

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

STATE OF WASHINGTON,	)	
	)	No. 69824-9-1
Respondent,	)	
	)	
v.	)	
	)	
CARLOS A. QUINTERO CISNEROS,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: May 12, 2014
	)	

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PER CURIAM — Carlos Cisneros appeals an order denying his motion to withdraw his guilty plea to third degree assault of a child with sexual motivation. Citing Padilla v. Kentucky, 559 U.S. 356, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010), he contends he was entitled to withdraw his plea because his attorney failed to inform him that he would be deported if he pleaded guilty. He concedes that his motion was filed beyond the one year time limit on collateral attacks in RCW 10.73.100. He argues, however, that Padilla constitutes a significant, retroactive change in the law, and therefore his motion falls within an exception to the one year time bar. RCW 10.73.100(6). In support of the latter proposition, Cisneros cites this court’s decision in In re Personal Restraint of Jagana, 170 Wn. App. 32, 282 P.3d 1153 (2012).

In Jagana, we held “there are sufficient reasons to apply Padilla retroactively.” 170 Wn. App. at 56. But our State Supreme Court granted review of Jagana and

remanded “for reconsideration in light of Chaidez v. United States, \_\_\_ U.S. \_\_\_, 133 S. Ct. 1103, 185 L. Ed. 2d 149 (2013). Chaidez held that Padilla does not apply retroactively and that “a person whose conviction is already final may not benefit from the [Padilla] decision in a habeas or similar proceeding.” Chaidez, 133 S. Ct. at 1107. In light of Chaidez, this court dismissed Jagana’s petition. Similarly, Division Two of this court recently dismissed a personal restraint petition as untimely under Chaidez. State v. Martinez-Leon, 174 Wn. App. 753, 760-61, 300 P.3d 481, review denied, 179 Wn.2d 1004 (2013) (time bar exception in RCW 10.73.100(6) requires showing that Padilla is retroactive; because Chaidez holds that it is not retroactive, Martinez-Leon’s petition was time barred); see also State v. Carney, \_\_\_ Wn. App. \_\_\_, 314 P.3d 736, 744 (2013) (rejecting argument that RCW 10.73.100(6) is distinct from federal retroactivity analysis, stating that in “In re Pers. Restraint of Haghghi, 178 Wn.2d 435, 309 P.3d 459 (2013), the Washington Supreme Court reiterated that it has ‘interpreted RCW 10.73.100 as a procedural rule that is entirely consistent with the federal retroactivity analysis. . . . Since Teague . . . , this court has consistently and repeatedly followed and applied the federal retroactivity analysis as established in Teague. Haghghi, 178 Wn.2d at 464” (alterations in original)).

Accordingly, because Cisneros’s collateral attack on his guilty plea was filed more than one year after his conviction became final and before the decision in Padilla, and because Padilla is not retroactive, his motion is time barred and the superior court properly denied it.

No. 69824-9-1/3

Affirmed.

FOR THE COURT:

*Wald, J.*  
*Dryden, J.*  
*Speckman, J.*

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