IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of	)	No. 81522-4
STEVEN JOSEPH CLARK,	)	EN BANC
Petitioner.	)	Filed April 8, 2010

FAIRHURST, J. – Steven Joseph Clark seeks to withdraw his 1998 guilty plea to two counts of second degree robbery. Clark asserts that his plea was involuntary because the plea agreement erroneously informed him that he would serve one year of community placement. Community placement was not statutorily authorized for his crimes. He seeks to avoid the one year time limit for bringing a personal restraint petition (PRP) by arguing that his judgment and sentence is invalid on its face. The Court of Appeals agreed with Clark and remanded to the trial court to give Clark the opportunity to elect to withdraw his plea. We disagree and reverse the Court of Appeals.

I. STATEMENT OF THE CASE

On January 20, 1998, Clark pleaded guilty to two counts of second degree robbery for robbing two banks. As part of his plea, the State dismissed a third count of second degree robbery. The plea agreement also included a minimum of one year of community placement.[1] On February 27, 1998, the trial court entered the judgment and sentence. The trial court sentenced Clark to 25 months' imprisonment for each count, to be served concurrently. The trial court also signed an appendix regarding community placement.[2]

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[1]The plea agreement contained the following paragraph:

> (k) In addition to confinement, the judge will sentence me to community placement for at least one year. During the period of community placement, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge _____ _____.]

PRP, App. B at 5.

[2]The pertinent portion of the appendix read as follows:

> The Court having found the defendant guilty of offense(s) qualifying for community placement, it is further ordered as set forth below.
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> **Community Placement:** Defendant additionally is sentenced on convictions herein, for each sex offense and serious violent offense committed on or after 1 July 1990 to community placement for two years or up to the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2) whichever is longer and on conviction herein for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, to a one-year term of community placement.
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> Community placement is to begin either upon completion of the term of confinement or at such time as the defendant is transferred to community custody

On March 6, 1998, the Department of Corrections wrote the trial court a letter asking for clarification after discovering that Clark did not meet the statutory criteria for community placement. On March 12, 1998, upon the State's motion, the trial court entered an order modifying the judgment and sentence by vacating the community placement appendix.

On May 14, 1999, the trial court entered a judgment and sentence against Clark on an unrelated charge of delivery of a controlled substance. Clark was sentenced to imprisonment of 12 months and 1 day, to be served concurrently to his second degree robbery sentences. The trial court did not impose community placement. At some point in 1999, Clark was released from prison.

On October 5 and 26, 1999, while out of prison, Clark again robbed two banks. A jury convicted him of two counts of second degree robbery. The trial court found Clark to be a persistent offender and sentenced Clark to life imprisonment without the possibility of parole.

In 2007, Clark filed a PRP with the Court of Appeals, Division One, alleging that his 1998 guilty plea to the two counts of robbery was involuntary because he was incorrectly informed he would be sentenced to community placement. He alleged his PRP was not time-barred because the judgment and sentence was invalid

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in lieu of early release.
PRP, App. A at 8.

on its face. In an unpublished opinion, the Court of Appeals agreed with Clark and remanded to the trial court so he could choose whether to withdraw his plea. *In re Pers. Restraint of Clark*, noted at 143 Wn. App. 1048, 2008 WL 836158. We granted the State's motion for discretionary review.

II. ISSUE

Is Clark's PRP timely?

III. ANALYSIS

There are two separate issues raised by Clark's PRP. The first is whether the PRP is time-barred. The second is whether Clark's plea was involuntary. Because we hold that Clark's PRP is untimely, we do not reach the second issue.

The State contends that Clark's PRP was untimely because he filed his PRP more than one year after judgment became final. Clark contends that he is not bound by the one year statute of limitations because the judgment and sentence is invalid on its face.

RCW 10.73.090(1) provides, "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." A judgment becomes final on the date it is filed with the clerk of the trial court if no appeal is filed. RCW

10.73.090(3)(a). Here, Clark's judgment and sentence became final in 1998 and his PRP was filed in 2007. Therefore, Clark is well outside the one year time limit prescribed in RCW 10.73.090(1). However, the statutory time limit does not apply if the judgment and sentence is not valid on its face. *Id.*

A judgment and sentence is not valid on its face when the judgment and sentence, without further elaboration, evidences an error. *In re Pers. Restraint of Thompson*, 141 Wn.2d 712, 718, 10 P.3d 380 (2000). The documents of a plea agreement can inform the inquiry as to whether the judgment and sentence is invalid on its face. *In re Pers. Restraint of Hemenway*, 147 Wn.2d 529, 532, 55 P.3d 615 (2002); *State v. Ammons*, 105 Wn.2d 175, 189, 713 P.2d 719, 718 P.2d 796 (1986). "The question is not, however, whether the plea documents are facially invalid, but rather whether the judgment and sentence is invalid on its face." *Hemenway*, 147 Wn.2d at 533.

Here, Clark's judgment and sentence is not invalid on its face. Clark asserts that the judgment and sentence is invalid on its face because it contains a term of community custody that is not authorized by statute. However, the judgment and sentence, as originally written, did not include a term of community placement.[3]

[3]Community placement is referenced only at section 4.7 and appendix H of the original judgment and sentence. *See* PRP, App. A. Section 4.7 is boilerplate and orders community placement for sex offenses, serious violent offenses, second degree assault, and offenses involving a deadly weapon. Appendix H begins by saying that "[t]he Court having found the defendant guilty of offense(s) qualifying for community placement, it is further ordered as set forth below."

Additionally, after being amended, the judgment and sentence does not even make reference to community placement. Therefore, the judgment and sentence is consistent with former RCW 9.94A.120(9) (1997), the community placement statute in effect in 1998. Consequently, the judgment and sentence is not invalid on its face.

Clark argues that examination of his guilty plea reveals that he was improperly informed about the consequences of his plea, thus making the judgment and sentence invalid on its face. However, we have already disposed of this argument in *Hemenway*. Hemenway pleaded guilty to first degree child molestation. 147 Wn.2d at 530. The plea form did not inform him about community placement but did state that the judge might place him on community supervision. *Id.* At sentencing, the court imposed a sentence of confinement and 24 months in community placement. *Id.* at 531. The judgment and sentence provided that Hemenway serve a term of community placement "'for the period of time provided by law.'" *Id.* (quoting J. & Sentence at 4.7). More than one year later, Hemenway filed a PRP, claiming his guilty plea was involuntary because he was not informed

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Id. at 8. However, appendix H is conditioned similarly to section 4.7 and actually orders community placement only when the defendant is convicted of specific charges. Here, Clark was not convicted of an offense that triggered community custody by the terms of section 4.7 or appendix H. Therefore, the original judgment and sentence did not impose a term of community custody. The order modifying the judgment and sentence merely removed section 4.7 and appendix H to avoid any confusion. Therefore, even before it was amended, the judgment and sentence was not invalid on its face.

that his sentence included mandatory community placement. *Id.* We held that Hemenway's judgment and sentence was valid on its face because it correctly reflected the law, and thus Hemenway's PRP was untimely. *Id.* at 532. We then rejected Hemenway's argument that because the plea form failed to inform him about the community placement, his plea was invalid on its face. *Id.* at 533. We reasoned that with regard to the timeliness of a PRP, the question was not whether the plea agreement was invalid on its face, but rather whether the judgment and sentence was invalid on its face. *Id.* We held that Hemenway's PRP was untimely.

Here, Clark's judgment and sentence correctly reflects the law. Even though Clark's plea agreement may be flawed, those flaws do not render his judgment and sentence facially invalid. Therefore, any problem in his plea agreement is insufficient to overcome the one year time limit of RCW 10.73.090(1).

Clark argues that the March 12, 1998, order amending his judgment and sentence is void because he was denied the due process rights of notice, an opportunity to be heard, and the right to counsel. However, even if the order were void, it would merely resurrect the original judgment and sentence, which is not facially invalid. Additionally, in order to determine whether the amending order is void, we must go beyond the face of the judgment and sentence. There is no evidence of constitutional infirmity from the face of the judgment and sentence or

the order amending it. Clark has provided an affidavit, some declarations, and other documentary evidence suggesting that his judgment and sentence was amended without a hearing. However, if Clark must resort to external documents in the hope of rendering his judgment and sentence invalid, then the judgment and sentence cannot be invalid on its face. Because this inquiry would require us to go beyond the face of the judgment and sentence, it cannot overcome the one year time limit imposed by RCW 10.73.090(1).[4]

IV. CONCLUSION

Clark had one year from when his judgment and sentence became final to bring a PRP. Instead, Clark's PRP was brought nine years after his judgment and sentence was entered. On its face, the judgment and sentence is consistent with the law. Therefore, Clark has failed to show that the one year time limit does not apply to him. Accordingly, we reverse the Court of Appeals and dismiss Clark's PRP as

[4]For its conclusion that the order modifying the judgment and sentence is void, the dissent relies on an argument not raised by Clark. The dissent argues that the order modifying the judgment and sentence was made in excess of the trial court's authority under CrR 7.8(a). Dissent at 3-5. CrR 7.8(a) allows courts to correct clerical errors. Clerical errors occur when a judgment and sentence does not reflect the intent of the court. *State v. Rooth*, 129 Wn. App. 761, 770, 121 P.3d 755 (2005) (citing *Presidential Estates Apartment Assocs. v. Barrett*, 129 Wn.2d 320, 326, 917 P.2d 100 (1996)). However, a reviewing court looks to "'whether the judgment, as amended, embodies the trial court's intention, *as expressed in the record at trial*.'" *Id.* (emphasis added) (quoting *Presidential*, 129 Wn.2d at 326). While the plea agreement suggests that the error may not have been clerical, we would have to consult the trial court record to ultimately make that determination. Therefore, we would have to go beyond the face of the judgment and sentence. Also, if the order were void, that would merely resurrect the original judgment and sentence, which is not invalid on its face.

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AUTHOR:
Justice Mary E. Fairhurst

WE CONCUR:
Chief Justice Barbara A. Madsen
Justice Susan Owens
Justice Charles W. Johnson
Justice Gerry L. Alexander
Justice James M. Johnson
Justice Debra L. Stephens
Justice Tom Chambers