

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Personal)
Restraint of:) No. 67097-2-1
)
)
JOSEPH ALBERT PELTIER,) DIVISION ONE
) UNPUBLISHED OPINION
) Petitioner.)
) FILED: February 13, 2012

PER CURIAM. Joseph Peltier has filed a personal restraint petition challenging his conviction of third degree rape and indecent liberties in Snohomish County Superior Court No. 02-1-01945-0 SEA. He claims that the crimes were charged after the statute of limitations had expired. In order to obtain collateral relief by means of a personal restraint petition, Peltier 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). Although his judgment and sentence became final in February 2004 when filed in the trial court, Peltier claims that his petition is not subject to the time bar of RCW 10.73.090 because the judgment and sentence is invalid on its face. RCW 10.73.090(3)(a); RCW 10.73.090(1); In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 866, 50 P.3d 618 (2002).

The State initially charged Peltier with second degree rape based on

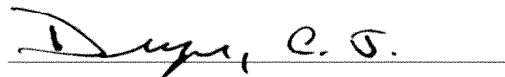
incidents occurring in 1993 and with child molestation based on a 2001 incident. In 2003, Peltier stipulated to facts and agreed to a bench trial on an amended information charging third degree rape and indecent liberties based on incidents occurring in 1993 and 1995. As part of the stipulation, Peltier agreed not to challenge his convictions. However, the stipulation does not address the applicable statute of limitations.

The State concedes that third degree rape and indecent liberties are subject to the three-year statute of limitations. RCW 9A.04.080(1)(h). The State also concedes that when a crime is barred by the statute of limitations, the resulting judgment is invalid on its face and the time bar of RCW 10.73.090 does not apply. In re Pers. Restraint of Stoudmire, 141 Wn.2d 342, 353-54, 5 P.3d 1240 (2000). Because the statute of limitations barred prosecution here, the sentencing court exceeded its authority and Peltier's restraint on these charges resulted in a complete miscarriage of justice. Id. at 355.

We accept the State's concession, grant the petition, vacate Peltier's convictions for third degree rape and indecent liberties, and remand for dismissal of the charges.

Granted.

For the court:



Spencer, J.

Leach, A.C. J.