*In re Pers. Restraint of Coats (Jeffrey A.)*

No. 83544-6

MADSEN, C.J. (concurring)—This case presents an ideal opportunity to clarify the meaning of RCW 10.73.090(1). The statute's plain language, "valid on its face," and the historical meaning of those words, which I discuss below, lead to one conclusion: in order to avoid the one year bar on collateral attack, the claimed defect must be a defect in the judgment and sentence and it must appear on the face of the judgment and sentence itself.

In some recent cases, this court has relied on ad hoc determinations of what RCW 10.73.090(1) means, and in each case the meaning has been dependent on the particular facts of the case. Regrettably, the majority does nothing to resolve this problem and in fact perpetuates this ad hoc approach by expressly refusing to give any fixed meaning to the statute.

We have a duty to interpret statutes and the rules we have promulgated when their meaning is in question. Vagueness and imprecision are not helpful to those who must attempt to apply the statute, whether petitioners or respondents, whether counsel or the

courts. Explaining only how the statute has played out in prior cases, as the majority does, is of little use in providing guidance as to how the statute should be applied across a range of circumstances. This perpetuates a situation where a flood of personal restraint petitions must be considered in detail despite the heavy burden this places on the courts and the obvious purposes of the statute to restrict and manage the flow of personal restraint petitions.

The majority raises other serious concerns as well. The majority conflates the issue whether the one-year time bar of the statute applies with the issue of whether a petitioner has established requisite prejudice entitling the petitioner to relief from restraint. Equally serious, the majority seems to think that RCW 10.73.090(1) substantively governs whether a petitioner is entitled to relief. The statute is, of course, *a procedural* bar, not a *substantive* bar.

Finally, as Justice Stephens' concurrence explains, the majority fails to provide any meaningful discussion of the petitioner's main contention—that once the one-year time bar of RCW 10.73.090(1) is avoided as to one claim, it is automatically avoided as to all claims asserted by the petitioner. Fortunately, the concurrence explains why this is an improper interpretation of the statute.

Turning briefly to that concurrence, I agree with its analysis in most respects. But like the majority, the concurrence fails to adequately explain what RCW 10.73.090(1) means.

This case provides the opportunity for this court to interpret RCW 10.73.090(1), in

context, and on its face. Because neither the majority nor Justice Stephens' concurrence does this, I write separately to urge that we correct our previously mistaken ad hoc approach to determining whether a judgment and sentence is invalid on its face. Focused as it is on the meaning of RCW 10.73.090(1), this case presents a good vehicle for addressing this issue.

In language, purpose, and context, RCW 10.73.090(1) is a blanket prohibition against considering the merits of a personal restraint petition filed more than one year after a judgment is final, if the judgment and sentence is valid on its face and the petition is not based on grounds identified in RCW 10.73.100. But instead of applying this provision according to its plain language, we have frequently and mistakenly looked behind the face of a judgment and sentence in order to determine whether it is valid. A course correction is necessary.

Because it is the starting point in this case, I first turn to RCW 10.73.090(1) to explain how and why it should be applied according to its plain language.

## Discussion

RCW 10.73.090(1) states:

> 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.

We have historically questioned the power of the legislature to dictate the scope of our review of petitions for collateral relief in criminal cases. *See Holt v. Morris*, 84 Wn.2d

841, 844, 529 P.2d 1081 (1974), *overruled in part on other grounds by Wright v. Morris*, 85 Wn.2d 899, 540 P.2d 893 (1975); *In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 351-52, 5 P.3d 1240 (2000), *overruled in part by In re Pers. Restraint of Turay*, 153 Wn.2d 44, 101 P.3d 854 (2004). However, because we have expressly incorporated the provisions of RCW 10.73.090 and .100 into our Rules for Appellate Procedure, this issue does not arise insofar as these particular statutes are concerned. RAP 16.4(d). The question then becomes what do these statutes, and in particular, RCW 10.73.090(1), mean?

