

In re Pers. Restraint of Carrier (Harry N.)

No. 83377-0

MADSEN, C.J. (concurrency in dissent)—I agree with the dissent’s analysis that former RCW 9.95.240 (2003) applies prospectively. The 1981 indecent liberties conviction was properly included in Harry Carrier’s criminal history because until he committed a new offense, the precipitating event for application of former RCW 9.95.240 did not occur. Because he did not commit a new offense until 2004, his criminal history was properly determined by applying the 2003 amendment to the statute.

I disagree with one aspect of the dissent, however, and that is in regard to the propriety of determining the facial validity of Carrier’s judgment and sentence under *In re Personal Restraint of Coats*, 173 Wn.2d 123, 267 P.3d 324 (2011). Dissent at 1 (citing majority at 6-7). I continue to believe that we have misapplied RCW 10.73.090(1) and would not consider the order dismissing Carrier’s 1981 conviction.¹ However, even assuming that the 1981 dismissal order is a proper document to consider under the

¹ I also have reservations about the majority’s application of *Coats* because the order dismissing the 1981 conviction is not related to the current case, i.e., it is not a document pertaining to the current offense, such as the charging document or a verdict form that the majority in *Coats* said that the court can consider in determining facial validity. Considering the order from 1981 goes far beyond the majority decision in *Coats*.

majority in *Coats*, it is proper to take judicial notice of relevant statutes when considering the validity on its face of a judgment and sentence, as I explained in my concurrence in *Coats*, 173 Wn.2d at 159 (Madsen, C.J., concurring). Here, if former RCW 9.95.240 applies prospectively in the manner that the dissent correctly identifies, which is a matter of interpreting the statute, then the judgment and sentence could not be invalid on the ground claimed. Accordingly, in connection with the claim that the judgment and sentence is invalid on its face, it is proper in this case to interpret the meaning of the statute and determine whether it applies prospectively.

AUTHOR:

Chief Justice Barbara A. Madsen

WE CONCUR:
