IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of	)	No. 83544-6
JEFFREY A. COATS,	)	En Banc
Petitioner.	)	
	)	Filed November 17, 2011

CHAMBERS, J. — In 1995, Jeffrey Coats pleaded guilty to conspiracy to commit murder, conspiracy to commit robbery, and robbery, all in the first degree. He received a standard range sentence of 20 years. His judgment and sentence erroneously states that the maximum sentence for conspiracy to commit robbery is life in prison. Fourteen years later, he filed a personal restraint petition contending that because of the erroneous statement, his judgment is not valid on its face and therefore he should be allowed to withdraw his guilty plea. We take this occasion to review our jurisprudence regarding the statutory one-year time limit for collateral attacks on judgments that are valid on their faces under RCW 10.73.090. We conclude that Coats's judgment is valid on its face despite the error; that the sentencing court did not exceed its authority in sentencing Coats; and that Coats's petition must be

denied.

BACKGROUND

Resolution of the issues presented does not turn on the facts of Coats's crime. We briefly describe the event for context. In 1994, when he was 14 years old, Coats and two friends decided to kill a man and steal his BMW. They armed themselves with a kitchen knife and a pipe in a bag that they would later claim was a gun. A security patrol officer found the three and chased them away from their intended victim. They wandered until they spotted David Grenier parking his Lexus. The three friends approached Grenier, robbed him, duct taped his hands and feet together, locked him in the trunk of his car, and drove him to a secluded spot near the Puyallup River. Being mercifully inept, one of the friends accidentally opened the trunk and Grenier was able to escape.

Coats was initially charged with six counts: I. conspiracy to commit kidnapping, II. conspiracy to commit first degree robbery, III. conspiracy to commit first degree murder, IV. first degree kidnapping, V. first degree robbery, and VI. first degree attempted murder. The juvenile court declined jurisdiction. While one of his friends was being tried, Coats pleaded guilty to first degree robbery, conspiracy to commit first degree robbery, and conspiracy to commit first degree murder. Likely, in return for his guilty plea, the prosecution dropped the other three charges and made a standard range sentencing recommendation on the rest.

Unfortunately, the judgment and sentence signed by the trial judge contained an error. The judgment erroneously reported that the maximum sentence for conspiracy to commit first degree robbery was life in prison. The Statement of the Defendant on Plea of Guilty states that the maximum was 20 years.[1] The parties before us agree that the maximum sentence available at the time for conspiracy to commit first degree robbery was in fact 10 years. Both documents correctly state that the maximum sentence on the other two charges was life in prison. Coats received standard range sentences of 51 months for conspiracy to commit robbery, 240 months for conspiracy to commit murder, and 109 months for robbery, all to be served concurrently. Coats did not appeal.

Fourteen years later, Coats filed this personal restraint petition in the Court of Appeals, alleging that since his judgment and sentence contained an obvious error it was invalid on its face. In Coats's view, the error on the judgment opened the door to allow him to attack the validity of his guilty plea.

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[1] At the plea hearing, the judge reflected the error on the defendant's statement on plea of guilty in his colloquy with Coats:

> Robbery in the First Degree has a maximum penalty of life in prison and a standard range, based on your known criminal history, of 51 to 68 months. Conspiracy to Commit Robbery in the First Degree has a maximum penalty of 20 years in prison and/or a $50,000 fine and a standard sentencing range, based on your known criminal history, of 38.25 months to 51 months. Conspiracy to Commit Murder in the First Degree has a maximum penalty of life in prison and a standard range, based on your known criminal history, of 210.75 to 270 months.

State's Resp. to Pers. Restraint Pet., App. B (Verbatim Report of Proceedings at 5-6.)

Coats reasons that because his "plea was based on misinformation about a direct consequence, it was neither knowing nor voluntary." Pers. Restraint Pet. at 2. The Court of Appeals dismissed the petition by order of the acting chief judge on the ground that the error was merely a "'technical misstatement that had no actual effect on the rights of the petitioner.'" Order Dismissing Pet. and Denying Mot. for Release from Custody at 2 (quoting *In re Pers. Restraint of McKiearnan*, 165 Wn.2d 777, 783, 203 P.3d 375 (2009) (Wash. Ct. App. Aug. 19, 2009)). We granted Coats's motion for review "only on the issue of whether Petitioner's judgment and sentence is facially invalid, and if so, whether he is entitled to withdraw his guilty plea." Order (Wash. June 2, 2010).

ANALYSIS

Coats challenges his detention through a personal restraint petition. Personal restraint petitions are modern version of ancient writs, most prominently habeas corpus, that allow petitioners to challenge the lawfulness of confinement. *Toliver v. Olsen*, 109 Wn.2d 607, 609-11, 746 P.2d 809 (1987).

Habeas predates both Washington State and the United States. As we noted recently, it is

> "a writ antecedent to statute, and throwing its root deep into the genius of our common law. . . . It is perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement. It is of immemorial antiquity, an instance of its

> use occurring in the thirty-third year of Edward I."

In re Pers. Restraint of Grantham, 168 Wn.2d 204, 210, 227 P.3d 285 (2010) (internal quotation marks omitted) (quoting *Fay v. Noia*, 372 U.S. 391, 400, 83 S. Ct. 822, 9 L. Ed. 2d 837 (1963), *overruled in part on other grounds by Wainwright v. Sykes*, 433 U.S. 72, 97 S. Ct. 2497, 53 L. Ed. 2d 594 (1977)). It is embedded in the common law. Horace G. Wood & Charles F. Bridge, A Treatise on the Legal Remedies of Mandamus and Prohibition, Habeas Corpus, Certiorari, and Quo Warranto 111 (3d ed. 1896) (citing *People ex rel. Tweed v. Liscomb,* 60 N.Y. 559 (1875)). "The writ of *habeas corpus* existed at common law prior to the promulgation of the Magna Charta." *In re Habeas Corpus of Grieve*, 22 Wn.2d 902, 904, 158 P.2d 73 (1945). For much of our history, this court restricted its post-conviction collateral review of final judgments to "but one question . . . Is this a judgment or a nullity?" without any consideration of the record. *Id.* This seemed to be predicated on the principle that as habeas was a writ, relief was not available if there was an adequate remedy at law, such as an appeal. *In re Habeas Corpus of Cavitt,* 170 Wash. 84, 15 P.2d 276 (1932) (holding that habeas relief was available when trial judge sua sponte ordered man who had finished serving his sentence to serve it again). However, by case law, court rule, and ultimately, by statute, consideration of collateral challenges expanded. *See* Laws of 1989, ch. 395 (enacting a personal restraint petition statute);[2] *Holt v. Morris*, 84

[2] The chief justice is correct that in our view, courts have from time to time considered extrinsic evidence in determining whether or not a judgment was valid upon a collateral challenge. *See, e.g., Holt v. Morris,* 84 Wn.2d 841, 844, 529 P.2d 1081 (1974) *overruled on other grounds by Wright v. Morris,* 85 Wn.2d 899, 540 P.2d 893 (1975). The

Wn.2d 841, 843-45, 529 P.2d 1081 (1974).

(reviewing expansion of judicial review and collateral relief since 1947). But this strict limitation on the scope of collateral review has long been in tension with concern about unlawful or unjustified detentions. In 1949, this court explicitly looked to the charging document when it was not possible to ascertain the charge from the judgment and sentence, found that the defendant had been sentenced for grand larceny after pleading guilty to petit larceny. *Sorenson v. Smith,* 34 Wn.2d 659, 661, 664, 209 P.2d 479 (1949). Over a sharp dissent that would have allowed the defendant to withdraw his plea and start over, the court granted relief and ordered resentencing.[3]

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legislature enacted RCW 10.73.090 against that backdrop, and given that it has not revised the statute since *Stoudmire,* we have no reason to think it is displeased with our approach.

[3] We respectfully disagree with the chief justice's characterization of *Sorenson* as holding the record could only be examined "*solely* for the purpose of determining that precise charge. *Sorenson v. Smith,* 34 Wn.2d 659, 209 P.2d 479 (1949); *see In re Habeas Corpus of Clark,* 24 Wn.2d 105, 112, 163 P.2d 577 (1945)." Concurrence (Madsen, C.J.) at 17. The most relevant language in *Sorenson* says:

> Although we are not permitted in habeas corpus proceedings to examine the information, where the judgment is regular on its face (*In re Grieve*, 22 Wn. (2d) 902, 158 P. (2d) 73), still, when it is impossible to ascertain from the judgment the precise charge on which the petitioner was sentenced, it is permissible for us to examine the judgment in connection with the record in which it is entered. *In re Clark*, 24 Wn. (2d) 105, 163 P. (2d) 577. This is particularly so when not only the judgment but also the information is made a part of the return to the show cause order, as was done in this case.
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> The judgment recited that the petitioner was guilty of the crime of "Larceny by Check." There is no statute designating "Larceny by Check" a crime, and we therefore find it necessary to examine the information in order to ascertain what the charge actually was.

