

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Personal) No. 66592-8-I
Restraint of:)
) DIVISION ONE
)
JOHN C. THOMPSON,) UNPUBLISHED OPINION
)
Petitioner.) FILED: September 24, 2012

PER CURIAM. John Thompson has filed a personal restraint petition claiming that the sentencing court imposed a term of confinement beyond the applicable standard range and challenging a firearm enhancement in King County Superior Court No. 97-1-00738-7 SEA. In order to obtain collateral relief by means of a personal restraint petition, Thompson 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. Thompson’s judgment and sentence became final in April 2000 when this court filed the mandate in his direct appeal, State v. Thompson, No. 42619-2-I. RCW 10.73.090(3)(b). Thompson filed his present motion for relief in the trial court in January 2011. Thus, any collateral attack on Thompson’s sentence is time-barred under RCW 10.73.090(1) unless he

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can show that his judgment and sentence is invalid on its face or an exception under RCW 10.73.100 applies. “Mere typographical errors easily corrected would not render a judgment invalid.” In re Coats, 173 Wn.2d 123, 135, 267 P.3d 324 (2011). A miscalculated offender score may render a judgment and sentence invalid on its face. See, e.g., In re LaChapelle, 153 Wn.2d 1, 6, 100 P.3d 805 (2004).

Thompson claims his judgment and sentence is invalid on its face. In particular, he points to the standard range listed for count 1, first degree murder, as 261 to 347 months, plus a 60 month enhancement, for a listed total of 321 to 417 months, as well as the confinement term imposed of 448 months. As Thompson argues, 347 plus 60 is 407, and 448 months exceeds the standard range listed but the judgment and sentence does not include the findings and conclusions necessary to support an exceptional sentence. Similarly, the standard range listed for count 2, unlawful possession of a firearm, is 26 to 34 months but the court imposed 41 months of confinement. Thompson argues that the judgment and sentence is invalid on its face because the sentencing court exceeded its authority by imposing a sentence above the standard range without findings and conclusions required for an exceptional sentence.

In response, the State has provided a transcript of the sentencing hearing demonstrating that the parties agreed, and the sentencing court found, that the proper offender score on count 1 was 5, rather than the 2 listed on the judgment and sentence, with a standard range of 351 to 448 months including the 60 month

enhancement. But the State concedes that the judgment and sentence is invalid on its face because the proper offender score on the murder charge based on Thompson's criminal history is 4 rather than 5. In particular, the sentencing court counted 3 points for Thompson's prior first degree robbery, one point for the other current offense, and one point for Thompson's being on community placement when he committed the current offense. But as the State now concedes, the court should have counted 2 rather than 3 points for the robbery. See Former RCW 9.94A.360(10) (Laws of 1995, ch. 316, § 1). As to count 2, the State argues that the sentencing court properly imposed 41 months based on an offender score of 3 and a standard range of 31 to 41 months, despite the offender score of 2 and standard range of 26 to 34 months listed on the judgment and sentence.

We accept the State's concession, grant the petition in part, and remand for resentencing.

Thompson also claims that his 60 month firearm enhancement is invalid under State v. Williams-Walker, 167 Wn.2d 889, 225 P.3d 913 (2010), because the jury found by special verdict that Thompson was armed with a deadly weapon. Thompson's sentence became final before Williams-Walker was decided. The Supreme Court has held that Williams-Walker announced a new rule – “that imposition of a firearm sentence enhancement where the State has charged but the jury has not found use of a firearm can never be harmless error” – that is not retroactive to cases that were not pending at the time it was decided. In re

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Eastmond, 173 Wn.2d 632, 642, 272 P.3d 188 (2012). Because we do not presume

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prejudice and Thompson has not demonstrated actual prejudice, we deny his claim for relief regarding the enhancement. Id.

Granted in part and remanded for resentencing.

For the court:

Cox, J.

Ederman, J.

Appelwick, J.