

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Personal)
Restraint of:) No. 66340-2-I
)
)
ANTHONY C. LEE,) DIVISION ONE
) UNPUBLISHED OPINION
Petitioner.)
) FILED: February 13, 2012

PER CURIAM. Anthony Lee filed a motion to modify or correct his judgment and sentence in King County Superior Court No. 09-1-04512-3 SEA and 08-1-03354-2 SEA and the superior court transferred the matter to this court for consideration as a personal restraint petition. CrR 7.8(c)(2); Toliver v. Olsen, 109 Wn.2d 607, 612-13, 746 P.2d 809 (1987). In order to obtain collateral relief by means of a personal restraint petition, Lee must demonstrate either an error of constitutional magnitude that gives rise to actual prejudice or a nonconstitutional error 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). As a general rule, personal restraint petitions must be filed within one year after the judgment and sentence becomes final. RCW 10.73.090. Lee’s judgment and sentence in No. 09-1-04512-3 SEA became final when filed in August 2010. RCW 10.73.090(3)(a). Lee’s judgment and sentence in No. 08-1-03354-2 SEA became final when filed in July 2008. RCW 10.73.090(3)(a). Lee filed his present motion for relief in the trial court in December 2010. Thus, this petition is timely as to No. 09-1-04512-3 SEA, but any collateral attack on Lee’s

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sentence in No. 08-1-03354-2 SEA is time-barred under RCW 10.73.090(1) unless he can show that his judgment and sentence is invalid on its face or an exception under RCW 10.73.100 applies.

In No. 09-1-04512-3 SEA, Lee pleaded guilty to possession of cocaine and second degree theft and the sentencing court imposed a prison-based Drug Offender Sentencing Alternative (DOSA) of 9.75 months confinement for the possession and of 19.5 months confinement for the theft. In No. 08-1-03354-2 SEA, Lee pleaded guilty to conspiracy to deliver cocaine and the trial court imposed a standard range sentence of 9 months.

Although it is by no means clear, Lee appears to challenge the sentencing court's calculation of the midpoint of the standard range for the purposes of the DOSA. The State concedes that the proper calculation of one-half the midpoint of the standard range of 12+ to 24 months for the possession would be 9 months and 9.75 months for the theft standard range of 17 to 22 months. Under RCW 9.94A.662(1)(a), the court should have imposed 12 months on each count because a prison-based DOSA requires a period of total confinement that is the greater of "one-half the midpoint of the standard sentence range or twelve months." We accept the State's concession, grant the petition in part, and remand for resentencing in No. 09-1-04512-3 SEA with a proper DOSA term of confinement.

Lee also appears to claim that the sentencing court miscalculated his offender score in No. 09-1-04512-3 SEA because the current offenses of possession of cocaine

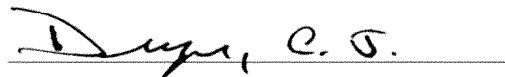
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and theft should have been considered the same criminal conduct. But Lee fails to argue or demonstrate that the two offenses require the same criminal intent, were committed at the same time and place, and involved the same victim. RCW 9.94A.589(1)(a). His claim therefore fails. Similarly, Lee fails to provide any support for his claim that the sentencing court erred by adding one point to his offender score for committing the current offenses while serving community custody on another charge. In the defense sentencing memorandum, Lee admitted to being on community custody when he committed the current offenses. See In re Pers. Restraint of Webster, 74 Wn. App. 832, 833, 875 P.2d 1244 (1994) (“Bare assertions and conclusory allegations are not sufficient to command judicial consideration and discussion in a personal restraint proceeding”).

Finally, Lee appears to contend that some counts should have been severed from others in No. 08-1-03354-2 SEA. The judgment and sentence under that case number lists only one count and became final in July 2008. Lee fails to identify any exception to the time bar or claim or establish any facial invalidity in the judgment and sentence. Lee’s challenge to his conviction in No. 08-1-03354-2 SEA is untimely and lacks merit.

Granted in part and remanded for resentencing in No. 09-1-04512-3 SEA.

For the court:



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Spencer, J.

Leach, A.C. J.