The meaning of "valid on its face" in RCW 10.73.090(1) is a matter of statutory or rule construction under familiar guidelines.[1] The goal when construing a statute is to discover and carry out the legislature's intent. *State v. Marohl*, 170 Wn.2d 691, 698, 246 P.3d 177 (2010). If the statute's language is plain on its face, we give effect to that language as a statement of the legislative intent. *State v. Hirschfelder*, 170 Wn.2d 536, 543, 242 P.3d 876 (2010).[2]

RCW 10.73.090(1) uses plain language that has a plain meaning. "Valid on its face" means there must be invalidity in the judgment and sentence. The majority and

[1] Although RCW 10.73.090 and .100 control by virtue of this court's incorporation of these statutes into RAP 16.4(d), whether, in the context here, interpretation of the statutes is perceived as a matter of statutory construction or in part as construction of a court rule makes no difference. Interpretation of statutes and court rules rests on the same principles of statutory construction. *City of Seattle v. Holifield*, 170 Wn.2d 230, 237, 240 P.3d 1162 (2010).

[2] The plain meaning of a statute is discerned from the ordinary language of the provision at issue, the context of the statute in which the provision is found, related statutes, and the statutory scheme as a whole. *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005); *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 W.2d 1, 9, 43 P.3d 4 (2002).

Justice Stephens conclude that the type of invalidity with which the statute is concerned occurs when a judgment and sentence is in excess of the trial court's authority. I agree with this conclusion, which essentially is that the judgment is not one that the court had authority to render or the sentence was imposed in excess of or without authority.

The more troublesome aspect of the statute is its command that the invalidity appear "on the face" of the judgment and sentence. This is the statutory language that the majority fails to define and erroneously applies, and that Justice Stephens' concurrence ignores.

As we recently stated, RCW 10.73.090(1) is not ambiguous. *In re Pers. Restraint of Skylstad*, 160 Wn.2d 944, 947, 162 P.3d 413 (2007). The term "valid on its face" means that the judgment and sentence evidences invalidity without further elaboration. *In re Pers. Restraint of Hemenway*, 147 Wn.2d 529, 532, 55 P.3d 615 (2002); *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 866, 50 P.3d 618 (2002). This means that the invalidity must appear on the face of the judgment and sentence, i.e., it must be discernable from the face of the document itself.

But having appropriately held that the meaning of the statute is plain and limits a court to looking to the judgment and sentence itself, we have ignored this holding and considered various other documents to determine whether the judgment and sentence is invalid for a reason not apparent from the face of the document. Instead of a rule of "no further elaboration," we have employed a rule of "with further elaboration." In *Stoudmire*, 141 Wn.2d at 354, and *In re Personal Restraint of Thompson*, 141 Wn.2d

712, 719, 10 P.3d 380 (2000), for example, we examined documents signed as part of plea agreements to determine facial invalidity. In *Hemenway*, 147 Wn.2d at 532-533, we explained that such plea documents are relevant insofar as they may disclose invalidity of the judgment and sentence. Building upon the error in *Stoudmire*, we have ignored the plain language of the statute by expanding our inquiry beyond the face of the document.

As we accurately stated in a recent case, if a petitioner "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." *In re Pers. Restraint of Clark*, 168 Wn.2d 581, 588, 230 P.3d 156 (2010).

Nonetheless, the majority is satisfied with continuing to apply RCW 10.73.090(1), not according to its plain language, but according to how it has been applied in our previous cases. The majority posits that at least since 1947 we have expanded review to include documents other than the judgment and sentence that disclose invalidity in the judgment and sentence. Majority at 17-18. The majority evidently seems to think that under RCW 10.73.090(1) consideration of sources outside the judgment and sentence is merely a continuation of this approach.

This is inaccurate. RCW 10.73.090(1), enacted in 1989, is the first time this state has implemented a time bar to consideration of personal restraint petitions. *See* Laws of 1989, ch. 395, §§ 1-2. Our obligation is to interpret these statutes as they are incorporated in our court rules.

Normally, when faced with a question about the meaning of a statute we go no

further than the words of the statute when those words are plain and unambiguous. *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.2d 228 (2007). However, given that we have already disregarded the plain meaning rule in regard to this particular statute, I believe it is useful to consider the purpose of the statute and the history of time limits for petitions for collateral relief in criminal cases. These considerations, like the plain language of the statute, indicate that we have improperly disregarded the intent behind RCW 10.73.090(1) and the related provisions in RCW 10.73.100.

Turning to the purposes of the statute, it is unnecessary to give RCW 10.73.090(1) an interpretation any broader than suggested by its plain language in order to carry out the purposes of the statute. That is, there is no need to construe the statute to protect a petitioner's ability to challenge a judgment and sentence that suffers from some error that is not apparent on the face of the document. To the contrary, the purposes of the statute are best served if it is construed to require that a claimed defect in the judgment and sentence be apparent on the face of these documents.

