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The slip opinion that begins on the next page is for a published opinion, and it has since been revised for publication in the printed official reports. The official text of the court's opinion is found in the advance sheets and the bound volumes of the official reports. Also, an electronic version (intended to mirror the language found in the official reports) of the revised opinion can be found, free of charge, at this website: https://www.lexisnexis.com/clients/wareports.

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FILED
MARCH 19, 2024
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In the Matter of the Personal Restraint of	)	
	)	No. 39505-7-III
STEVEN C. ALLGOEWER,	)	
	)	
Petitioner.	)	OPINION PUBLISHED IN PART

STAAB, J. — Steven C. Allgoewer was convicted in Spokane County in 2008 on one count of indecent liberties by forcible compulsion and one count of second degree assault with sexual motivation. The trial court imposed an indeterminate sentence with a minimum term of 80 months. The Indeterminate Sentence Review Board (ISRB or Board) released Allgoewer to community custody in June 2020, and in February 2022 he was arrested for suspected violation of his community custody conditions. He was charged with nine violations, and pleaded guilty to five of the violations. Following a hearing, the hearing officer found he was guilty on all nine violations and revoked Allgoewer's community custody.

Allgoewer filed this personal restraint petition (PRP) raising several issues. He challenges the validity of certain conditions, the procedures employed before and during the hearing, and the revocation decision itself. Specifically, Allgoewer asserts that several conditions are not statutorily authorized and are unconstitutional on various

grounds. Procedurally, he contends his community corrections officer (CCO) conducted an illegal search, his statements to his CCO should have been suppressed, that misconduct by the assistant attorney general and the CCO violated his right to a fair hearing, and the ISRB failed to follow its own procedural rules. Finally, he contends the ISRB abused its discretion on a number of grounds. He asks this court to reverse the revocation decision and order the ISRB to release him back to community custody.

In the published portion of our opinion we agree with the ISRB that most of Allgoewer's challenges to the validity of his community custody conditions are untimely. In the unpublished portion of the opinion we deny relief on Allgoewer's remaining issues and dismiss Allgoewer's PRP.

BACKGROUND[1]

In 2008, Steven Allgoewer was convicted in Spokane County Superior Court of one count of indecent liberties by forcible compulsion and one count of second degree assault with sexual motivation. His convictions arose from an attack on an adult woman who was unknown to Allgoewer while she was walking down the sidewalk. The victim alleged that Allgoewer tackled her to the ground, lifted her skirt, and sexually assaulted her. During the struggle, Allgoewer choked her so that she could not breathe or scream,

[1] The facts regarding Allgoewer's underlying crime are taken largely from this court's unpublished opinion in Allgoewer's direct appeal, *see State v. Allgoewer*, noted at 148 Wn. App. 1033 (2009).

then jumped up and ran away. Although Allgoewer denied that he had touched, or tried to touch, her vagina, and he denied intending to rape her, he admitted that he attacked the victim for a sexual purpose. The presentence investigation report (PSI) indicates that when speaking to police, Allgoewer admitted to similarly attacking two or three other women.

Allgoewer filed a direct appeal successfully arguing that the crimes constituted the same criminal conduct. On remand, the trial court resentenced Allgoewer under former RCW 9.94A.712 (currently RCW 9.94A.507) to an indeterminate sentence with an 80-month minimum term of confinement and a maximum term of life. The court did not impose any of the community custody conditions at issue in this petition.

After Allgoewer served his minimum term in this matter and his term of confinement in another matter, he petitioned the ISRB for release to community custody. The ISRB denied release several times and extended Allgoewer's minimum sentence by 72 months total. The ISRB found Allgoewer releasable on February 19, 2020.

On April 22, 2020, the ISRB ordered Allgoewer's release subject to various release conditions imposed pursuant to RCW 9.95.420. Allgoewer agreed to his conditions. The form Allgoewer signed also informed him of his right to appeal the conditions to the ISRB. Allgoewer administratively appealed several of the ISRB-imposed conditions, and the ISRB denied the appeal on June 1, 2020.

The Department of Corrections (DOC) released Allgoewer to community custody on June 1, 2020.

On February 8, 2022, a CCO arrested Allgoewer for violating the conditions of his community custody. He subsequently pleaded guilty to five violations and was found to have committed an additional four violations after a hearing. On March 28, 2022, the ISRB revoked Allgoewer's conditional release and ordered Allgoewer to serve a new minimum term of 30 months before he would be eligible to petition the ISRB for release.

Additional facts relevant to Allgoewer's challenges to this hearing are set forth below.

Allgoewer filed this PRP on February 2, 2023, challenging several of the ISRB-imposed community custody conditions imposed upon his release in 2020 and challenging the ISRB's revocation decision on multiple grounds. After receiving the DOC's response and Allgoewer's reply, this court transferred the petition to a panel of this court for review. Allgoewer's current conditional release review date is May 9, 2024.[2]

STATUTE OF LIMITATIONS

Allgoewer raises a number of statutory and constitutional challenges to the validity of various community custody conditions. The ISRB responds that these

[2] Allgoewer filed a motion to accelerate this matter based on his anticipated review date. The motion was referred to the panel, and we grant accelerated review.

challenges are time-barred because the two-year statute of limitations began to run on these challenges in April 2020 when the conditions were imposed by the ISRB. Allgoewer concedes that the two-year statute of limitations period applies, but argues that the statute of limitations period should be tolled under the circumstances. In addition, he suggests that the statute of limitations period for those conditions that he was found to have violated commenced or recommenced after the violation hearing. Finally, he makes a fleeting comment that some of the conditions are exempt from the statute of limitations period because they are facially invalid. After the parties submitted their briefs in this case, Division One of the Court of Appeals issued an unpublished decision holding that the two-year statute of limitations period begins to run from the enforcement of a condition, even if the condition is invalid. *In re Pers. Restraint of Thompson*, No. 83298-1-I, slip op. at 5 (Wash. Ct. App. Dec. 4, 2023) (unpublished), https://www.courts.wa.gov/opinions/pdf/832981.pdf.

