In re Personal Restraint of Coats (Jeffrey A.)

No. 83544-6

Stephens, J. (concurring)—I appreciate the majority's attempt to explain the meaning of the phrase "valid on its face." RCW 10.73.090(1). While I agree with much of the majority's recitation of the history of collateral relief, I write separately to clarify the type of showing a petitioner must make to establish that a judgment and sentence is invalid. Unlike the majority, I do not believe our precedent requires a showing of harm or prejudice to the petitioner in order to demonstrate a facial invalidity in the first instance. The prejudice inquiry comes later, only after the petitioner establishes that the judgment and sentence is invalid.

I also write separately to explain the remedy that follows from an invalid judgment and sentence. This was the major point of contention between the State and Coats in their briefing and at oral argument before this court. I would hold that the remedy for an invalid judgment and sentence is correction of the error that renders the judgment and sentence facially invalid, not opening the door to other time-barred claims.

Invalidity of the Judgment and Sentence

The touchstone of an invalid judgment and sentence is the trial court exceeding its authority. This reflects the traditional showing that was necessary to challenge a judgment and sentence by collateral attack. "While a judgment and sentence could not be successfully challenged on habeas corpus if it were merely erroneous, sentences in excess of lawful authority could be successfully challenged." *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 868, 50 P.3d 618 (2002).

Our cases illustrate that such overstepping generally occurs when the trial court imposes a sentence for a crime that it lacks authority to punish. *In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 354, 5 P.3d 1240 (2000) (statute of limitations had expired on offense for which defendant was convicted); *In re Pers. Restraint of Thompson*, 141 Wn.2d 712, 717, 10 P.3d 380 (2000) (defendant convicted of offense that was not enacted until two years after offense occurred); *In re Pers. Restraint of Hinton*, 152 Wn.2d 853, 857, 100 P.3d 801 (2004) (defendants convicted of a nonexistent crime). It also commonly occurs when the sentence itself is in excess of the trial court's statutory authority. *Stoudmire*, 141 Wn.2d at 355-56 (sentence in excess of statutory maximum); *Goodwin*, 146 Wn.2d 866-67 (sentence in excess of what was statutorily authorized for correct offender score); *In re Pers. Restraint of West*, 154 Wn.2d 204, 211-13, 110 P.3d 1122 (2005) (sentence unlawfully prevented imposition of early release time); *In re Pers. Restraint of*

Tobin, 165 Wn.2d 172, 176, 196 P.3d 670 (2008) (sentence in excess of statutory maximum); *In re Pers. Restraint of Bradley*, 165 Wn.2d 934, 938-39, 205 P.3d 123 (2009) (sentence in excess of what was statutorily authorized for correct offender score). In each circumstance, we have found the judgment and sentence invalid because the trial court in some way exceeded its authority under the law.[1]

While the majority casts its rule in terms of the trial court's authority, the majority's application of the rule actually focuses on the effect of the alleged invalidity on the petitioner's rights. The result is that invalidity under the majority's approach requires a showing of prejudice to the petitioner, not simply that the trial court exceeded its authority. *See* majority at 24 ("While the judgment and sentence misstated the maximum possible sentence for one count, Coats was in fact sentenced within the standard range of possible sentences for that offense.").

These concepts—the court exceeding its authority and the petitioner experiencing prejudice—are not simply two sides of the same coin. It is possible for the trial court to exceed its authority and not affect the petitioner's rights. A slight modification to the facts of this case illustrates the point. The trial court sentenced Coats to 51 months for conspiracy to commit robbery, 240 months for conspiracy to commit murder, and 109 months for robbery, all to be served

[1] In dictum, the majority suggests that a miscalculated offender score will always render a sentence facially invalid and subject to collateral attack after one year. Majority at 18 n.11. This statement sweeps too broadly, as we have never endorsed looking to extraneous facts to challenge an offender score calculation. An erroneous calculation may result from a number of factors, such as misstatement of the offender's age, faulty comparability analysis or an error in a guilty plea form, but these errors do not render the judgment and sentence facially invalid.

concurrently. Had the trial court sentenced Coats to 130 months for conspiracy to commit robbery, it would have clearly exceeded its authority, since the statutory maximum for conspiracy to commit robbery is 120 months. But the court's overstepping arguably would not have affected Coats's rights because he was already sentenced to a concurrent term of 240 months for conspiracy to commit murder. Under the majority's approach, then, this error would not render the judgment and sentence facially invalid.