"The purpose underlying the time limit in RCW 10.73.090 is to manage the flow of post-conviction collateral relief petitions by requiring collateral attacks to be brought promptly. Limiting attacks to a one-year period, except in instances provided in RCW 10.73.100, also promotes finality of judgments." *In re Pers. Restraint of Bonds*, 165 Wn.2d 135, 141, 196 P.3d 672 (2008); *see Shumway v. Payne*, 136 Wn.2d 383, 399, 964 P.2d 349 (1998). "[C]ollateral relief '"undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish

admitted offenders."'" *Id*. (quoting *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 809, 792 P.2d 506 (1990) (quoting *In re Pers. Restraint of Hews*, 99 Wn.2d 80, 86, 660 P.2d 263 (1983))).

These purposes necessarily contemplate that collateral attacks that might have been successful if brought in a timely manner will instead fail. However, even with the absolute time bar, personal restraint petitions that involve certain types of claims are exempt from the one-year time bar. *See* RCW 10.73.100. "Faced with a virtually unlimited universe of possible postconviction claims, the Legislature wisely chose to exempt those contentions which go to the very validity of the prisoner's continued incarceration." *In re Pers. Restraint of Runyan*, 121 Wn.2d 432, 449, 853 P.2d 424 (1993). In directing that no time bar applies with respect to certain specified claims, the legislature assured the constitutionality of the statutes under the state constitution's suspension clause. *Id*. at 444. It also contemplates collateral relief beyond that which is constitutionally required, "'situations which affect the continued validity and fairness of the petitioner's incarceration.'" *In re Pers. Restraint of Greening*, 141 Wn.2d 687, 695, 9 P.3d 206 (2000) (emphasis omitted) (quoting *Runyan*, 121 Wn.2d at 445). The grounds in RCW 10.73.100 that are exempt from the time limit are very broad, encompassing serious constitutional infirmities and later developments that bring the validity of continued detention into question. *Runyan*, 121 Wn.2d at 445.

The statute thus restricts the stream of personal restraint petitions but does not prevent a petitioner from pursuing collateral relief where circumstances set out in RCW

10.73.100 exist. In other words, the petitioner is not prevented by RCW 10.73.090(1) from petitioning for relief if the ground comes within the exemptions in RCW 10.73.100. If not, then the petitioner is still free to petition for relief provided he or she does so in a timely fashion; and if the judgment and sentence is not valid on its face, it is subject to challenge more than one year after the judgment is final. Thus, RCW 10.73.090(1) and .100 do not establish any substantive bars to collateral relief. RCW 10.73.090(1) is a procedural bar.

The purposes of RCW 10.73.090(1), like its plain language, weigh in favor of applying RCW 10.73.090(1) exactly according to its terms, without resort to any other part of the record in a petitioner's case that might disclose some error in the defendant's conviction or sentence. Implementing the plain language of the statute provides the certainty that is necessary for efficient management of the flow of personal restraint petitions. Courts can readily give effect to the legislature's purpose to dispense with petitions that do not meet the requirements of the statute. Moreover, adhering to the statute's plain language serves the goal of finality by consistently and uniformly applying the statute's fixed time period in which to bring a personal restraint petition. When, instead, courts must look behind the faces of judgments and sentences in criminal cases, the result is a logjam of petitions that require evaluation of legal arguments and the record—serving neither the goal of managing the flow of personal restraint petitions nor the goal of finality.

The history of time limits for petitions or motions for collateral relief in criminal

cases also favors applying the statute as written. With regard to collateral attacks on judgments in criminal proceedings, history gives contextual meaning to what types of judgments and sentences have been considered without any time limits as well as what it means for a judgment and sentence to be "invalid on its face."

The first time that RCW 10.73.090(1) came before us for interpretation was in *Runyan*, 121 Wn.2d 432, where the principal claim was that the one-year time bar in RCW 10.73.090(1) violated the suspension clause of the Washington State Constitution. Const. art. I, § 13.[3] This challenge caused the court to consider petitions for writs of habeas corpus as they existed at the time Washington became a state, because the origins of personal restraint procedures are found in habeas corpus proceedings. *In re Pers. Restraint of Hagler*, 97 Wn.2d 818, 823, 650 P.3d 1103 (1982).

