptional sentence because he was bound by the standard sentencing range. Gasvoda conflates principles of sentencing.

While a court is not bound to follow the recommendations of parties in ordering a sentence, a court is simultaneously required to order a sentence within the standard range, unless a party demonstrates mitigating circumstances justifying an exceptional sentence. RCW 9.94A.431(2), .505(2)(a)(i), .535. Consistent with the plea agreement, Gasvoda did not argue for or demonstrate mitigating circumstances justifying an exceptional sentence downward. The judge, therefore, was bound to sentence him within the standard range. Gasvoda does not show that the judge committed any error leading him to plead guilty.

C. Plea Agreement

Gasvoda argues that the deputy prosecutor violated the plea agreement by interfering with Gasvoda undergoing a neurological evaluation prior to sentencing in support of a possible downward sentence. He claims the deputy prosecutor imposed an impossible condition requiring that Gasvoda have an armed transport or escort take him to the evaluation. But he does not present any competent evidence that the deputy prosecutor imposed such a condition.

D. Expert Witness.

Gasvoda argues that the trial court erred in ruling that Steve Tutty, Ph.D., would not qualify as an expert. But he does not present any competent evidence that the trial court made such a ruling.

E. Excessive Bail.

Gasvoda argues that excessive bail was imposed before trial. But he does not show how this would be a ground for reversal of his convictions. *State v. Ingram*, 9 Wn. App. 2d 482, 496-97, 447 P.3d 192 (2019), *review denied*, 194 Wn.2d 1024 (2020).

F. Constitutional Punishment

Gasvoda contends his punishment violates the Eighth Amendment to the United States Constitution and article 1, section 14 of the Washington State Constitution because (1) he was not eligible for a special sex offender sentencing alternative (SSOSA) sentence because there was no actual victim of his crime and (2) his indeterminate sentence is longer than determinate sentences imposed to other defendants for similar crimes. He does not show that he had a constitutional right to a SSOSA sentence; it is solely a creature of statute. And he does not show that his sentence is so disproportionate as to constitute cruel and unusual punishment. He received a low-end standard range sentence of a minimum term of 58.5 months of confinement and a maximum term of life confinement.

G. *Warrantless Search*

Gasvoda argues that he was subjected to a warrantless search of his car. But he presents no evidence that any evidence was obtained during that search. And by pleading guilty, he waived his opportunity to object to the search. *Teems*, 28 Wn. App. at 637. He also appears to assert a *Brady*[1] violation in not producing dash camera video, body camera video or electronic surveillance of his arrest and the search of his car. But he does not show that such evidence existed or how they were exculpatory evidence.

Gasvoda does not show any grounds for relief from personal restraint. We therefore deny his petition and his request for appointment of counsel.

[1] *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

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.

Veljacic, J.

We concur:

Worswick, P.J.

Cruser, J.