

FILED
Dec 18, 2024
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Personal Restraint)	No. 40754-3-III
of:)	
)	
Selene Violet HENDERSON, f/k/a/)	ORDER DISMISSING PERSONAL
Bryan Paul HERNANDEZ,)	RESTRAINT PETITION
)	

Petitioner.

Selene Henderson seeks relief from civil restraint imposed pursuant to superior court case number 23-6-01056-32, which relates to a civil commitment order imposed under Chapter 71.05, RCW. Henderson currently has two appeals related to that case number pending. *See In re Detention of Hernandez*, Nos. 39918-4-III, 40718-7-III.

In this current petition,¹ Henderson claims (1) she was coerced into signing the 180-day confinement order, (2) she was forced to choose between ineffective assistance of counsel and representing herself, (3) she was not given adequate access to legal resources, (4) there was insufficient evidence to enter the 180-day commitment order, (5)

¹ This is one of numerous petitions filed with this court by Henderson across multiple case numbers.

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PRP of Henderson

the superior court disregarded her motions to dismiss, (6) Eastern State Hospital has restricted what games she may possess and play on her Nintendo Switch, and (7) the superior court failed to consider a less restrictive alternative.

To prevail in a personal restraint petition, a petitioner must show they are under unlawful restraint. RAP 16.4. Henderson must show actual and substantial prejudice resulting from alleged constitutional errors, or for alleged nonconstitutional errors, a fundamental defect that inherently results in a complete miscarriage of justice. *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 813, 792 P.2d 506 (1990). To avoid dismissal, the petitioner must support claims with facts and not merely bald or conclusory allegations. *Id.* at 813-14. The supporting evidence must be based on "more than speculation, conjecture, or inadmissible hearsay," and failure to meet this standard calls for dismissal of the petition. *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992). This court will dismiss a petition as frivolous if it "fails to present an arguable basis for relief in law or in fact, given the constraints of the personal restraint petition vehicle." *In re Pers. Restraint of Khan*, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015).

It is difficult to ascertain on what grounds Henderson is claiming she is entitled to relief. She has not provided this court with any evidence or supporting argument beyond the conclusory assertions that her restraint is unlawful based on the reasons given in her

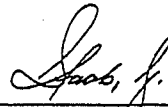
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PRP of Henderson

petition. These bald and conclusory allegations fail to warrant the review of this court.

Cook, 114 Wn.2d at 813-14; *Rice*, 118 Wn.2d at 886.

Accordingly, the petition is dismissed as frivolous. RAP 16.11(b); RCW 10.73.090(1). The court also denies the request for appointed counsel. *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 390, 972 P.2d 1250 (1999); RCW 10.73.150(4).



TRACY STAAB
ACTING CHIEF JUDGE

FILED
SUPREME COURT
STATE OF WASHINGTON
2/20/2025
BY SARAH R. PENDLETON
CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of:

SELENE VIOLET HENDERSON, f/k/a
BRYAN HERNANDEZ,

Petitioner.

No. 103792-9

Court of Appeals No. 40754-3-III

RULING DENYING REVIEW

In Spokane County Superior Court in July 2023, Selene Henderson was ordered committed for involuntary mental health treatment for 180 days. She appealed from this order to Division Three of the Court of Appeals. This appeal remains pending. No. 39918-4-III. Under the same superior court cause number, Henderson was committed for another 180 days in September 2024. She also appealed this order, and this appeal, too, remains pending. No. 40718-7-III. In October 2024 Henderson filed a personal restraint petition in the Court of Appeals challenging the commitment orders and some conditions of her confinement. Finding no showing of any arguable basis for relief, the acting chief judge dismissed the petition as frivolous. Henderson now seeks this court's discretionary review. RAP 16.14(c).

To obtain this court's review, Henderson must show that the acting chief judge's decision conflicts with a decision of this court or with a published Court of Appeals decision, or that she is raising a significant constitutional question or an issue of substantial public interest. RAP 13.4(b); RAP 13.5A(a)(1), (b). She does not cite these

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criteria or otherwise show that any of them applies. To the extent Henderson is challenging the commitment orders themselves, she has appeals from those orders pending, as indicated. She thus has an adequate alternative remedy, precluding relief by personal restraint petition. RAP 16.4(c). To the extent she is challenging any conditions of her confinement (apparently concerning access to legal resources and video games), she does not present sufficient facts or argument to show that any of these conditions constitutes unlawful restraint. She also claims she is entitled to unspecified discovery, but she does not explain in what way discovery has been purportedly denied or demonstrate the existence of any of the "rare circumstances" where discovery is allowed in relation to personal restraint petitions. *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 392, 972 P.2d 1250 (1999).

The motion for discretionary review is denied.¹

Walter M. Burt
DEPUTY COMMISSIONER

February 20, 2025

¹ To the extent Henderson requests appointment of counsel, her request is denied in light of this ruling.

Eastern State Hospital

Title: ESH 10.101 Electronic Media for Patients

Approved By: Mark Kettner (CHIEF EXECUTIVE OFFICER)

Approval Date: 12/03/2020

I. PURPOSE

Eastern State Hospital must maintain an environment of physical and psychological safety, by establishing reasonable parameters for patients to access electronic media. While understanding that technological tools may provide patients with therapeutic opportunities, this policy is to advise staff on procedures and expectations regarding the access and/or viewing of movies, films and other media such as television, video games, electronic gaming systems, photos, newspapers, magazines, music and radio for patients.

II. SCOPE

All Eastern State Hospital patients and employees, contracted employees, volunteers, interns and students.