We conclude that Allgoewer has not demonstrated grounds for equitable tolling. We also disagree with the holding in *Thompson* and conclude that since most of Allgoewer's challenges to his community custody conditions accrued more than two years ago, these challenges are now time-barred. Allgoewer's grounds for challenging the validity of his community custody conditions remained the same before and after these conditions were enforced and the limitations period did not recommence when Allgoewer was found in violation of those conditions. Finally, we decline to address

whether the court should create an exception to the two-year statute of limitations applicable here because the issue has not been adequately briefed.

To properly address this issue, we consider the distinction between a PRP filed under chapter 10.73 RCW and those governed solely by RAP 16.4.

PRPs that challenge an underlying judgment and sentence are limited in time and manner under chapter 10.73 RCW. For example, obtaining relief in a PRP filed under chapter 10.73 RCW requires a threshold showing of actual and substantial prejudice for constitutional issues or "'a fundamental defect which inherently results in a complete miscarriage of justice,'" for nonconstitutional issues. *In re Pers. Restraint of Cook,* 114 Wn.2d 802, 811, 792 P.2d 506 (1990) (quoting *Hill v. United States*, 368 U.S. 424, 428, 82 S. Ct. 468, 7 L. Ed. 2d 417 (1962)). In addition, challenges under this chapter have a shortened one-year statute of limitations. RCW 10.73.090(1). These limitations recognize that a defendant filing a PRP under this chapter has already had an opportunity for a direct appeal, and balance the need for finality with the interest in providing review for prejudicial errors. *See Cook,* 114 Wn.2d at 809.

The policy reasons behind these limitations do not apply "when the challenge is to a decision . . . from which the inmate generally has had no previous or alternative avenue for obtaining state judicial review." *In re Pers. Restraint of Cashaw,* 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994). Thus, when an inmate files a PRP that challenges a Board decision, the restrictions do not apply and the petitioner is required to meet only the

requirements of RAP 16.4 by demonstrating unlawful restraint. *See id.* at 149. In addition, since a PRP outside of chapter 10.73 RCW is an original action that is civil in nature, the two-year "catchall" statute of limitations period of RCW 4.16.130 applies. *See In re Pers. Restraint of Heck*, 14 Wn. App. 2d 335, 340-41, 470 P.3d 539 (2020).

Tolling

Allgoewer concedes that the two-year statute of limitations period generally applies, but contends that it should not apply to his case for several reasons.

First, he contends that equitable tolling should apply under the circumstances. Historically, equitable tolling required the party seeking to extend the statute of limitations to demonstrate "bad faith, deception, or false assurances" by the other party. *In re Pers. Restraint of Haghighi*, 178 Wn.2d 435, 448, 309 P.3d 459 (2013). Under the recent decision in *Fowler*, a petitioner may still be entitled to equitable tolling in the absence of bad faith, deception, or false assurances by the State if he demonstrates "that [he] diligently pursued [his] rights and [ ] that an extraordinary circumstance prevented a timely filing. *In re Pers. Restraint of Fowler*, 197 Wn.2d 46, 54, 479 P.3d 1164 (2021) (extraordinary circumstances presented by offender's counsel's failure to file timely petition).

Allgoewer fails to demonstrate how equitable tolling should apply here. Allgoewer contends that an extraordinary circumstance existed in the form of the

COVID-19[3] (pandemic) that resulted in the closure of the law library and instituted stay-at-home orders that prevented him from conducting the necessary research to challenge his conditions. He also appears to argue that the closures prevented him from electronically filing his PRP. However, the record indicates he had a personal laptop in June 2020, when he signed the Department of Corrections Internet Monitoring Agreement. Allgoewer provides few details demonstrating that the pandemic actually prevented him from filing the PRP during the entire two-year statute of limitations. Notably, he managed to appeal the conditions to the ISRB in May or June 2020, which was during the pandemic. Even if Allgoewer is correct that the pandemic and resulting closures constituted an extraordinary circumstance, the limited facts he provided fail to demonstrate that Allgoewer exercised due diligence but was unable to file his PRP within the two-year statute of limitations.

Enforcement

Next, Allgoewer suggests that the limitations period for the community custody conditions that Allgoewer was found to have violated did not commence until the violation hearing. The timeliness of a challenge to community custody conditions depends on several factors including the nature of the challenge, whether the record is sufficiently developed, and the timing of the challenge. A person who has been released

[3] Coronavirus disease 2019.

"'from total confinement to community custody . . .' is under restraint for purposes of RAP 16.4(b)." *In re Pers. Restraint of Ansell*, 1 Wn.3d 882, 892, 533 P.3d 875 (2023) (quoting *In re Pers. Restraint of Winton*, 196 Wn.2d 270, 275, 474 P.3d 532 (2020)). "A person subject to such community custody conditions may raise a challenge to the conditions through a PRP, where they must show that they are restrained and that the restraint is unlawful." *Id.* at 892 (citing RAP 16.4(a)-(c)).