Sorenson, 34 Wn.2d at 661. *Sorenson* did not consider or hold whether ambiguity in the

For a brief time, by court rule, judges could order full evidentiary hearings whenever a collateral challenge "'appears to have any basis in fact or law'" and relief could be granted if the court found "'that the conviction was obtained . . . in violation of the Constitution of the United States or the Constitution or laws of the State of Washington,'" among other things. *Holt*, 84 Wn.2d at 847-48 (quoting former CrR 7.7(b), (g) (rescinded effective July 1, 1976)). This appears to have been the high water mark for the scope of collateral challenges.

Habeas corpus has also been a part of the fabric of Washington statutes for as long as we have existed as Washington. The very first territorial legislature enacted a generous habeas corpus act in 1854. Laws of 1854, §§ 434-456. It proudly proclaims that "[e]very person restrained of his liberty under any pretence whatever, may prosecute a writ of habeas corpus to enquire into the cause of the restraint, and shall be delivered therefrom when illegal." *Id.* § 434. One restrained could demand that his or her custodian prove that the restraint was lawful. *Id.* § 435. The court would "determine the cause, and if no legal cause be shown for the restraint . . . shall discharge the party." *Id.* § 444. However, this generous act for challenging most types of restraint was more restrictive when challenging restraints imposed by

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judgment and sentence as to the precise charge was the sole reason the record could be consulted. *Accord In re Habeas Corpus of Clark*, 24 Wn.2d 105, 112, 163 P.2d 577 (1945) ("The judgment must be read as a whole and in connection with the record of the cause in which it is entered, and if, when so read, it is not indefinite or uncertain, it is neither void nor voidable.").

courts.[4] "No court or judge shall enquire into the legality of any judgment or process whereby the party is in custody, or discharge him when the term of commitment has not expired . . . [u]pon any process issued on any final judgment of a court of competent jurisdiction." *Id.* § 445. This principle was reenacted by many subsequent legislatures. *See* Laws of 1869, § 617; Code of 1881, § 677; Laws of 1891, ch. 43, § 1; Laws of 1947, ch. 256, § 3. The courts and the legislature, while certainly not eliminating the judges' authority to issue writs of habeas corpus, have provided for judicial review and refined collateral challenges to court imposed sentences. Currently, a conviction may be collaterally challenged on any grounds for a year after it is final, though relief will only be available if the petitioner can meet other high burdens. RCW 10.73.090; *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 810-12, 792 P.2d 506 (1990). After a year, a petitioner challenging a judgment and sentence that is "valid on its face and was rendered by a court of competent jurisdiction," RCW 10.73.090(1),[5] is limited to the six grounds

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[4] In modern times, we sometimes forget that habeas has long been available to challenge any sort of restraint. It has been used by slaves to challenge their bondage, and slave owners to demand the return of their slaves. *See* Badshah K. Mian, American Habeas Corpus: Law, History, and Politics 83-89 (1984); *see also Dred Scott v. Sandford*, 60 U.S. 393, 485-87, 15 L. Ed. 691 (1856), *superseded by constitutional amendment*, U.S. Const. amend. XIV. It has been used by parents in custody disputes even in recent times. *See* Mian, *supra*, at 81-83; *see generally* Paul J. Buser, *Habeas Corpus Litigation in Child Custody Matters: An Historical Mine Field*, 11 J. Am. Acad. Matrim. Law. 1 (1993).

[5] In most relevant part, RCW 10.73.090 says:

> (1) 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.
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> (2) For the purposes of this section, "collateral attack" means any form

enumerated in RCW 10.73.100.[6]

Among the peculiar characteristics of personal restraint petitions is the fact that they may be, and usually are, considered first by appellate courts, not by trial courts. RCW 10.73.090. Therefore, the normal standards of review (which show varying levels of deference to trial courts as the initial decision maker) do not apply. However, our review is still constrained. Relief by way of a collateral challenge to a conviction is extraordinary, and the petitioner must meet a high standard before this court will disturb an otherwise settled judgment. *Cook*, 114 Wn.2d at 810-12. Among other things, personal

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> of postconviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

[6] RCW 10.73.100 says:

> 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;
>
> (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.

