

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 27945-6-III

Respondent,

Division Three

v.

CALVIN J. MINES,

Appellant.

UNPUBLISHED OPINION

Sweeney, J. — Collateral attacks on a judgment following a criminal conviction must be brought within one year of the conviction. The collateral attack here was brought about 40 years after the conviction. We conclude, then, that it is time barred and we affirm the court's refusal to set aside the conviction.

Facts

Calvin Mines was 16 years old in December 1969, when he raped a girl at knife point. The State charged him in juvenile court with delinquency based on allegations of assault, attempted forcible sexual intercourse by threatened use of a knife, and possession and consumption of alcohol by a minor. The court appointed counsel. The State filed a

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“Summons on Juvenile Complaint.” It informed Mr. Mines’s parents of the allegations and notified them of a disposition hearing scheduled for December 8. The hearing on the juvenile complaint was continued until December 9. Mr. Mines’s parents were notified of the change.

The court found that due to Mr. Mines’s numerous juvenile commitments and parole revocations and the “gravity of the alleged incidents, there is little service that can be offered to the said youth through the above-entitled court that has not been previously offered.” Clerk’s Papers (CP) at 82-83. The juvenile court then transferred jurisdiction to adult court. Mr. Mines was present in the courtroom along with his parents and his attorney, and the court so noted. Mr. Mines’s attorney objected to the transfer from juvenile court.

The State then charged Mr. Mines with first degree assault and sodomy. The court again appointed counsel for Mr. Mines. Mr. Mines pleaded guilty to first degree assault in exchange for the State’s agreement to dismiss the sodomy charge. The court sentenced Mr. Mines to a maximum term of not more than 20 years.

Mr. Mines was paroled after less than 5 years in prison. He then committed other crimes. The State ultimately petitioned to have Mr. Mines committed civilly (RCW 71.09.030) as a sexually violent predator and it informed him that it intended to use his

1970 conviction as a predicate crime for commitment.

Mr. Mines then moved to vacate the 1970 assault conviction on October 20, 2008. He claimed that the trial court failed to hold a declination hearing and the State failed to adequately notify him of any hearing. He argued that these failures violated his right to due process of law and vitiated the adult superior court proceedings. He argued that the statutory one-year limitation on collateral attacks of judgments did not apply because the court had no jurisdiction. He also said that his lawyer failed him and so his conviction should be set aside.

The court refused to set aside the conviction and denied Mr. Mines's motion.

DISCUSSION

Motion to Set Aside Conviction Time Barred

Mr. Mines contends that the one-year time bar under RCW 10.73.090(1) does not apply here because the declination of jurisdiction was constitutionally invalid and because he was given only two to three days' notice to prepare for the hearing. He argues that the notices were inadequate because they referred to delinquency hearings—not a declination hearing. And he argues there is no evidence that a court held a declination hearing. Finally, Mr. Mines argues that his lawyer was ineffective because he failed to provide adequate information about the proceedings and overlooked mitigating issues,

such as Mr. Mines's mental limitations and the victim's multiple conflicting stories. Ultimately then Mr. Mines claims that these combined failures (lack of hearing, inadequate notice, and ineffective assistance of counsel) violated his due process rights and therefore rendered his 1970 judgment and sentence void.

The dispositive issue here is whether Mr. Mines's October 2008 CrR 7.8 motion to vacate his 1970 judgment and sentence is time barred. That is a question of law and so our review is de novo. *State v. Gilman*, 105 Wn. App. 366, 368, 19 P.3d 1116 (2001).

CrR 7.8 permits a trial court to grant relief from a judgment for mistake, void judgment, or any other reason justifying relief from the operation of the judgment. CrR 7.8(b)(1), (4), (5). But a CrR 7.8 motion to vacate a judgment is a collateral attack, RCW 10.73.090(2), and so it is subject to a one-year time limitation: "No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction." RCW 10.73.090(1).

A motion for relief from judgment must be made "within a reasonable time." CrR 7.8(5). A reasonable time is limited to one year under RCW 10.73.090 unless exceptions apply. Mr. Mines's judgment became final on February 5, 1970. CP at 98. A statutory exception is that the sentence exceeded the court's jurisdiction. RCW 10.73.100(5). The

idea behind the statutory limitation here is to strike a balance between an error free trial and finality. *Shumway v. Payne*, 136 Wn.2d 383, 399, 964 P.2d 349 (1998).

Here, the record shows that the juvenile court declined jurisdiction on December 10, 1969. Mr. Mines argues that the court failed to hold a declination hearing. The record shows otherwise. CP at 81-84. It reflects that Mr. Mines was appointed counsel for the hearing and that his parents and attorney were present in the courtroom. CP at 76, 82. The court's findings of fact and conclusions of law were reduced to writing and resulted in a formal order. The record also shows that his parents received notice of the court date. CP at 72, 78, 80. Mr. Mines argues that the notice was constitutionally infirm because it did not give him adequate time to prepare for the hearing; however, he does not explain what he would have done with more time, or how more time would have made a difference here.

Finally, Mr. Mines claims that his counsel entirely failed to assist him during the declination and guilty plea proceedings. But ineffective assistance of counsel is not grounds for collateral review more than one year from the conviction, and for good reason. *State v. Wade*, 133 Wn. App. 855, 870, 138 P.3d 168 (2006) ("An issue not permitted under RCW 10.73.090(1) and .100 could nearly always be couched in terms of counsel's ineffectiveness for not raising the issue at trial or on direct appeal."). Any

shortcomings in counsel's representation would have been apparent, at least, at the time Mr. Mines was sentenced. And it would be difficult, if not impossible, for the court to evaluate the propriety of what his lawyer did 40 years after the fact, when files have been destroyed, or when one or more of the lawyers involved may have passed from this earth.

The court properly concluded that Mr. Mines's collateral attack on his judgment was time barred.

Statement of Additional Grounds

Mr. Mines, on his own, argues that the State cannot use a constitutionally invalid conviction in a sexually violent predator petition. But we "will not consider a defendant/appellant's statement of additional grounds for review if it does not inform the court of the nature and occurrence of alleged errors." RAP 10.10(c). Further, we are not obligated to search the record in support of claims raised in a statement of additional grounds. *Id.*

Here, Mr. Mines does not explain the basis for challenging his prior conviction or which conviction he would like us to examine. Without more, we are unable to address his claim. And we have already concluded that his challenge to the 1970 judgment and sentence is untimely.

We affirm the order of the trial court that denied his motion to set aside the 1970

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conviction for assault.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

WE CONCUR:

Sweeney, J.

Kulik, C.J.

Korsmo, J.