

*In re Pers. Restraint of Dyer (Richard J.)*

No. 85091-7

CHAMBERS, J. (dissenting) — Richard J. Dyer will likely die in prison. He will die there, in no small part, because he maintains his innocence. This should trouble all of us since the Innocence Project has exonerated hundreds of innocent men and women who were wrongfully convicted. *See State v. Riofta*, 166 Wn.2d 358, 377, 209 P.3d 467 (2009) (Chambers, J., concurring in dissent) (citing Sophia S. Chang, Note, *Protecting the Innocent: Post-Conviction DNA Exoneration*, 36 Hastings Const. L.Q. 285, 289 (2009)). Because of the work of the Innocence Project, we know innocent men and women are convicted by good juries, good judges, and honest witnesses.

Whether he is guilty or innocent should not be the issue; the issue is whether any person convicted of a crime has the right to continue to assert his innocence postconviction without retribution. The fact that Dyer would have a chance of parole if he was guilty and admitted it, and effectively no chance if he asserts his innocence, troubles me deeply, especially given that he has already served almost five times the midstandard range sentence for the crimes. *See Pers. Restraint Pet.*, Ex. K at 1.

I am not without sympathy for the Indeterminate Sentencing Review

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Board (Board) that, despite this court's strong suggestions to the contrary, *see In re Pers. Restraint of Dyer*, 157 Wn.2d 358, 139 P.3d 320 (2006), has steadfastly refused to grant Dyer parole. Its members clearly care about discharging their duties carefully, and the law does not permit them to release Dyer until they conclude his "rehabilitation has been complete." RCW 9.95.100. Many believe that there can be no rehabilitation without treatment, and before treatment can be effective, one must accept the need for treatment. But Dyer has participated in treatment programs when he has been permitted to do so, and I believe he has the constitutional right to maintain his innocence. The Board cannot exercise prudence and judgment by blindly enforcing a rigid code. In a sense, the Board has tied its own hands; it is caught in a Catch 22 by a rule of its own making, which prevents it from performing its job in a more meaningful, thoughtful, and judicious way.

But this court's hands are not tied. I would order Dyer's immediate release. If the State truly believes he is a danger, it would have an opportunity to plead and prove its case to a jury in a sexually violent predator petition under chapter 71.09 RCW.

For these reasons, and for the reasons expressed by Justice Sanders the last time Dyer petitioned this court for relief, *see In re Pers. Restraint of Dyer*, 164 Wn.2d 274, 297, 189 P.3d 759 (2008), I respectfully dissent.

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AUTHOR:

Justice Tom Chambers

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WE CONCUR:

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Justice Charles W. Johnson

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