restraint petitioners who have had prior opportunity for judicial review must show that they were actually and substantially prejudiced by constitutional error or that their trials suffered from a fundamental defect of a nonconstitutional nature that inherently resulted in a complete miscarriage of justice. *In re Pers. Restraint of Elmore*, 162 Wn.2d 236, 251, 172 P.3d 335 (2007) (heightened standard); *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 299, 88 P.3d 390 (2004) (no prior opportunity for review); *Cook*, 114 Wn.2d at 810-12. If the personal restraint petition has been first considered by the Court of Appeals, this court will only take review if we are satisfied that review is warranted under RAP 13.4(b). Thus, the petitioner must persuade us that either the decision below conflicts with a decision of this court or another division of the Court of Appeals; that it presents a significant question of constitutional interest; or that it presents an issue of substantial public interest that should be decided by this court. RAP 13.5A(a)(1), (b); RAP 13.4(b). Once we have accepted review, we review pure questions of law de novo and the question of deference to the Court of Appeals does not arise. *1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165, 172, 149 P.3d 616 (2006) (citing *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000)). However, our respect for settled judgments remains.

In this case, our review is somewhat hampered because Coats has not briefed whether the error he complains of is, in his view, constitutional or not.

We acknowledge that we have not been entirely consistent in requiring petitioners claiming facial invalidity to establish the type of error and requisite prejudice. *Compare, e.g., In re Pers. Restraint of Hinton*, 152 Wn.2d 853, 858-59, 100 P.3d 801 (2004) (citing *Isadore*, 151 Wn.2d at 298) (requiring actual showing of prejudice before granting relief based on an invalid judgment and sentence), *with In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 353, 5 P.3d 1240 (2000) (granting relief without considering whether the petitioner was prejudiced). However, this is simply an artifact of the fact that in the cases where we have found facial invalidity, the error was often so striking that the State simply did not challenge whether relief was appropriate. Petitioners would be well advised to specifically brief the question.

Facial Validity

Coats contends that his judgment and sentence is invalid on its face because it misstates the maximum sentence on one of the three charges. We have used the phrases "facial validity" and "facial invalidity" as shorthand when a judgment and sentence is (or is not) "valid on its face," but neither is the actual operative statutory phrase.[7] Under Coats's theory of collateral

[7] The first time this court used a variation on the phrase "facial invalidity" in the context of a collateral challenge to a conviction was in 1986, in a brief per curiam opinion applying our then-recent, seminal opinion, *State v. Ammons*, 105 Wn.2d 175, 713 P.2d 719, 718 P.2d 796 (1986). The defendant had challenged his offender score and, among other things, we held that "the State need not prove the constitutional validity of prior guilty pleas, though a *facially invalid* plea cannot be used." *State v. Binder*, 106 Wn.2d 417, 419, 721 P.2d 967 (1986) (emphasis added). Two years later, we used the term in a personal restraint petition decision, again in the context of a challenge to a defendant's offender score. *In Re Pers. Restraint of Williams*, 111 Wn.2d 353, 368, 759 P.2d 436 (1988) ("Unless the convictions are *facially invalid*, it is presumed that a defendant's

review, "'facial invalidity' . . . alone does not merit relief. It only serves as a gateway• making an otherwise untimely petition timely." Suppl. Br. at 7. In his view, "[w]hen a judgment reveals an infirmity 'on its face,' the reviewing court can then look to other documents to determine whether there is 'fundamental defect which inherently results in a complete miscarriage of justice.'" *Id.* (quoting *In re Pers. Restraint of Thompson*, 141 Wn.2d 712, 719, 10 P.3d 380 (2000)). Put another way, in Coats's view, the error on his judgment and sentence allows him to bring an otherwise untimely challenge to his guilty plea. Coats also argues that we have never required a showing of prejudice, as the harm flows from the invalidity of the judgment alone.

In essence, it is Coats's view that an error in the judgment and sentence permits him to circumvent other carefully crafted time limits on collateral review. We disagree, but his confusion is understandable. Determining whether a judgment and sentence is invalid on its face and not subject to the one-year time bar has long troubled this court. Our jurisprudence has developed case by case. The term "valid on its face" does not itself illuminate its meaning. In addressing the cases before us, we have not found it necessary in the past, nor do we now, to articulate an unyielding definition, and we hesitate to do so given the rich and complicated history of collateral challenges. However, we do take this opportunity to summarize our

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silence when his or her convictions are introduced means that they are proper to use for sentencing purposes." (emphasis added)). It appears that the first time we used a variation on the phrase in the context of a collateral challenge to a conviction under RCW 10.73.090 was in 2001, in *Stoudmire* 145 Wn.2d at 265 ("An alternative argument made by Stoudmire is that the conviction is *facially invalid*." (emphasis added)).

jurisprudence.