"Preenforcement challenges to community custody conditions [are routinely considered and] are ripe for review when the issue raised is primarily legal, further factual development is not required, and the challenged action is final." *State v. McWilliams*, 177 Wn. App. 139, 153, 311 P.3d 584 (2013). However, not all community custody conditions are ripe for review when imposed. Some require further factual development.[4] Once community custody conditions become ripe for review, the statute of limitations begins to accrue. *See In re Pers. Restraint of Barnes*, No. 54322-2-II (Wash. Ct. App. May 4, 2021) (unpublished), https://www.courts.wa.gov/opinions/pdf/D2%2054322-2-II%20Unpublished%20Opinion.pdf (personal restraint petition challenging the validity of community custody conditions imposed by the ISRB was

[4] *See McWilliams*, 177 Wn. App. at 153 (some conditions like those imposing financial obligations or allowing for the search of a residence may not be ripe if they require further factual development demonstrating actual harm); *State v. Autrey*, 136 Wn. App. 460, 470-71, 150 P.3d 580 (2006) (constitutionality of community custody condition allowing compliance monitoring of the defendant not ripe for review, because no search had occurred).

untimely when filed more than two years after denial of the petitioner's administrative appeal of the conditions).

In this case, Allgoewer contends that his PRP is timely because it was filed within two years of his violation hearing. In *Thompson*, Division One addressed a similar scenario where the inmate challenged the validity of the community custody conditions after he was found to have violated those conditions and his release was revoked. *In re Pers. Restraint of Thompson*, No. 83298-1-I, slip op. at 4 (Wash. Ct. App. Dec. 4, 2023) (unpublished), https://courts.wa.gov/opinions/pdf/832981.pdf. The ISRB similarly argued that because the conditions had been imposed more than two years prior, the statute of limitations on challenging the validity of those conditions had expired. *Id*. at 5.

Division One disagreed with the ISRB and found Thompson's challenge timely. The court reasoned that the limitations period "begins to run when the government action subsequently challenged on collateral attack occurs." *Id.* The court noted that when a petitioner asserts unlawful restraint due to the imposition of community custody conditions, the petitioner is seeking relief from the requirement to conform to the conditions. *Id.* On the other hand, restraint in the form of revocation of release is a separate restraint. *Id.* Noting that Thompson was alleging unlawful restraint "not because he was subject to those conditions, but because the ISRB revoked his conditional release based on violations of the conditions," the court concluded that "[r]estraint resulting from the enforcement of an invalid condition of supervision remains unlawful

restraint," under RAP 16.4(c)(6). *Id.* at 4, 5. This is true, the court reasoned, even though Thompson was asserting that the revocation was improper because the underlying condition was invalid. *Id*. at 5. Since Thompson filed his petition within two years of enforcement of the invalid condition, the court concluded that his petition was timely. *Id.* Other than RAP 16.4(c)(6), the court did not cite any authority for this conclusion.

To the extent that *Thompson* holds that the statute of limitations on challenges to the validity of a community custody condition accrues or recommences because the type of a defendant's restraint changed due to a violation, we decline to follow it. Under RAP 16.4(c)(6), a defendant must show that the restraint is unlawful because "[t]he conditions or manner of the restraint of petitioner are in violation of the Constitution of the United States or the Constitution or laws of the State of Washington." For purposes of this issue, Allgoewer is not challenging the manner of his restraint, he is challenging the conditions of his restraint; conditions that were imposed in April 2020 and remain in place today. While enforcement of these conditions may change the nature of the restraint and the type of relief sought, it does not change the grounds for relief.[5]

This case demonstrates the problems with focusing on a change in the type of restraint as opposed to the grounds for relief. Here, Allgoewer is not only challenging

[5] The *Thompson* decision focused on the change in type of restraint as recommencing the statute of limitations. It is not clear whether *Thompson* would reach the same result if a defendant were found to have violated a condition, but his release was not revoked.

conditions that he violated but also conditions that he has not violated. And yet, under the holding in *Thompson*, only Allgoewer's challenges to the validity of those conditions that he has violated are timely even though the fact of enforcement has not changed his grounds for relief.

The holding in *Thompson* does not address policies of finality or ripeness. Allgoewer raises primarily legal challenges to the validity of his community custody conditions. For the most part, these challenges were ripe when the conditions were imposed. Allgoewer exercised his right to challenge some of the conditions through an administrative appeal. He could have filed a PRP as well. *See McWilliams*, 177 Wn. App. at 153 (rejecting State's argument that defendant's legal challenges to community custody conditions were not ripe for review until enforced). If the statute of limitations is to have any effect, the limitations period needs to start and it needs to end.

We hold that most of Allgoewer's constitutional and statutory challenges to his community custody conditions became ripe and actionable when the conditions were imposed. The challenges Allgoewer raises are purely legal, do not require further factual development, and the challenged action was final when the conditions were imposed. *Id.* at 153. When the claims became ripe, they became actionable and the statute of limitations began to run.

Our decision here does not affect Allgoewer's ability to timely challenge decisions made during the violation hearing, i.e., challenges to the manner of his restraint, and we

address those issues below. But Allgoewer cannot use the violation hearing as a gateway to raise an untimely collateral attack on the underlying conditions. *See In re Pers. Restraint of Adams*, 178 Wn.2d 417, 424-25, 309 P.3d 451 (2013) ("raising a claim under one of the exceptions in RCW 10.73.090 does not open the door to other time-barred claims").

We also agree that when grounds for challenging a community custody condition do not ripen until enforcement, then the statute of limitations does not accrue on these restraints until that point. *See* RAP 16.4(c)(3) (providing grounds for relief when "[m]aterial facts exist which have not been previously presented and heard"). For example, Allgoewer argues that a portion of condition O, requiring him to disclose unadjudicated victims, violates his Fifth Amendment right to the United States Constitution against self-incrimination. Unlike Allgoewer's other constitutional challenges, this argument is not ripe for review.

