IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JUSTIN EDWARD TAYLOR, Appellant.	No. 39015-9-II UNPUBLISHED OPINION

Bridgewater, J. — Justin Edward Taylor appeals a Jefferson County Superior Court order denying his motion to withdraw his guilty plea. He contends that the plea was not voluntary because he was not clearly informed that the maximum penalty for his crimes was life in prison. We dismiss this appeal because the challenge to the guilty plea was untimely.[1]

FACTS

In May 2005, Taylor pleaded guilty to second degree rape of a child and bail jumping.

[1] A commissioner of this court considered this matter pursuant to RAP 18.14 and referred it to a panel of judges.

The trial court denied his request for a Special Sex Offender Sentencing Alternative (SSOSA) sentence and imposed a minimum term of incarceration of 95 months, with a maximum of life. On November 4, 2005, the court reconsidered its decision and granted the request for a SSOSA. The amended judgment and sentence imposed the same sentence, but suspended all but six months of it on several conditions.

Taylor failed to comply with most of those conditions, and on October 5, 2007, the court entered orders revoking the SSOSA and imposing incarceration of 95 months. On September 12, 2008, the Department of Corrections asked the court to amend the sentence to provide both a minimum and a maximum term of confinement. The court amended the judgment and sentence again on November 14, 2008, providing a minimum term of 95 months and a maximum term of life.

Taylor moved to withdraw his plea on January 27, 2009, contending that he was confused by the court's explanation of his possible sentence at his plea hearing. He asserted that he believed his maximum term of incarceration was the top of the standard range, and he was subject only to community custody for life. The court denied his motion, and this appeal followed.

ANALYSIS

Taylor's CrR 7.8 motion to withdraw his guilty plea is a collateral attack on the 2005 judgment. *See* RCW 10.73.090(2). A motion collaterally attacking a criminal judgment must ordinarily be brought within one year after the judgment becomes final if it is valid on its face and was rendered by a court of competent jurisdiction. RCW 10.73.090(1). The time limit does not apply to motions based on (1) newly discovered evidence, (2) the unconstitutionality of the statute that the defendant was convicted of violating, (3) a conviction barred by double jeopardy, (4)

insufficient evidence to support the conviction, (5) a sentence in excess of the court's jurisdiction, or (6) a significant change in the law material to the conviction. RCW 10.73.100.

The court had jurisdiction to impose judgment, and that judgment and sentence is valid on its face as, standing alone, it does not indicate any constitutional infirmity. *See State v. Olivera-Avila*, 89 Wn. App. 313, 320, 949 P.2d 824 (1997). Neither does Taylor contend that any of the exceptions apply here.

Taylor argued below that the limitations period ran from November 14, 2008, when the court amended the sentence it had imposed upon revocation.[2] That simply is not so. Taylor did not appeal the original judgment and sentence or the amended judgment and sentence entered on November 4, 2005 (granting SSOSA). Those decisions have been final for several years. It is too late to challenge the validity of the guilty plea. *See In re Det. of Turay*, 139 Wn.2d 379, 395, 986 P.2d 790 (1999) (challenge to prior conviction at the time it was used in Sexually Violent Predator proceeding was untimely), *cert. denied*, 531 U.S. 1125 (2001); *In re Pers. Restraint of Runyan*, 121 Wn.2d 432, 437, 450-51, 853 P.2d 424 (1993) (collateral attack on three prior guilty pleas at the time they were included in defendant's offender score for a subsequent crime was untimely).

This rule does Taylor no injustice. We agree that the court's explanation of the range of his potential incarceration might have been confusing.[3] However, the July 8, 2005 judgment and

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[2] He addresses that issue here only in a footnote. *See* Br. of Appellant at 9 n.3.

[3] That explanation included the following:

> THE COURT: Do you understand that the maximum penalty for the most serious charge, the rape of a child in the second degree, is life imprisonment, do you understand that?
>
> [TAYLOR]: Yeah.

sentence and the November 4, 2005 amended judgment and sentence both clearly stated that the term of incarceration was from 95 months to life. At that point, Taylor certainly knew the potential length of his incarceration. While the October 5, 2007 sentence may have given him reason to hope for a shorter term than that originally imposed, it clearly had no effect on his guilty plea. That sentence was contrary to the sentences previously imposed, and its correction via the November 14, 2008 amendment did not entitle Taylor to any relief.[4]

> . . . .
>
> THE COURT: And the Prosecuting Attorney's going to recommend the low end of the standard range for a SSOSA sentence. Do you understand that I don't have to follow that, or that whoever sentences you doesn't have to follow that recommendation? That the sentencing Judge can impose a sentence—Well in these sex offenses isn't the sentence life and then there's a minimum term to serve, isn't that the way it works?
>
> [PROSECUTOR]: The minimum term is (inaudible over Court)
>
> THE COURT: Yeah, the minimum term would be 95 months and the maximum term would be the top end of the standard range. But the sentence is actually life, and you'd be on community placement, I think they call it, or community supervision, or at least under the supervision of the Department of Corrections, conceivably for the rest of your life, do you understand that?

TR (May 20, 2005) at 4-6. We note that section 6 of Taylor's plea statement contained unambiguous advice about the sentence, however. Paragraph 6(a) stated that the maximum sentence was life. Paragraph 6(f)(i)stated in pertinent part:

> Sentencing under RCW 9.94A.712: If this offense is for any of the offenses listed in subsections (aa) or (bb), below, the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of confinement either within the standard range for the offense or outside the standard range if an exceptional sentence is appropriate. The minimum term of confinement that is imposed may be increased by the Indeterminate Sentence Review Board if the Board determines by a preponderance of the evidence that it is more likely than not that I will commit sex offenses if released from custody.

CP at 17. Taylor assured the court that he had gone over the plea statement with his attorney and that he understood all of the serious consequences of pleading guilty.

[4] The October 5, 2007 sentence was, in fact, an improper modification of the original sentence.

This challenge is barred by RCW 10.73.090. The appeal is dismissed.

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 pursuant to RCW 2.06.040, it is so ordered.

Bridgewater, J.

We concur:

Hunt, J.

Van Deren, C.J.

See State v. Harkness, 145 Wn. App. 678, 685-86, 186 P.3d 1182 (2008). The trial court indicated that omission of the maximum term was merely a clerical error, and it properly entered the correction. *See State v. Snapp*, 119 Wn. App. 614, 627, 82 P.3d 252, *review denied*, 152 Wn.2d 1028 (2004).