A. *What Makes a Sentence Invalid*

First, to avoid RCW 10.73.090's one-year time bar on challenging judgments that are valid on their face, the error must render the judgment and sentence "invalid." Not every error renders a judgment and sentence "invalid." *See, e.g.*, *McKiearnan,* 165 Wn.2d at 783. Mere typographical errors easily corrected would not render a judgment invalid. Similarly, errors in fact such as a date or place would not necessarily render a judgment invalid. *Id.* But, argues Coats, any error of law such as an error concerning the maximum sentence converts an otherwise valid judgment into an invalid one.

However, a careful review of our cases reveals that we have only found errors rendering a judgment invalid under RCW10.73.090 where a court has in fact exceeded its statutory authority in entering the judgment or sentence. For example, we have found judgment and sentences invalid when the trial judge has imposed an unlawful sentence. We found invalidity when the offender has been given a longer sentence than the statutory maximum authorized by law. *In re Pers. Restraint of Tobin*, 165 Wn.2d 172, 176, 196 P.3d 670 (2008) (sentence exceeded statutory maximum; remanded for resentencing within the standard range). We found facial invalidity on the judgment and sentences of offenders convicted of nonexistent crimes in *Hinton,* 152 Wn.2d at 857. *Accord Thompson,* 141 Wn.2d at 719 (judgment and sentence invalid when defendant pleaded guilty to "an offense which was not criminal at the

time he committed it").

Similarly, we found invalidity when an offender agreed to serve a 10 year exceptional sentence on a lesser crime, with no reduction for earned early release time, in exchange for the prosecution reducing the charge from a third strike offense, and the trial judge memorialized the agreement on the judgment and sentence. *In re Pers. Restraint of West*, 154 Wn.2d 204, 206-07, 110 P.3d 1122 (2005). However reasonable the bargain was, the trial judge lacked the statutory authority to direct whether an offender would or would not earn early release. We found that the judgment and sentence was thus invalid, and remanded for deletion of the offending clause. *Id.* at 215-16. In another case, we found that a judgment and sentence was invalid when it was plain that the trial judge had miscalculated the petitioner's offender score and sentenced the offender based on a washed out prior offense. *In re Pers. Restraint of LaChapelle*, 153 Wn.2d 1, 6, 100 P.3d 805 (2004). Again, we remanded for resentencing. *Id.* at 14. We found the judgment and sentence in *Stoudmire,* 141 Wn.2d at 353, to be facially invalid because it purported to memorialize a lawful conviction of a man who had been charged with a crime after the statute of limitations had run. In that case, we vacated the unlawful convictions and remanded for resentencing on the remaining charges. *Id.* at 356-57.[8]

[8] The Chief Justice's concurrence suggests that we should overrule *Stoudmire* and its progeny. Concurrence (Madsen, C.J.) at 19. As the parties have not briefed that issue, we decline to consider it.

Thus, we have regularly found facial invalidity when the court actually exercised a power it did not have. However, we have never found a judgment invalid merely because the error invited the court to exceed its authority when the court did not in fact exceed its authority. Only where the judgment and sentence was entered by a court without the authority to do so have we held the judgment invalid.

Coats notes that "[s]entencing provisions outside the authority of the trial court have historically been described as 'illegal' or 'invalid.'" Suppl. Br. at 3 (quoting *State v. Smissaert,* 103 Wn.2d 636, 639, 694 P.2d 654 (1985)). Citing *Smissaert,* he suggests that an invocation of an invalid or illegal power is enough to render a judgment facially invalid. *Id.* The citation is not well taken. Smissaert was convicted of first degree murder. 103 Wn.2d at 638. Under the old indeterminate sentencing schema, the trial judge sentenced Smissaert to a maximum of 20 years in prison. Smissaert did not appeal, and some years later, the Board of Prison Terms and Paroles informed the court that it had erred and Smissaert should have been given a life sentence. *Id.* The trial court corrected the judgment nunc pro tunc, and Smissaert promptly appealed. The Court of Appeals held that Smissaert had waived his right to appeal by not challenging the original judgment and sentence. *Id.* This court reversed, holding that while the trial court had the "power and duty to correct an erroneous sentence," it should not have corrected the judgment nunc pro tunc, effectively depriving Smissaert of his constitutional right to appeal. *Id.*