The constitutionality of a community custody condition "is not ripe for review unless the person is harmfully affected by the part of the [condition] alleged to be unconstitutional." *State v. Massey*, 81 Wn. App. 198, 200, 913 P.2d 424 (1996). Allgoewer does not allege that he has been harmfully affected by this condition. This is not one of the provisions that Allgoewer was found to have violated and he does not assert that he has changed his actions to conform to this particular provision. Because this challenge is not ripe for review, we decline to consider it.

Allgoewer also challenges the Board's release and supervision condition No. 6, which requires him to submit to a search of his "person, residence, vehicle and/or possessions when requested by a CCO." Resp't Br., Ex. 1, Attach. B. He contends that the condition is vague and overbroad because it does not specify that the search must be based on reasonable suspicion. In *Massey*, we held that this challenge to this condition was not ripe for review until the defendant was subjected to a search according to this condition. 81 Wn. App. at 200. Since Allgoewer challenges the CCO's search of his person and property under condition No. 6, his challenge is ripe and timely, and we thus address it below.

Otherwise, we conclude that Allgoewer's challenges, alleging that certain conditions are not crime-related or are unconstitutionally vague or overbroad, are untimely. These conditions were imposed in April 2020. Allgoewer filed this PRP on February 2, 2023. Our review indicates that these challenges were ripe when the conditions were imposed. Thus, his vagueness and crime-related challenges to the following conditions are time-barred: A, B, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, and condition No. 3.

Facially Invalid

Finally, Allgoewer suggests that regardless of any time-bar, several of his community custody conditions are facially invalid and exempt from the limitations period. As we have discussed above, the two-year catchall statute of limitations applies

to decisions of the ISRB. RCW 4.16.130. This generalized statute of limitations does not include any exemptions or exceptions. In contrast, the one-year statute of limitations period under RCW 10.73.090(1) exempts facially invalid judgment and sentences. While Allgoewer mentions the issue, he does not provide any briefing or argument to support the issue. ISRB does not provide a response to the issue. Whether the court should create an exemption to the two-year limitations period for facially invalid community custody conditions imposed by the ISRB is an important question that requires adequate briefing. Because the issue is not adequately briefed, we decline to address it here.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder, having no precedential value, shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.

ADDITIONAL BACKGROUND

Upon being released from confinement to conditional release, Allgoewer completed the "Social Media and Electronic Device Monitoring Agreement" (Agreement) that included requirements as set forth in condition Q of the Order of Release and Supervision Conditions. The Agreement permitted Allgoewer to use computer systems at his educational facility or his placement of employment for purposes of education and employment purposes only. It also provided he was approved to use computers and devices for web browsing, email, interpersonal communication, producing

web content, Internet-related phone communication, and file sharing but he was prohibited from activities related to online gaming without prior written permission.

At the time he entered the Agreement, Allgoewer's approved device was a Samsung smartphone. The Agreement also indicates that he disclosed an HP Chromebook and a Samsung tablet. His CCO, Kennedy, also allowed him to have a Dell laptop provided by the University of Washington, since Allgoewer was enrolled in classes.

On February 7, 2022, CCO Mary Bullard[6] received information that Allgoewer had violated multiple release conditions by having an undisclosed sexual relationship with M.B. an 18-year-old woman whom Allgoewer allegedly met while she was still a minor. The next day Bullard had a telephone conversation with M.B. during which she reported: (i) she had obtained a Harassment Restraining Order in Minnesota against Allgoewer after he sent her sexually explicit images and videos of himself, (ii) she met Allgoewer at a church in Burien when she was 17 and they started dating when she was 18, and (iii) the relationship became sexual when she was 18 years of age. M.B. also indicated that she had some screenshots of messages from Allgoewer which were sent through his phone and computer using both email and social media, and that she would

[6] Although CCO Kennedy had been Allgoewer's CCO, the record indicates that CCO Kennedy was on extended leave or getting ready to go on leave, and therefore CCO Bullard was the one who investigated Allgoewer's potential violation. Resp't Br., Ex. 3 at 12.

send the screenshots and a copy of the restraining order petition. The DOC Warrants Unit was able to confirm that there was a restraining order that had been served on Allgoewer on February 2, 2022.

After receiving this information, CCO Bullard arrested Allgoewer outside of his residence and searched his person, residence, and vehicle for electronic devices. During the search, CCO Bullard and the other CCOs who participated in the search found: a Samsung Galaxy S21 in Allgoewer's pocket, and an HP ProBook laptop on the table inside the residence. The HP ProBook was not being monitored because Allgoewer had not previously disclosed it. Allgoewer claimed he did not use the HP laptop, indicating he only used the Dell laptop issued to him by the University of Washington, which was located in his vehicle. A search of the vehicle revealed a Dell laptop inside Allgoewer's backpack. The vehicle search also revealed a strong odor and a small amount of a brown, dried leafy substance on the floor of the vehicle. Testing of the substance indicated positive for marijuana.

That same day, M.B. provided CCO Bullard with screenshots of photos and messages Allgoewer sent her using social media. In one photo he was nude with his buttocks visible. She also indicated she had deleted some photos and videos she received from Allgoewer. She provided emails she received from Allgoewer, including messages from January 14 and January 19, 2022 in which he stated he loved her. She also provided an email dated January 27, 2022 (the day she applied for the restraining order)

in which Allgoewer wrote, "C'mon! This is bs. How could you just cut me out of your life?? After all we've been through together and all we've shared and how special our connection is ???? C'mon. Don't let them change who you know me to be, baby. You're my girl. Please at least let me know where you stand and how you're doing and what you're thinking. Please." Resp't Br., Ex. 1, Attach. C.

