

*In re Pers. Restraint of Scott (Joshua Dean)*

No. 82951-9

MADSEN, C.J. (concurring/dissenting)—The petitioner claims that the one-year time bar of RCW 10.73.090(1) does not prevent consideration of his personal restraint petition because his judgment and sentence is invalid on its face. The invalidity he claims is that the trial court imposed a firearm sentence enhancement rather than a deadly weapon sentence enhancement, although the jury found by special verdict that the petitioner was armed with a deadly weapon. On the face of the judgment and sentence, however, the trial judge checked a box indicating there had been a special verdict/finding for use of a firearm. In other words, the sentence reflected on the face of the judgment and sentence matches the verdict as it appears on the face of the judgment and sentence. Accordingly, the judgment and sentence is valid on its face.

The lead opinion concludes, however, that the petition is not time barred. The lead opinion says that imposing a firearm enhancement when the verdict form indicated a deadly weapon finding is an error involving imposition of a sentence in excess of the trial

court's authority, the type of invalidity contemplated by RCW 10.73.090(1). To reach this conclusion, however, the lead opinion must go "behind" the face of the judgment and sentence.

I disagree with this approach. As I explain in my concurrence in *In re Personal Restraint of Coats*, 173 Wn.2d 123, 267 P.3d 324 (2011), a judgment and sentence is invalid on its face for purposes of RCW 10.73.090(1) only when the claimed invalidity appears on the face of the judgment and sentence. A court should not look behind the judgment and sentence and examine a charging document, special verdict form, or any other part of a petitioner's case record to determine whether some invalidity exists that is not apparent on the face of the judgment and sentence.<sup>1</sup>

Here, no invalidity appears on the face of the judgment and sentence. The judgment and sentence on its face shows a verdict or finding of use of a firearm and a firearm sentence enhancement was imposed. Because there is no invalidity appearing on the face of the judgment and sentence, the petitioner's argument for avoiding the one-year time bar in RCW 10.73.090(1) on the basis of facial invalidity does not apply. He raises no other argument in this court for avoiding the one-year bar, and accordingly his petition should be time barred.

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<sup>1</sup> As I explain in *Coats*, 173 Wn.2d at 158-59 (Madsen, C.J., concurring), a narrow exception should apply if it is impossible to tell from the face of the judgment and sentence for what precise charge the petitioner was sentenced. In such circumstances, a court should examine the judgment in connection with the record solely for the purpose of determining the precise charge for which sentence was imposed. However, here, this exception does not apply because on the face of the judgment and sentence the trial judge indicated a special verdict/finding for use of a firearm. This is the finding necessary to support a firearm sentence enhancement, and therefore no question arises from the face of the judgment and sentence about the basis for the firearm enhancement.

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I agree that the petition should be dismissed.

AUTHOR:

Chief Justice Barbara A. Madsen

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WE CONCUR:

Justice James M. Johnson

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