at 639, 643. But *Smissaert* was not, properly speaking, a collateral review case. It was a timely challenge to a trial court's judgment and sentence, albeit one that the trial judge had attempted to backdate. Furthermore, like the cases surveyed above, Smissaert's judgment and sentence showed the judge exercised an authority he did not have; to actually render a sentence the law did not allow. It does not stand for the proposition that any error on the face of the judgment and sentence opens the door to an otherwise time barred challenge.

Coats suggests that under *In re Personal Restraint of Bradley,* 165 Wn.2d 934, 205 P.3d 123 (2009), an error on the face of the judgment and sentence removes the time bar and allows the petitioner to raise otherwise untimely claims. It is true that as a matter of fact, that is what Bradley was allowed to do. But that was not because this court so held, it was an artifact of the issues the State chose to litigate. As we noted, "The State . . . appear[ed] to concede that the miscalculation [of the offender score] resulted in a facial invalidity on Bradley's judgment and sentence, allowing him to avoid the one-year time bar." *Id.* at 938-39. We accepted that apparent concession and we turned to the issues actually presented by the parties: whether Bradley's plea was involuntary when he was misinformed of the maximum sentence on one of the lesser charges (but not of the total he faced) and what the appropriate remedy would be. *Bradley* did not consider, and therefore, did not establish, whether an error on the face of the judgment and

sentence in fact acted to waive the time bar. "Because we are not in the business of inventing unbriefed arguments for parties sua sponte, there certainly was no significance in our not doing so." *State v. Studd*, 137 Wn.2d 533, 547, 973 P.2d 1049 (1999); *see also Alverado v. Wash. Pub. Power Supply Sys.*, 111 Wn.2d 424, 429, 759 P.2d 427 (1988) (describing when the court may choose to raise issues the parties did not). In contrast, the State emphatically makes no such concession in the case at bar. *See* Suppl. Br. of Resp't. at 3-9. Like any other case, *Bradley* stands for the propositions it established; not for the propositions conceded by the parties.[9]

B. *What Does "On Its Face" Mean?*

Second, the judgment and sentence must be valid "on its face." "On its face" modifies "valid." Put another way, for the petitioner to avoid the one-year time bar, he or she must show that the judgment and sentence is "facially invalid." *E.g.*, *LaChapelle*, 153 Wn.2d at 6 (citing *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 865-67, 50 P.3d 618 (2002)). Since at least 1947, we have not limited our review to the four corners of the judgment and sentence. *See generally Holt*, 84 Wn.2d at 843-45. But we have only considered documents that reveal some fact that shows the judgment and sentence is invalid on its face because of legal error. *See, e.g., Goodwin*, 146

[9] We respectfully disagree with Justice Stephens's characterization of our opinion as holding that "our precedent requires a showing of harm or prejudice to the petitioner in order to demonstrate a facial invalidity in the first instance." Concurrence (Stephens, J.) at 1. In our view, the question of prejudice is separate from the question of validity, though of course they may turn on the same facts in a particular case.

Wn.2d at 866 n.2, 872.[1]

The court has looked beyond the face of the judgment and sentence to determine facial invalidity on several occasions. In *Stoudmire*, 141 Wn.2d at 346, the defendant pleaded guilty to two counts of indecent liberties, among other things. More than a year after his convictions became final, he challenged the indecent liberties convictions on the ground that the statute of limitations had run when he was charged, again among other things. *Id.* This court looked to the information, saw that the statute of limitations had run when the indecent liberties counts were charged, found the judgment and sentence not valid on its face as to those convictions, and vacated those convictions. *Id.* at 354. In *Thompson*, 141 Wn.2d at 716, the petitioner had pleaded guilty to rape of a child under a statute that was not enacted until two years after the charged conduct. We again looked to the information, as well as the defendant's statement on plea of guilty to find the charging date and the date of the alleged conduct, and vacated without prejudice to refilling the charges under the correct statute. *Id.* at 717, 730. In *Hinton*, the petitioners had been convicted of felony murder predicated on assault before the time we found that theory of the case unsustainable under the statute as written, and therefore the petitioners had been "convicted of a nonexistent crime." *Hinton*,

[1] While not presented in this case, we note in passing we have held a miscalculated offender score renders a sentence invalid and may be challenged in a personal restraint petition at any time. *Goodwin*, 146 Wn.2d at 867, 873-74 (noting "that a sentence in excess of statutory authority is subject to collateral attack, that a sentence is excessive if based upon a miscalculated offender score . . . and that a defendant cannot agree to punishment in excess of that which the Legislature has established").