The issue in *Runyan* was whether, in imposing a one-year time limit for personal restraint petitions valid on their face, RCW 10.73.090(1), with the exceptions in RCW 10.73.100, conflicted with the right protected by our state constitution's suspension clause. We explained, as early cases had held, that the right to post-conviction relief protected by the suspension clause was the same as the right to petition for a writ of habeas corpus at common law, itself embodied in the first state statute, carried over from

[3] "The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety requires it." Const. art. I, § 13; *see* Const. art. IV, § 4 ("The supreme court shall have original jurisdiction in habeas corpus . . . [and] shall also have power to issue writs of . . . habeas corpus . . . . Each of the judges shall have power to issue writs of habeas corpus to any part of the state upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or before the supreme court, or before any superior court of the state or any judge thereof.").

territorial days, that governed petitions for writs of habeas corpus. *Runyan*, 121 Wn.2d at 441-43.

At common law, that "*the petitioner was held by any process or judgment good upon its face not only precluded inquiry into the validity of such process or judgment, but also precluded inquiry as to the facts of his being held by such process or judgment at all*." *In re Habeas Corpus of Lybarger*, 2 Wash. 131, 134, 25 P. 1075 (1891) (emphasis added). In *Lybarger* the court examined the state statute, on the books since 1854, that barred a court from inquiring into the legality of the judgment or process of any court of competent jurisdiction, and held the scope under the statute was the same as at common law. *Id*. at 132. Further, it was the same right protected under the state's suspension clause. *Id*. at 135-36. These principles were reiterated in later cases. *See*, *e.g.*, *In re Habeas Corpus of Grieve*, 22 Wn.2d 902, 904, 158 P.2d 73 (1945); *In re Habeas Corpus of Palmer*, 45 Wn.2d 278, 280, 273 P.2d 985 (1954).

The scope of the right was very narrow; it was not a substitute for an appeal and was not available to challenge any and all sentences affected by some error. "Traditionally, the writ of habeas corpus could not be used to attack even an erroneous judgment, unless that judgment was void for lack of jurisdiction." *Runyan*, 121 Wn.2d 441. "'Jurisdiction' refers to personal and subject-matter jurisdiction, including sentences based on non-existent laws." *Id*. at 441 n.5. Although this rule originally precluded attack if the court had jurisdiction over the person and the subject matter, the rule was modified when the court determined that in order to render a judgment that would be

immune from collateral attack, the court had to have not only jurisdiction of the subject matter and the person, but also the authority to render the particular judgment in question. *See Horner v. Webb*, 19 Wn.2d 51, 55-58, 141 P.2d 151 (1943).[4] Even with this modification, a habeas corpus petition would not succeed if "'the petitioner was held by any process or judgment good upon its face.'" *Runyan*, 121 Wn.2d at 442 (quoting *Lybarger*, 2 Wash. at 134).[5]

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[4] Before this change in the law, the court had held that habeas corpus would not lie for the discharge of a petitioner who was held under an unconstitutional statute or a statute that had been repealed, and that the remedy for such an erroneous judgment was through appeal. *In re Habeas Corpus of Newcomb*, 56 Wash. 395, 401, 105 P. 1042 (1909).

[5] Prior to 1947, when the legislature amended the state statute governing a court's inquiry into the legality of any judgment pursuant to which a person is confined, decisional law limited post-conviction relief pursuant to a petition for a writ of habeas corpus to cases where the judgment was void on its face. In 1947, the legislature changed the state statute and added an exception permitting further inquiry "where it is alleged in the petition that rights guaranteed the petitioner by the Constitution of the state of Washington or of the United States have been violated." RCW 7.36.130(1); *see* Laws of 1947, ch. 256, § 3. This began an expansion of the substantive scope of habeas corpus inquiry, which then developed "'on a case-by-case basis of a somewhat haphazard habeas corpus procedure.'" 4A Karl B. Tegland, Washington Practice CrR 7.8 author's cmt. 4, at 539 (7th ed. 2010). In response, this court promulgated CrR 7.7 to achieve a unified, systematic and expeditious procedure for post-conviction relief. Three years later, in 1976, the court reformulated the rule, in RAP 16.3-16.15, to provide for post-conviction relief by personal restraint petition. *Id*.