During a phone interview shortly after Allgoewer's arrest, M.B. reported that she met Allgoewer through the church her family attended, she and her mother did not know he was a convicted sex offender or that he was classified as a level 3, that she had sexual contact with Allgoewer that occurred at his residence and he supplied her with alcohol. She also indicated he had sent her a computer, which was at her mother's house, and that Allgoewer wanted her to get rid of it.

CCO Bullard retrieved the laptop Allgoewer sent M.B., an HP Chromebook, from the home of M.B.'s mother. R.B., who is M.B.'s mother, provided CCO Bullard with a voicemail Allgoewer left her a few days prior in which he blamed her for the restraining order and referred to his relationship with M.B. as being consenting between two adults. Allgoewer provided the username and password for the Chromebook after indicating he only used it for watching Hulu.

During a search of the Chromebook, Bullard found a photo where Allgoewer posed without a shirt and with his pants pulled down and his penis exposed. M.B. verified that Allgoewer sent her this photo, and also reported that he sent her videos of full nude masturbation.

CCO Bullard was unable to access the contents of the HP ProBook found at Allgoewer's home. When asked for the information, Allgoewer indicated he provided the logon information to CCO Manahan on the date of arrest and provided the same log-on information for the Dell laptop. This information did not open the ProBook.

The ISRB issued a notice of violation, alleging nine community custody violations as follows:

> 1. Engaging in a romantic relationship without permission from the CCO since release from confinement.
> 2. Forming a relationship with a person with minor children without first disclosing his sex offender status and without having the relationship approved by his CCO since release from confinement.
> 3. Having contact with minors without being accompanied by an adult who knows of your conviction and who has been approved in advance by your CCO and sexual deviancy treatment provider since release from confinement.
> 4. Possessing marijuana on or about 02/08/2022.
> 5. Using marijuana since 08/17/2021.
> 6. Failing to abide by the Social Media and Electronic Device Monitoring Agreement by possessing an unauthorized computer, an HP ProBook without accountability software on 02/08/2022.
> 7. Failing to abide by the Social Media and Electronic Device Monitoring Agreement by transmitting sexually explicit material since release from confinement.
> 8. Possessing sexually explicit material since release from confinement.

> 9. Failing to submit to a search of a computer, an HP ProBook, by failing to provide the correct logon information when asked on 02/15/2022.

Resp't Br., Ex. 1, Attach. C. The notice, which was prepared by Bullard, recommended revocation as a sanction.

At the ISRB revocation hearing, Allgoewer, who was represented by counsel, pleaded guilty to violations 1, 4, 5, 7, and 8, and not guilty to the remaining four allegations.

At the hearing, CCO Bullard provided some background, testifying that the evidence of Allgoewer's relationship with M.B. came to light after M.B. had a mental breakdown, attempted suicide, and reported the relationship to her therapists. They contacted Allgoewer's CCO, Kennedy, who was going on leave and he gave the information to CCO Bullard. With respect to violation No. 2 and No. 3, M.B. testified that she first met Allgoewer at a church event in 2020. She indicated that he became friends with her family, which included her mother and her twin sister, and spend time together at church events and peoples' houses.

R.B. also testified that Allgoewer first met her family in June 2020, and that he did not inform R.B. of his status as a sex offender. She did not find out he was a sex offender until roughly August 2021, and she did not know about the conditions limiting his contact with minors until February 2022.

Allgoewer testified that he had little understanding of the condition about the forming of a relationship with a person with minor children, indicating he asked lots of questions about what that condition meant. He also stated he did not consider R.B. and her children friends until 2021. He also indicated that when he told his CCO and therapist he was attending church, no one suggested a safety plan to ensure he was not violating community custody.

CCO Kennedy testified that as he recalled, at the time of Allgoewer's arrest he had disclosed the Dell laptop and a Samsung Galaxy cellphone that were being monitored. CCO Kennedy denied remembering that Allgoewer ever told him he had a laptop he did not want to use to access the internet. Allgoewer asserted that he never accessed the internet on the HP ProBook. CCO Bullard told the hearing officer that they were unable to log into the HP ProBook with any of the passwords provided by Allgoewer. Allgoewer claimed that he never changed the log-on information from the factory settings from when his sister purchased it, and that he gave that information to all four CCOs present during his arrest. CCO Bullard denied this version of events.

At the conclusion of the fact-finding portion of the proceeding, the hearing officer accepted Allgoewer's guilty pleas and found him guilty on the four contested counts Nos. 2, 3, 6, and 9. CCO Bullard recommended revocation. Allgoewer's attorney acknowledged that Allgoewer entered into an unapproved relationship but denied any suggestion that the relationship was coerced or manipulated. He noted that the

accusations regarding Allgoewer's conduct with M.B. did not seem to fit the deviancy he was originally convicted of, and noted Allgoewer was otherwise doing well in the community by going to school, gaining employment, and building his life. He asked that he be reinstated with conditions that he not have contact with M.B. or her family.

The hearing officer asked Allgoewer why he failed to disclose the relationship and obtain approval from the DOC. Allgoewer became emotional, indicating he had a lot going on in his life, he was feeling isolated and starting to withdraw from people. When pressed directly as to why he did not tell his CCO, he stated because it "happened fast," M.B. sent him pictures of herself and he sent pictures back and he figured he "was already toast and then later I minimized because I knew she was going to college." Resp't Br., Ex. 3 at 68. He also indicated he feared going back to prison. Given the short time Allgoewer was allowed to address the hearing officer, Allgoewer's attorney asked the hearing officer to allow Allgoewer to submit some of his explanation for the violations in writing before the hearing officer made his decision. The hearing officer agreed.[7]

The hearing officer imposed the sanction of revocation of community custody pursuant to RCW 9.95.435(2). The officer's written findings and conclusions stated that Allgoewer was revoked based on:

[7] Although Allgoewer apparently submitted a written explanation, it appears it was not provided by either Allgoewer or the ISRB in the record before this court.