152 Wn.2d at 856-57 (citing *In re Per. Restraint of Andress,* 147 Wn.2d 602, 56 P.3d 981 (2002)). Their convictions were vacated. *Id.* at 861. In *West,* 154 Wn.2d at 209, we looked to the defendant's waiver of earned early release time as condition of plea agreement to illuminate a handwritten notation on the judgment and sentence, but our decision that the judgment and sentence was not valid on its face rested only on the judgment and sentence itself. *See also LaChapelle*, 153 Wn.2d 1; *Goodwin,* 146 Wn.2d at 866-68. We remanded for correction. *West,* 154 Wn.2d at 216; *accord Tobin*, 165 Wn.2d at 176 (remanded for correction when the sentence exceeded the statutory maximum). In *McKiearnan,* 165 Wn.2d at 783, we did consider the offered plea agreement, which, like the judgment and sentence, showed the petitioner had been misinformed of the statutory maximum, but we found that the actual standard range sentence was valid on its face. Finally, in *Bradley,* 165 Wn.2d at 942, we considered the defendant's statements on pleas of guilty.

Taken together, we have found invalidity based upon charging documents, verdicts, and plea statements of defendants on plea of guilty. We have not rested our decision on jury instructions, trial motions, and other documents that relate to whether the defendant received a fair trial.[11]

Defendants have a right to a constitutionally fair trial. The defendants'

[11] We recognize that *Hinton* referenced jury instructions, but the case did not turn on what documents could be consulted to determine facial invalidity. *Hinton,* 152 Wn.2d at 858; *see also West,* 154 Wn.2d at 206-07. *Hinton* should not be read to suggest that defects in jury instructions can render a judgment not valid on its face. Such errors must be raised in a timely appeal, personal restraint petition, or fit within an RCW 10.73.100 exception.

right to a fair trial is protected by a right of direct appeal. After the right of appeal has been exhausted and the appeal is final, the defendant is afforded the additional right to collateral review by a personal restraint petition. This right, however, is not unlimited. It requires the petitioner to make a heightened showing of prejudice, among many other things. *Cook*, 114 Wn.2d at 810-12. Personal restraint petitions based upon most claimed errors made at trial by the judge such as jury instructions and rulings on evidence and motions must be brought within the one-year time limit prescribed by RCW 10.73.090. We have not referred to trial rulings, motions, or jury instructions when they reflect on fair trial issues and not the validity of the judgment and sentence.[12] The 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. A claim that the judgment is not valid on its face may not be used to make an end run around the time limit and a personal restraint petition.

Similarly, we have found an involuntary plea does *not* render a judgment and sentence facially invalid. *In re Pers. Restraint of Clark,* 168 Wn.2d 581, 586-87, 230 P.3d 156 (2010); *In re Pers. Restraint of Hemenway*, 147 Wn.2d 529, 532, 55 P.3d 615 (2002). Hemenway contended he pleaded guilty without being told that, as a direct consequence of his plea, he would serve mandatory community placement. *Hemenway,* 147 Wn.2d at 531. As

[12] We recognize that we have referenced other documents in dicta, e.g., *Hinton,* but such documents will be helpful in only the rarest of circumstances.

an accused is entitled to know all the direct consequences of a plea, Hemenway contended that his plea was not knowing, voluntary, and intelligent, and, critically for our purposes, that the invalidity of the plea infected the judgment and sentence. *Id.* (citing *State v. Ross*, 129 Wn.2d 279, 916 P.2d 405 (1996)); *see also id.* at 533 (Chambers, J., dissenting). If Hemenway had raised that challenge in a timely personal restraint petition, he likely would have prevailed. S*ee, e.g.*, *Isadore,* 151 Wn.2d at 298 (noting, in a timely challenge, that a defendant not informed of the direct consequences of a plea must be allowed to withdraw it). But this court rejected Hemenway's argument that he was entitled to the same relief in an untimely collateral challenge. As we noted, "[t]he question is not, however, whether the plea documents are facially invalid, but rather whether the judgment and sentence is invalid on its face. The plea documents are relevant only where they may disclose invalidity in the judgment and sentence." *Hemenway,* 147 Wn.2d at 533 (footnote omitted). This principle was bluntly recapitulated in *McKiearnan*: "an invalid plea agreement cannot on its own overcome the one year time bar or render an otherwise valid judgment and sentence invalid." *McKiearnan,* 165 Wn.2d at 782. In short, we may examine a plea statement to evaluate a claim that a judgment and sentence is not valid on its face, but not the other way around.