III. DEFINITIONS

Electronic and other media includes films/movies, television, video games, and other electronic gaming systems (e.g., Xbox, Wii).

- A. "Media" in this policy means visual or audio content or material and communication channels through which news, entertainment, education, data, or other messages are distributed. Media includes but is not limited to photos, newspapers, magazines, videos, television, music, and radio.
- B. "Pornographic material" means media which displays sexually-explicit behavior or activities.
- C. IDT- Interdisciplinary Treatment Team
- D. NC-17- No Children under 17 admitted
- E. X-Rated- contains sexual scenes that are considered suitable only for adults
- F. MPAA- Motion Picture Association of America
- G. DON- Director of Nursing
- H. AD- Administrative Director

IV. POLICY

- A. None of the following may be openly/publicly displayed in any area of ESH:
 - 1. Media which meets the definition of pornographic material;
 - 2. Media which overtly promotes criminal, violent, or self-destructive behavior;
 - 3. Media which overtly expresses hatred on the basis of race, religion, national origin, or sexual orientation; or
 - 4. Media rated "NC-17", "X", "MA", or equivalent rating systems
- B. IDTs and patients will access individual needs regarding therapeutic environment and

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treatment, while balancing patient rights, vulnerabilities, risk mitigation, and protection from harm.

1. Patient trauma history must be considered in the guideline review process.
- C. Copyrighted media in any form (e.g., written materials, videos) may not be used except in compliance with applicable copyright or piracy laws. Downloading pirated media is prohibited.
- D. Movies may **not** be brought from home, rented, or purchased by any Eastern State Hospital employee, contracted employee, intern, volunteer, or student for patient viewing except with prior written approval from the patient's IDT, or Director of Active Treatment or designee, or unit DON or designee or Administrative Director or designee.
- E. If the IDT, or Active Treatment Director or designee, or DON or designee or Administrative Director or designee determines a patient is violating state or federal laws relating to copyrights, licenses, permits, or other proprietary rights, all copied materials and equipment used for copying the materials will be confiscated and handled in accordance with ESH Policies and Procedures Patient Property, ESH policy 1.11, FSU Work Instructions 3.12.
- F. Films/Movies provided for patients must be MPAA-rated G, PG, or PG-13. No R-rated movies/films will be shown to patients. (Movies provided, which initially had an R-Rating but have been edited for content, are acceptable.) All electronic gaming software must be rated Teen or below ("Everyone 10+" (E10+) and "Teen" (T)). No electronic games rated Mature or Adults-Only may be purchased with hospital funds.
- G. As electronic media with lower content ratings can be psychologically traumatizing and counter-therapeutic. It is the responsibility of the staff to ensure that any patient who appears to be negatively affected by exposure to electronic media/media etc.. is referred to the IDT when available or charge RN to assess the patient for further therapeutic intervention needs.
- H. If a patient requests to obtain and view, for example, R-rated media on his/her personal video device (e.g., DVD player), they may discuss with their treatment team if the viewing would be beneficial to their recovery. If approved for therapeutic or educational reasons, a Dr.'s order will be written and the rationale for the approved media will be documented in the progress note of the medical record by an IDT staff member.

Once approved, staff will ensure that only the approved patient views the media or item away from others (e.g., only in his/her bedroom). Similarly, patients may obtain Mature or Adult-rated electronic games only with a psychiatrist's order and the documented approval of their treatment team in the progress notes of the medical record and may only use the media away from others. Note that FSU does not allow Mature/Adult-rated video games on admission/competency restoration wards (see Forensic Services Unit Ward Guidelines).

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IV. PROCEDURE

A patient/patients may access media rated "Everyone 10+" (E10+) and "Teen" (T) unless the patient has a restriction established for therapeutic reasons. Electronic games rated "Mature" (M) or "Adult-Only" (AO) are prohibited unless an exception in this policy applies.

A patient/patients may access media with a movie rating "parental guidance-13" (PG-13) unless the patient has a restriction established for therapeutic reasons.

The IDT may restrict a patient from accessing any media which contains known triggering or known traumatic content or is otherwise deemed to be detrimental to the patient's treatment.

- A. A patient requiring additional levels of restrictions from access to media due to known behavioral triggering or trauma must have such restrictions clearly communicated with the patient. Such restrictions must be reflected in their treatment care plan, along with goals and interventions to progressively reduce the restrictions if indicated.
- B. The IDT must consider that a patient's roommate's approved media may trigger behavior and/or trauma
- C. If media is a planned and approved part of a group plan, the Group leader will communicate with the patient's IDT, or the unit DON or designee or the Active Treatment Director or designee or the Administrative Director via email or hard copy communication.
- D. An employee, contracted employee, student, intern and/or volunteer who wishes to provide a patient R-rated or not rated media must have express, documented permission from the patient's IDT, the Unit DON or designee or the Active Treatment Director or designee or the Administrative Director or designee.
- E. In consideration of such requests, the IDT, DON, ATD (or designees) or Administrative Director will review:
 - 1. the media's therapeutic value,
 - 2. how it would be used (e.g., discussion, etc.),
 - 3. the patient's trauma history and risk mitigation, and
 - 4. therapeutic goals in relation to viewing the media.
- F. The IDT recommendation and rationale regarding the R-rated or not rated media will be communicated to the requestor.
- G. Electronic games purchased by ESH may not be rated higher than E10+.
- H. If a dispute arises regarding access to media, the patient may file a complaint/grievance regarding the dispute using the patient complaint process. (ESH Policy 1.38).

V. REFERENCES

Oregon State Hospital
Western State Hospital
Arizona State Hospital

Eastern State Hospital

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