IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,	)	No. 29754-3-III
Respondent,	)	
	)	
v.	)	
	)	
JEFFREY SCOTT NORMAN,	)	
	)	UNPUBLISHED OPINION
Appellant.	)	
	)	

Siddoway, A.C.J. — Jeffrey Norman was convicted of several offenses in 2005, and the convictions became final in 2008. In 2011, he filed a motion in superior court seeking postjudgment relief under CrR 7.8(b) and CrR 8.3(b), alleging that prosecutorial misconduct tainted the trial court proceedings. The superior court denied his motion.

We affirm the trial court, although on the basis on which we would have dismissed Mr. Norman's motion had it been transferred to us for disposition as a personal restraint petition: the motion is untimely.[1]

FACTS AND PROCEDURAL BACKGROUND

Jeffrey Norman moved the superior court for relief from a judgment and sentence

imposed for his 2005 Stevens County convictions of first degree child molestation, second degree child molestation, first degree child rape, and two counts of second degree child rape. His convictions were affirmed on appeal to this court. *State v. Norman*, noted at 139 Wn. App. 1003 (2007). The Supreme Court denied review on April 1, 2008. *State v. Norman*, 163 Wn.2d 1015, 180 P.3d 1291 (2008).

On January 21, 2011, Mr. Norman filed a motion to dismiss the charges due to government misconduct resulting in an allegedly improper pretrial determination of probable cause. After a hearing without argument on February 2, 2011, the trial court found that there was no material evidence of misconduct and denied Mr. Norman's motion. Mr. Norman timely appealed.

ANALYSIS

Mr. Norman argues that the trial court erred in summarily denying his motion for postconviction relief under CrR 7.8(b)(3) and (4) because he presented sufficient evidence of governmental misconduct to warrant a hearing. While the State argues that Mr. Norman's motion was not brought under CrR 7.8(b), but only CrR 8.3(b), the record is to the contrary. Mr. Norman principally relied on CrR 8.3(b) but he invoked CrR

[1] CrR 7.8(c)(2) provides that the superior court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.

7.8(b)(3)-(4) "as an alternative sanction for the State's misconduct . . . rendering the determination of probable cause void as a matter of law." Clerk's Papers at 49. His assertion of the alternative ground proved critical; he belatedly recognizes on appeal that CrR 8.3 is not applicable to collateral attacks on a criminal judgment, by its plain terms.[2]

At issue, then, is whether the trial court abused its discretion by denying Mr. Norman's CrR 7.8(b) motion. *State v. Robinson*, 153 Wn.2d 689, 705 n.15, 107 P.3d 90 (2005) (Sanders, J. dissenting) (standard of review is abuse of discretion).

CrR 7.8(b)(1)-(5) allows a court to relieve a party from a final judgment for enumerated reasons, as well as any other reason justifying relief from the operation of the judgment. Among other requirements, any motion under the rule must comply with the one-year limitation period prescribed by RCW 10.73.090. CrR 7.8(b) (providing that, in addition to time limitations imposed by the rule, "[t]he motion . . . is further subject to RCW 10.73.090"); *State v. Olivera-Avila*, 89 Wn. App. 313, 320, 949 P.2d 824 (1997).

We may affirm on any grounds supported by the record. *State v. Costich*, 152

[2] CrR 8.3(b) provides for dismissal on the motion of the court, complementing the provisions of CrR 8.3(a) and (c), which provide, respectively, for dismissal on motion of the prosecution and on the motion of the defendant. CrR 8.3(c) expressly provides that a motion under the rule is made prior to trial. The rule speaks throughout of dismissal of "an indictment, information or complaint," CrR 8.3(a); a "prosecution," CrR 8.3(b); or "a criminal charge," CrR 8.3(c). It says nothing about dismissing a judgment entering a conviction, nor would there be a need to extend the rule to such proceedings, given that CrR 7.8(b)(3) already allows for postconviction relief due to government misconduct.

Wn.2d 463, 477, 98 P.3d 795 (2004). The time bar provided by RCW 10.73.090 is dispositive.

RCW 10.73.090(1) provides that "[n]o 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." Certain exceptions to this rule are enumerated in RCW 10.73.100,[3] but none apply here. Because Mr. Norman brought his current motion in January 2011, more than two years after his judgment became final, it is time barred unless he can demonstrate that his judgment and sentence is facially invalid or was entered by a court lacking jurisdiction.

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[3] "The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:

"(1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;

"(2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;

"(3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution;

"(4) The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;

"(5) The sentence imposed was in excess of the court's jurisdiction; or

"(6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard." RCW 10.73.100.

While a court determining facial invalidity is not limited to the four corners of the judgment and sentence, only "errors that result from a judge exceeding the judge's authority" render a judgment and sentence facially invalid. *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 144, 267 P.3d 324 (2011). Our Supreme Court has noted that "[t]he exception for facially invalid judgments and sentences may not be used to circumvent the one-year time bar to personal restraint petitions relating to fair trial claims." *Id.* at 141.

Mr. Norman's allegations of government misconduct go to the fairness of the trial court proceedings and not to the facial validity of the judgment. *See State v. Gudgel*, 170 Wn.2d 656, 658, 244 P.3d 938 (2010) (implying that an alleged *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) violation did not call into question the facial validity of the judgment). He also does not dispute the jurisdiction of the court to enter the judgment, nor does he address any other basis on which his motion was timely.

Mr. Norman's motion is therefore time barred by RCW 10.73.090. Its denial by the trial court is affirmed on that basis.

STATEMENT OF ADDITIONAL GROUNDS

In a pro se statement of additional grounds, Mr. Norman provides his own, somewhat cumulative, statement of the prosecutor's alleged misconduct during the trial court proceedings and the effect of the misconduct on his right to a fair trial. These

restated arguments fail for the same reason as the principal argument stated in the briefs. Mr. Norman has failed to identify any basis on which his motion is not time barred.

Affirmed.

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.

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Siddoway, A.C.J.

WE CONCUR:

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Brown, J.

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Kulik, J.