> • Mr. Allgoewer is an End of Sentence Review Committee (ESRC) recommended level Three for community notification, the highest risk level for notification purposes. He has multiple stranger victims, both adults and a minor.
> • Prior to release, Mr. Allgoewer had five .420 Hearings with the Board which is unusual and indicative of the potential risk he presents to the community.
> • Mr. Allgoewer accepted little responsibility for his violation behavior during today's hearing or in his statement to the Board and did not provide an expectation of a better outcome if he is reinstated. He had limited time to provide his version of events, was given an opportunity to continue the hearing, or as suggested by his attorney, submit a written account of his explanation to which he agreed. The written explanation did not provide additional information to impact this decision.
> • He has been participating in an unapproved relationship with an individual he originally met when she was still a minor (16 or 17) through his association with a church. The subject of the unapproved relationship (18 years old) has subsequently sought a noncontact order against Mr. Allgoewer and is reportedly significantly traumatized by the events that took place during the time she was involved with Mr. Allgoewer.
> • Mr. Allgoewer has not been charged with a new sex offense or other criminal matter, however the descriptions of his interactions with a young female age 16-18, particularly when involved in a sexual relationship, are highly concerning and may need to be addressed through additional sex offender treatment.
> • He has demonstrated he is not safe to be back in the community by continuing to have risk related violation behavior and appears to be highly sexually preoccupied.

Resp't Br., Ex. 1, Attach. D at 5.

ANALYSIS

1. WARRANTLESS SEARCH BY CCO

Allgoewer challenges the CCO's search of his person, apartment, cell phone, computer and vehicle, arguing that the searches violated his constitutional rights.

Pointing out that he was found to have violated condition No. 6, which requires him to submit to such searches, Allgoewer contends that this condition is invalid because it does not require the search to be based on reasonable suspicion. Finally, he contends that there was no nexus between the items searched and the suspected violations. The ISRB responds that Allgoewer fails to establish the search was unlawful or that the exclusionary rule applies to ISRB proceedings. ISRB points out that Allgoewer signed agreements consenting to such searches and even without consent there was reasonable suspicion to believe that evidence of a violation of a release condition would be found in the places searched. We conclude that the CCO had reasonable cause to search Allgoewer and his property and therefore, as applied, condition No. 6 was not unconstitutional.

Generally, "searches without a valid warrant . . . are [ ] 'unreasonable' per se unless it is demonstrated that public interest justifies creation of an exception to the general warrant requirement." *State v. Simms*, 10 Wn. App. 75, 85, 516 P.2d 1088 (1973). Under the Fourth Amendment and article 1, section 7, probationers and parolees have a diminished right of privacy permitting a warrantless search if reasonable. RCW 9.94A.631(1); *Massey*, 81 Wn. App. at 200. "The search is reasonable if an officer has a well-founded suspicion that a violation has occurred." *Massey*, 81 Wn. App. at 200. However, the location to be searched must be limited "to property reasonably believed to

have a nexus with the suspected probation violation." *State v. Cornwell*, 190 Wn.2d 296, 306, 412 P.3d 1265 (2018).

ISRB contends the searches in this case were lawful because Allgoewer consented to any announced/unannounced searches of all computers and electronic devices under the Social Media and Internet Monitoring Agreement. However, Washington courts have consistently found that parole and probation conditions which require a parolee or probationer to submit to searches still require reasonable suspicion for the search to be lawful.[8] "Courts require reasonable suspicion for such searches in part because these intrusions run the risk of exposing a large amount of private information." *State v. Olsen*, 189 Wn.2d 118, 132, 399 P.3d 1141 (2017). Accordingly, the fact that Allgoewer signed a consent form to search his electronic devices does not waive the requirement that the search for the devices and of the devices must have been supported by reasonable suspicion.

Allgoewer challenges the validity of condition No. 6, which requires him to submit to a search of his person and property, arguing that because condition No. 6 does

[8] *See, e.g.*, *State v. Jardinez*, 184 Wn. App. 518, 523-24, 338 P.3d 292 (2014) (search of parolee's iPod); *Massey*, 81 Wn. App. at 199 (parolee ordered to "submit to testing and searches of [his] person, residence and vehicle" (alteration in original)); *State v. Keller*, 35 Wn. App. 455, 457, 667 P.2d 139 (1983) (search of residence pursuant to condition that "[d]efendant shall submit to a search of residence, person and vehicle upon request"); *State v. Coahran*, 27 Wn. App. 664, 666-67, 620 P.2d 116 (1980) (search of parolee's truck).

not limit such searches based on reasonable suspicion it is overbroad. We disagree. This exact argument was rejected in *Massey*, 81 Wn. App. at 201. There we concluded that although it is advisable, an order such as this does not necessitate the inclusion of language restricting searches to those based on reasonable suspicion. *Id.* "[R]egardless of whether the sentencing court includes such language in its order, the standard for adjudicating a challenge to any subsequent search remains the same: Searches must be based on reasonable suspicion." *Id.*

The parties also dispute whether the exclusionary rule applies to ISRB proceedings. We do not decide this question because we determined that Allgoewer failed to establish that the searches in this case were unreasonable.