Prejudice

Aware, perhaps, that he will be hard-pressed to meet this standard,

Coats suggests that this court "has never held that harm or prejudice must flow from the error or facial invalidity on the judgment alone." Suppl. Br. at 6. It is true that historically, we have not consistently analyzed whether or not the petitioner has shown sufficient prejudice before granting relief based on personal restraint petitions that avoid the time bar based on facially invalidity. *Compare, e.g., Hinton,* 152 Wn.2d at 858-59 (both requiring actual showing of prejudice before granting relief based on an invalid judgment and sentence) (citing *Isadore,* 151 Wn.2d at 298), *with Stoudmire,* 141 Wn.2d 342 (granting relief without considering whether the petitioner was prejudiced). *See also Goodwin,* 146 Wn.2d at 876-77 (applying miscarriage of justice standard); *Thompson,* 141 Wn.2d at 719 (same). However, where we have found facial invalidity without examining prejudice, the error was often so striking that the State focused its arguments on whether the error could be reached and simply did not challenge whether relief was appropriate if we did so. Where the court exceeded its authority by sentencing for a crime that did not exist or for which the defendant was never charged, the prejudice has been so obvious that extensive (or sometimes any) discussion of prejudice was unnecessary. *Thompson,* 141 Wn.2d at 719; *see also Stoudmire,* 141 Wn.2d 342. We can find no case• and the petitioner has directed us to none• where we have actually *held* that prejudice need not be shown. While we tend to agree with Justice Stephens that actual and substantial prejudice must be shown before relief is appropriate due to an error on the face of a judgment and sentence,

given our resolution of this case, the question is not before us.

Coats's Judgment and Sentence

With these principles in mind, we turn to Coats's contention that the judgment and sentence was facially invalid. Coats is correct that his judgment and sentence contains an error. It misstated the maximum possible sentence for conspiracy to commit robbery as 20 years when, in fact, the maximum sentence for that crime is 10 years. There is a defect in the judgment and sentence. But as we have discussed above, not every error renders a judgment and sentence invalid. Only where the court has erred by exceeding its authority has this court found the error rendered the judgment and sentence invalid.[13] Coats pleaded guilty to first degree robbery, conspiracy to commit first degree robbery, and conspiracy to commit first degree murder to take advantage of the State's offer to drop three serious charges and, apparently, make a standard range sentencing recommendation, which the trial judge followed. Coats does not challenge the jurisdiction of the court and did not appeal. 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. The court did not exceed its authority and the judgment and sentence is not facially invalid. Therefore, Coats's petition is time barred.

[13]We respectfully disagree with the factual predicate underlying the chief justice's statement that "[t]he trial court erred in imposing a sentence with a maximum sentence in excess of that which is authorized and this invalidity appears on the face of the judgment and sentence." Concurrence (Madsen, C.J.) at 22. The trial judge did not impose a sentence in excess of that authorized.

CONCLUSION

There was an error in Coats's judgment and sentence. But not every defect renders a judgment and sentence invalid. When squarely presented, we have only found errors that result from a judge exceeding the judge's authority to render a judgment and sentence facially invalid. The court did not exceed its authority. Further, the "not valid on its face" limitation of RCW 10.73.090 is not a device to make an end run around the one-year time bar for most errors, including errors at trial that affect a fair trial. We will examine limited documents to determine if an error in a judgment and sentence is "on its face" but those documents must reflect an error on the judgment and sentence. An error in the judgment and sentence does not render a plea involuntary.

Coats's judgment and sentence is valid on its face. Although not an error rendering the judgment and sentence "not valid on its face," there was an error in Coats's judgment and sentence and we remand to the trial court to correct the error under CrR 7.8(a).

AUTHOR:
Justice Tom Chambers

WE CONCUR:

Justice Charles W. Johnson

Justice James M. Johnson

Justice Gerry L. Alexander

Justice Charles K. Wiggins

Justice Susan Owens