By focusing its analysis on the harm to the petitioner, the majority perpetuates the misreading of *In re Personal Restraint of McKiearnan*, 165 Wn.2d 777, 203 P.3d 375 (2009), that has led some to import a prejudice requirement for finding a judgment and sentence invalid in the first instance. In *McKiearnan*, the judgment and sentence misstated the statutory maximum for a sentence as "'20 Yrs. to Life,'" when in fact the statutory maximum was just "life." 165 Wn.2d at 780 (quoting Mot. for Discretionary Review, App. C (J. & Sentence) at 1-4). Focusing on the trial court's authority, we explained that the misstatement did not render the judgment and sentence invalid under RCW 10.73.090. *Id.* at 782-83. This was so because the court "could have sentenced McKiearnan to a term within the standard range, to life imprisonment, or anywhere in between. The maximum was life in prison whether he was informed that the maximum sentence was 1 year to life, 10 years to life, or 20 years to life." *Id.* Simply put, the trial court had not exceeded its authority because it properly imposed the maximum sentence of life. This court

observed, however, that "[t]o be facially invalid, a judgment and sentence requires a more substantial defect than a technical misstatement that had no actual effect on the rights of the petitioner." *Id.* at 783.

This latter statement has caused confusion insofar as it has been read to suggest a requirement that petitioners show prejudice to establish a facial invalidity. But, such a requirement makes little sense and would be unduly repetitive because we already require a threshold showing of prejudice when we reach the merits of a personal restraint petition. For constitutional claims, a petitioner must show actual and substantial prejudice to obtain relief. *In re Pers. Restraint of Gentry*, 170 Wn.2d 711, 714, 245 P.3d 756 (2010), *petition for cert. filed*, No. 10-10814 (U.S. May 31, 2011). For nonconstitutional claims, we require a showing that the alleged error constitutes a fundamental defect that inherently resulted in a complete miscarriage of justice. *Id.* Our consistent approach has thus been to analyze whether the judgment and sentence is invalid (without regard to prejudice to the petitioner), and if so, to ask whether the petitioner can show the requisite prejudice to obtain relief on the merits. *See Stoudmire*, 141 Wn.2d at 355-56 (miscarriage of justice); *Thompson*, 141 Wn.2d at 719 (miscarriage of justice); *Goodwin*, 146 Wn.2d at 876-77 (miscarriage of justice); *Hinton*, 152 Wn.2d at 858-59 (actual and substantial prejudice); *West*, 154 Wn.2d at 209, 213 (miscarriage of justice). *But see Tobin*, 165 Wn.2d at 172 (no discussion of prejudice).

If we meant to change the law in *McKiearnan* we would have said so. To the

extent *McKiearnan* has been read to impose a prejudice overlay on the facial invalidity question, that reading is wrong. The touchstone of an invalid judgment and sentence is the court exercising authority it does not have.

Coats's judgment and sentence is invalid on its face because it reflects that the trial court ordered a sentence outside its statutory authority. No statute allowed the trial court to order a maximum life sentence for conspiracy to commit robbery. To the contrary, the relevant statute prescribed a maximum sentence of 120 months for the offense. Thus, Coats's claim that the judgment and sentence misstated the maximum penalty falls within the exception in RCW 10.73.090 for an invalid judgment and sentence. Because the one-year time bar does not apply, we may consider the claim on the merits.