As noted, the majority seems to think that examining documents outside the judgment and sentence is simply a continuation of the practice that began in 1947. But the expanded inquiry was then determined necessary because of expanded scope of habeas review under the state statute. *See generally*, *e.g.*, *Buckingham v. Cranor*, 45 Wn.2d 116, 273 P.2d 494 (1954); *Palmer*, 45 Wn.2d 278; *see Thorne v. Callahan*, 39 Wn.2d 43, 234 P.2d 517 (1951); *Gensburg v. Smith*, 35 Wn.2d 849, 215 P.2d 880 (1950). When the court began to inquire into possible violations of constitutional rights, as a basis for obtaining relief, the court also began to look beyond the judgment and sentence and in many cases evidentiary hearings were necessary.

In 1989, when the legislature enacted RCW 10.73.090 and .100, it also amended RCW 7.36.130 to provide:

> No court or judge shall inquire into the legality of any judgment or process whereby the party is in custody, or discharge the party when the term of commitment has not expired, in either of the cases following:
>
> (1) Upon any process issued on any final judgment of a court of competent

But there was no time limit that applied to the coextensive common law, statutory, and constitutional rights (and this was true both at the time of statehood and when the grounds for relief were expanded to include the court's authority to render the particular judgment). Therefore, in *Runyan* we had to determine whether RCW 10.73.090(1), as modified by RCW 10.73.100, imposed a time limit in conflict with the limitless time permitted under the suspension clause. "A strict statute of limitations on all habeas petitions would be a derogation of the common law writ of habeas corpus and hence, an unconstitutional suspension of the writ." *Runyan*, 121 Wn.2d at 444.

We found two provisions of the statutes preserve the constitutional right. First, we concluded that the exception in RCW 10.73.100(5) to RCW 10.73.090(1)'s one-year time bar, for sentences imposed in excess of the court's jurisdiction, was enough to preserve the jurisdictional inquiry protected by the suspension clause.

We also concluded that RCW 10.73.090(1)

> itself only applies to attacks on judgments rendered by "a court of competent jurisdiction", thereby specifically *excluding from its ambit* any petition which calls for the *constitutional habeas inquiry into jurisdiction.* RCW 10.73.090. We find that *the constitutional scope of habeas relief has been explicitly preserved by this statute* and that, hence, the statute is constitutional.

*Runyan*, 121 Wn.2d at 444 (emphasis added). This statute preserves "the constitutional core of habeas corpus." *Id*. Thus, RCW 10.73.090(1) itself embodies the principle that

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> jurisdiction except where it is alleged in the petition that rights guaranteed the petitioner by the Constitution of the state of Washington or of the United States have been violated *and the petition is filed within the time allowed by RCW 10.73.090 and 10.73.100*.

Laws of 1989, ch. 395, § 3 (emphasis added.)

no time limit applies in criminal cases insofar as the right to petition for relief from personal restraint (the successor to the petition for a writ of habeas corpus) is protected under the suspension clause and also as it developed under the common law.

Early in our state's history, numerous cases were decided that illuminate the scope of the constitutional habeas inquiry and the inquiry at common law as it evolved to include contemplation of whether a court had authority to render the particular judgment. These cases repeatedly referred to the unassailability by collateral attack of judgments that were facially valid. *E.g.*, *Lybarger*, 2 Wash. at 136 ("[f]rom an examination of all the cases that we have been able to find we think our statute is constitutional, and that under it we are precluded from questioning a judgment of a court of general jurisdiction *fair upon its face*" (emphasis added)); *Permstick v. Sheriff of Pierce County*, 3 Wash. 672, 674, 29 P. 350 (1892) (granting writ of habeas corpus where "the commitment *shows on its face* that the prisoner is detained for a cause not recognized by the law as ground for a judgment of imprisonment, and therefore not within the possible jurisdiction of any court" (emphasis added)); *In re Habeas Corpus of Parent*, 112 Wash. 620, 622, 129 P. 947 (1920) (court declined to consider proceedings leading up to commitment and judgment where commitment "*upon its face*, shows legal cause for the petitioner's imprisonment" and was issued by a court of general jurisdiction (emphasis added)); *In re Habeas Corpus of Bishop*, 114 Wash. 245, 246, 194 P. 971 (1921) (commitment, in effect, was "*valid on its face*" where court had jurisdiction of the person and the subject matter (emphasis added)); *In re Habeas Corpus of Voight*, 130 Wash. 140, 143, 226 P.