The record demonstrates that CCO Bullard received notice that Allgoewer had been in an undisclosed relationship with M.B. The next day M.B. confirmed that she had been in a dating and sexual relationship with Allgoewer and had recently obtained a Harassment Restraining Order against Allgoewer. M.B. also had screenshots of explicit messages from Allgoewer which were sent through his phone and computer using both email and social media. The DOC Warrants Unit was able to confirm that there was a restraining order that had been served on Allgoewer on February 2, 2022.

The evidence Bullard gathered from M.B. prior to conducting the search was sufficient for a well-founded suspicion that Allgoewer had violated condition O by having an undisclosed dating or sexual relationship. Based on this reasonable suspicion

Bullard arrested Allgoewer and searched his person, residence and vehicle for electronic devices. The search uncovered evidence of these and other violations. A search of Allgoewer's residence revealed an unauthorized HP ProBook laptop. When CCO Bullard searched Allgoewer's vehicle for the Dell laptop, she found marijuana.

The information provided by M.B. also indicated there was a reasonable probability that evidence of this unapproved relationship, including texts, photos, and emails Allgoewer sent to M.B. during their relationship, would be found on Allgoewer's cell phone and computers. The cell phone was likely to be kept on his person and Allgoewer told CCO Bullard that his Dell laptop was located in his vehicle. Accordingly, there was a nexus between the suspected violation and the search of Allgoewer, his electronic devices, and the vehicle. Although Allgoewer also raises arguments regarding the scope of the search on these devices, the record is insufficient to demonstrate that the scope of the search exceeded the nexus to the suspected violation.

On this record, condition No. 6 was not unconstitutional because CCO Bullard had reasonable cause to search Allgoewer and his property. Moreover, there was a nexus between the items searched and the alleged violation.

2. INTERROGATION OF ALLGOEWER

Allgoewer contends that CCO Bullard denied him his right to counsel and violated his right to not self-incriminate by failing to advise him of his *Miranda*[9] rights when he was being questioned. The ISRB responds that even if *Miranda* rights were required, the statements would not be suppressed at a parole violation hearing.

The Fifth Amendment guarantees an individual the right to be free from compelled self-incrimination while in police custody, and to protect this right, law enforcement is required to provide *Miranda* warnings to a person in custody before that person may be subjected to interrogation. *Miranda*, 384 U.S. 436. *Miranda* warnings are required where the defendant is (1) in custody and (2) being interrogated (3) by a state agent. *State v. Post*, 118 Wn.2d 596, 826 P.2d 172 (1992). Statements by an individual during custodial interrogation are inadmissible at trial in the absence of *Miranda* warnings. *See, e.g.*, *Miranda*, 384 U.S. at 444; *State v. Sargent*, 111 Wn.2d 641, 655-56, 762 P.2d 1127 (1998).

Here, we do not decide the preliminary issue of whether *Miranda* rights were necessary because assuming they were, Allgoewer fails to demonstrate that any statements obtained should have been suppressed at the revocation hearing. As the ISRB

[9] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

notes, a revocation hearing is not part of a criminal prosecution, and therefore the parolee does not have the same rights as a defendant in a criminal trial.

Parolees are entitled to minimum requirements of due process. *Morrissey v. Brewer*, 408 U.S. 471, 489, 92 S. Ct.2593, 33 L. Ed. 2d 484 (1972). These due process requirements do not include the right to *Miranda* warnings before a custodial interrogation can be introduced at a violation hearing. *State v. Johnson*, 9 Wn. App. 766, 772, 514 P.2d 1073 (1973). Instead, where a defendant confesses acts which violate the terms of probation, he has the right to deny or explain away the probation officer's testimony, but "[m]ore is not needed for compliance with due process protections in a probation revocation hearing. To hold otherwise (that warnings would have to be given), the purpose of probation would be materially affected and the probationer-probation officer relationship would be strained if a carte blanche exclusionary rule were applied to every office visit and noncustodial or custodial contact." *Id.* at 773.[10]

This court has subsequently recognized that compelled statements made in the absence of *Miranda* warnings may be used to revoke parole, even if they would not be admissible in a criminal prosecution. *See, e.g.*, *State v. Roberts*, 14 Wn. App. 727, 729, 544 P.2d 754 (1976) (recognizing that statements by a parolee to his parole officer while

[10] This court also noted that it was not answering the question of whether evidence obtained by a probation officer in the absence of *Miranda* warnings should be excluded from subsequent criminal prosecutions against the probationer as that question was not before the court. *Id.* at 773.

in custody are inadmissible at trial, but not at a revocation hearing, in the absence of *Miranda* warnings); *State v. King*, 78 Wn. App. 391, 398, 897 P.2d 380 (1995) (State may insist on answers to incriminating questions at probation revocation hearing as long as it recognizes that the required answers may not be used in a criminal proceeding and thus eliminates the threat of incrimination).

Allgoewer fails to demonstrate that his statements to CCO Bullard were inadmissible at the parole revocation hearing or that the hearing officer erred to the extent he considered the statements when determining whether to revoke Allgoewer's community custody.

3. ALLEGED MISCONDUCT BY CCO BULLARD AND AAG

Next, Allgoewer contends that CCO Bullard and the AAG violated his right to a fair hearing by engaging in misconduct. He does not cite any authority for the standard we should apply to an allegation of prosecutorial misconduct at an ISRB hearing.

As noted above, a parolee is entitled to the minimum requirements of due process at a revocation hearing as set forth in *Morrissey*. 408 U.S. at 489. This includes written notice of the claimed violations of parole, disclosure of the evidence against the parolee, the opportunity to be heard, present witnesses, and the opportunity to confront witnesses. *Id.* An alleged community custody violator under the ISRB's jurisdiction is entitled to a "fair and impartial hearing of the charges." WAC 381-100-150(1).

Allgoewer first contends the AAG improperly coached witnesses, interrupted Allgoewer's attempt to personally question a witness, and enforced conditions of community custody that were unconstitutional. As to the alleged witness coaching, Allgoewer admits the whispering in the recorded hearing is "indiscernible" and does not demonstrate the AAG was coaching the witness. He also fails to demonstrate the AAG committed misconduct by objecting to his attempt to directly question M.B. (rather than posing the question through his attorney), or by pursuing enforcement of the conditions.

Allgoewer also makes several allegations that CCO Bullard committed misconduct that deprived him of a fair hearing. However, he has not briefed these issues sufficiently to allow meaningful review, and he therefore fails to satisfy his burden to demonstrate he is entitled to relief on this basis. *See, e.g.*, *In re Pers. Restraint of Rice,* 118 Wn.2d 876, 886, 828 P.2d 1086 (1992) (conclusory allegations without citation to authority, references to the record or persuasive reasoning are insufficient to gain consideration of a personal restraint petition); *In re Pers. Restraint of Dyer*, 175 Wn.2d 186, 196, 283 P.3d 1103 (2012) (a petitioner must demonstrate the ISRB abused its discretion to be entitled to relief in a PRP challenging an ISRB decision).

In sum, Allgoewer fails to demonstrate any misconduct on the part of the AAG or CCO Bullard.

4. WHETHER ISRB FAILED TO FOLLOW RULES

In his final issue, Allgoewer alleges the ISRB deprived him of a fair hearing and abused its discretion by imposing revocation.

In reviewing ISRB's decisions regarding parole and revocation, this court does not function as a "super" ISRB. *In re Pers. Restraint of Whitesel*, 111 Wn.2d 621, 628, 763 P.2d 199 (1988). This court reviews ISRB revocation decisions for an abuse of discretion. *In re Pers. Restraint of Dodge*, 198 Wn.2d 826, 836-37, 502 P.3d 349 (2022). An offender does not have a right to parole, and therefore the ISRB's decisions regarding an offender's parole, including revocation decisions, are entirely within its discretion. *Dyer*, 175 Wn.2d at 196. The ISRB abuses its discretion by basing a decision on solely "speculation and conjecture" or by failing to follow its own procedural rules. *Id*.

Allgoewer contends the ISRB abused its discretion on a number of grounds, including: (i) drafting findings and conclusions during the hearing, (ii) relying on unconfirmed allegations or descriptions, (iii) manufacturing evidence, (iv) improperly basing its decision on speculation and conjecture, and (v) neglecting to use a graduated sanction process or provide a reason why revocation was the sanction imposed. He has not briefed these issues sufficiently to allow meaningful review, and therefore fails to demonstrate he is entitled to relief. *Rice*, 118 Wn.2d at 886; *Dyer*, 175 Wn.2d at 196. Allgoewer fails to demonstrate that the ISRB violated its own rules or abused its

discretion by determining that revocation was an appropriate sanction under these circumstances.

Allgoewer's final challenge is that the hearing officer's decision to set his new minimum term of confinement at 30 months violated the ex post facto clause. Specifically, he argues that at the time his underlying crime was committed on July 13, 2006, the law in effect stated that "If the board does not order the offender released, the board shall establish a new minimum term not to exceed an additional two years." Former RCW 9.95.420(3). In 2007, RCW 9.95.420(3) was amended to increase the allowable punishment from two years to five. Allgoewer contends he brought this to the ISRB's attention to allow it to correct its mistake but it refused to do so, and the 30-month sentence is in excess of its statutory authority and an ex post facto violation.

The ex post facto clause of the federal and state constitutions applies when the legislature enacts a law retrospectively altering the definition of criminal conduct or increasing the punishment for a crime. *State v. Ward*, 123 Wn.2d 488, 496, 869 P.2d 1062 (1994); U.S. CONST. art. 1, § 10; WASH. CONST. art. 1, § 23. A law violates the ex post facto clause if it is (1) substantive, rather than procedural, (2) retrospective, and (3) disadvantages the person it affected. *Ward*, 123 Wn.2d at 498.

Allgoewer fails to demonstrate a violation of the ex post facto clause because he fails to demonstrate that RCW 9.95.420(3) applies here. Both the current and former versions of that statute apply to the situation only where an incarcerated individual

applies for release and the ISRB does not order release to the community. RCW 9.95.420(3) ("If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011"); former RCW 9.95.420(3) (2002) ("If the board does not order the offender released, the board shall establish a new minimum term not to exceed an additional two years."). Nothing in either the former or current version of RCW 9.95.420(3) states that this statute limits the ISRB's authority regarding setting a new minimum term upon revocation of release.

Instead, it appears this situation is governed by RCW 9.95.435(1), which at all relevant times to this petition provided that upon finding a violation of release conditions, "the board may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence." Allgoewer received an indeterminate sentence where the maximum term is life imprisonment, and thus the ISRB was authorized to order him returned to confinement for up to his maximum term. Allgoewer fails to demonstrate he was previously entitled to a minimum term of no more than 24 months upon revocation of community custody. Accordingly, Allgoewer fails to demonstrate that the ISRB violated the ex post facto clause by ordering a new minimum term of 30 months.

CONCLUSION

We conclude that most of Allgoewer's challenges to the validity of his community custody conditions are untimely. His challenge to certain portions of condition O are not

ripe and his timely challenge to condition No. 6 fails. Otherwise, we find no error in the proceedings before the ISRB and dismiss Allgoewer's petition.

Staab, J.

WE CONCUR:

Fearing, C.J.

Cooney, J.