On reaching the merits, however, we must conclude that Coats is not entitled to any relief. As the majority points out, Coats does not specify whether his claim of a misstated maximum in the judgment and sentence is of a constitutional magnitude. If it were, Coats would not be able to show actual and substantial prejudice because the misstatement does not affect the actual length of his incarceration. If the claim were nonconstitutional, it would likewise fail on the merits because, even though the misstatement may be a fundamental defect, it has not resulted in a gross miscarriage of justice. Thus, while the misstated maximum sentence renders Coats's judgment and sentence invalid, his claim ultimately fails because he has not demonstrated any resulting prejudice.

Remedy for Invalidity

The analysis does not end with denying relief on Coats's claim of an invalid judgment and sentence because his untimely petition also raises a claim challenging the voluntariness of his guilty plea. Coats argues that we must address the guilty plea claim if we find his judgment and sentence invalid. In his view, a facial invalidity waives the one-year time bar for *all* claims, including those that do not relate to the invalidity of the judgment and sentence. In other words, Coats asserts that the claim of facial invalidity under RCW 10.73.090 is merely a gateway to allow consideration of other time-barred claims.

To begin, it is important to consider how we typically process untimely personal restraint petitions. The six enumerated exceptions to the time bar are listed in RCW 10.73.100.[2] If a petition raises a claim that fits one of these exceptions, we will consider that specific claim. If a claim does not fit within one of the exceptions, we will not consider it. Further, under our mixed-petition rule, if one or more claims fall within the grounds listed in RCW 10.73.100, and one or more claims do not, then the entire petition is dismissed, including the claims that properly fall within an exception. *See, e.g., In re Pers. Restraint of Hankerson*, 149 Wn.2d 695, 702-03, 72 P.3d 703 (2003). Under RCW 10.73.100, there is no notion of a claim serving as a gateway for consideration of other claims that do not fit within one of the enumerated exceptions.

When a claim does not fall within one of the exceptions to RCW 10.73.100,

we have sometimes turned to RCW 10.73.090. *See, e.g., Stoudmire*, 141 Wn.2d at 351. While the legislature did not specify "exceptions" to the one-year time limit in RCW 10.73.090, it did designate two preconditions for application of the time bar: (1) that the judgment and sentence be "valid on its face" and (2) that the judgment and sentence be "rendered by a court of competent jurisdiction." RCW 10.73.090(1). We have referred to these two preconditions as additional, discrete "exceptions" to the time bar. *Stoudmire*, 141 Wn.2d at 346, 349, 351; *see also Hankerson*, 149 Wn.2d at 698 (referring to the preconditions in RCW 10.73.090 as "limited exceptions").

The one-year time bar in RCW 10.73.090 presupposes that some, if not many, meritorious claims will be barred from consideration when petitioners fail to

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[2] RCW 10.73.100 provides:

> 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:
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> (1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;
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> (2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;
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> (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;
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> (4) The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;
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> (5) The sentence imposed was in excess of the court's jurisdiction; or
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> (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.

raise the claims in a timely manner. Thus, in the vast majority of cases, the interests of finality and efficiency that justify the one-year time bar will prevail over a petitioner's interest in having his meritorious claim heard. The exceptions listed in RCW 10.73.090 and RCW 10.73.100 represent the only situations in which the legislature has deemed that finality and efficiency must yield to the interests that weigh in favor of considering an untimely claim on its merits.

Coats would have us construe the invalidity exception in RCW 10.73.090 as a "super exception" that removes the time bar not only for the specific claim that fits the exception, but for all other claims as well. I see no reason to treat the exceptions in RCW 10.73.090 so differently from the exceptions listed in RCW 10.73.100. There is no indication that the legislature intended an invalidity in the judgment and sentence to have the sweeping effect Coats attributes to it—that is, to waive the time bar for all untimely claims regardless of whether they relate to the validity of the judgment and sentence. As noted above, none of the exceptions to RCW 10.73.100 have that affect. Moreover, to open the door to claims that do not fall within one of the enumerated exceptions in RCW 10.73.090 or RCW 10.73.100 would require us to ignore the interests of finality in situations where the legislature intended finality to carry the day.

Reading RCW 10.73.090 and RCW 10.73.100 together demonstrates that the remedy for an invalid judgment and sentence is correction of the error. If a claim falls within the exception in RCW 10.73.090 for an invalid judgment and sentence,

then we will address only that claim. Like RCW 10.73.100, RCW 10.73.090 does not open the gateway to consideration of other time-barred claims.

While the notion of a limited remedy is inherent in the statutory scheme, I recognize that this court has not been entirely consistent in adhering to this approach. We seemingly followed it in *Stoudmire*, where the petitioner raised numerous untimely claims, including a claim that his guilty plea was involuntary and a claim that the judgment and sentence was invalid because the trial court exceeded its sentencing authority. 141 Wn.2d at 347. We reached the merits of the facial invalidity claim because it fit within an exception under RCW 10.73.090. *Id.* at 354. Stoudmire's guilty plea claim, however, was dismissed as untimely because it was submitted as part of a mixed petition—i.e., it was barred under RCW 10.73.100—and the claim did not fall within either exception to RCW 10.73.090. *See id.* at 350.

Our analysis in *Bradley*, however, suggested a more expansive remedy. There, the petitioner raised two separate claims after the one-year time limit: that the guilty plea was involuntary and that the judgment and sentence was invalid, both as a result of a miscalculated offender score. *See Bradley*, 165 Wn.2d at 938-39. The State conceded that the misstated offender score rendered the judgment and sentence invalid. *Id.* But the State argued that the remedy for the invalidity was limited to correcting the sentencing error. *Id.* at 939. We nonetheless addressed Bradley's guilty plea claim and concluded that he was entitled to withdraw his plea.

Id. at 944.

The majority opinion in *Bradley* makes no mention of either RCW 10.73.090 or RCW 10.73.100. There is no discussion of the facial invalidity analysis from *Stoudmire*, nor does the majority discuss the important policy implications of a rule that would allow an invalid judgment and sentence to waive the time bar for all purposes. Rather, the entire majority opinion focuses on the merits of Bradley's guilty plea claim, with particular emphasis on whether Bradley could withdraw his guilty pleas as a "package deal." *Id.* at 941-43. The concurrence and the dissent likewise focus on the "package deal" analysis and make no mention of the appropriate remedy for an invalid judgment and sentence. *Id.* at 944-46 (Owens, J., concurring); *id.* at 946-48 (Alexander, C.J., dissenting). The absence of any such discussion, together with the general focus of each opinion on the "package deal" analysis, confirms that the issue of the appropriate remedy for a facial invalidity simply was not before the court in *Bradley*. I agree with the majority that *Bradley* should not be read as precedent on an issue it expressly did not address.

Turning to Coats's petition, a proper prejudice analysis requires us to dismiss his guilty plea claim as untimely. The claim does not fit within any of the exceptions listed in RCW 10.73.100. Nor does the claim fit within either exception listed in RCW 10.73.090. *See In re Pers. Restraint of Hemenway*, 147 Wn.2d 529, 533, 55 P.3d 615 (2002) (holding that an involuntary guilty plea does not render the judgment and sentence invalid). Because the claim does not fall within any of the

enumerated exceptions, we can say with confidence that the legislature prioritized the interests of finality and efficiency over Coats's interest in having his guilty plea claim heard on the merits in a personal restraint petition.

Accordingly, Coats's personal restraint petition should be dismissed.[3]

[3] Because I do not agree with the majority that the misstated maximum sentence is a "clerical mistake" under CrR 7.8, I would not remand for correction of the judgment and sentence.

AUTHOR:

Justice Debra L. Stephens

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WE CONCUR:

Justice Mary E. Fairhurst

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