482 (1924) (*Voight* I) ("'[a] judgment by a court of competent jurisdiction, *valid upon its face*, and a valid commitment under it, is an unanswerable return to a writ of habeas corpus'" (emphasis added)) (quoting *Smith v. Hess*, 91 Ind. 424, 427-28 (1884); *Voight*[6] *v. Mahoney*, 10 Wn.2d 157, 162-65, 116 P.2d 300 (1941) (*Voight* II) (surveying cases for the same proposition stated in *Voight* I and concluding that where the judgment was not "*void on its face*, even though it may have been erroneous, it cannot be attacked collaterally by petition for writ of habeas corpus presented to this court" (emphasis added) (emphasis omitted)); *In re Habeas Corpus of Behrens*, 24 Wn.2d 125, 133, 163 P.2d 587 (1945) ("proceedings to obtain a writ of habeas corpus are not available or permissible to review trial errors, but are limited by law to those cases where it appears that the judgment, including the sentence upon which the petitioner for such writ is held in confinement, is *void upon its face*" (emphasis omitted)).

When the legislature enacted RCW 10.73.090 and .100, the legislature did not write on a clean slate, given the history of habeas corpus relief and the common law antecedents to personal restraint petitions, as well as rules relating to personal restraint petitions themselves. I am convinced that in distinguishing between judgments and sentences valid on their face and judgments and sentences not valid on their face, and between judgments and sentences rendered by courts of competent jurisdiction and judgments and sentences not rendered by courts of competent jurisdiction, the legislature

[6] The case name is spelled incorrectly as "Voigt." We will cite this case using the correct spelling of "Voight."

had in mind the constitutional and historical scope of the right to seek collateral relief. The description in RCW 10.73.090(1) of a judgment and sentence "valid on its face" has strong historical antecedents. Indeed, this very language shows that the statute harkens back to the origins of habeas corpus and personal restraint in this state. The words "valid on its face" and the reference to a court of competent jurisdiction in the statute implicate the kind of inquiry that a court could conduct when faced with a petition for a writ of habeas corpus under *Lybarger* and other early cases.

Early case law shows that this was a stringent standard, rigorously applied. "Determinations as to voidness were, as a matter of course, made judicially without looking into and examining the record and without any testimony or evidence being adduced by remand to a trial court." *Holt*, 84 Wn.2d at 843 (citing *Grieve*, 22 Wn.2d 902). Two cases raising the same issue concerning the court's authority to render the particular judgment show the difference in results between a judgment invalid on its face and one that was not. In *Horner*, 19 Wn.2d 51, the petitioner complained that he had been denied the nonwaivable right then granted by statute to have a jury determine the degree of murder and the punishment when the defendant pleaded guilty to murder. The court granted the petition for a writ of habeas corpus on this ground, while emphasizing that it was of "*controlling importance*" that the court's failure to call a jury "*appears upon the face* of the judgment and sentence." *Id*. at 53 (emphasis added). The court also noted that while the basis for an attack now included the court's lack of authority to render the particular judgment in question, in addition to lack of jurisdiction over the

person and the subject matter, the court still would not engage in a factual inquiry to determine whether the judgment and sentence was void. *Id.* at 56. In contrast, in *Voight* I, the petitioner asserted the same ground for relief—that after he pleaded guilty to murder, a jury had not been impaneled as statutorily required to determine the degree of murder and the punishment. The court denied the petition for a writ of habeas corpus because the judgment of conviction was not void on its face, though it might have been erroneous. *Voight* I, 130 Wash. at 143-44. Unlike the situation in *Horner*, the judgment in *Voight* I did not show the error on the face of the judgment.[7]

There was one narrow exception to the rule that a court would not look behind a judgment valid on its face: if it was impossible to determine from the judgment the precise charge for which the petitioner was sentenced, a court could examine the judgment in connection with the record, *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).[8] In addition, in assessing

[7] The petitioner in *Voight* I did not give up, however. Approximately 17 years later, in *Voight* II, he made the same argument, evidently relying on the fact that in the interim the relevant records of his conviction, formerly deposited in the Cowlitz County courthouse, were lost or destroyed. The court rejected the argument, holding that the earlier *Voight* case was determinative.

[8] *Sorenson* stated a narrow exception to the general rule that a court would not look behind the face of the judgment and sentence. Although the majority believes I have mischaracterized the case, even the language quoted by the majority shows that the court recognized the general rule and the exception endorsed in *Sorenson*. Majority at 6 n.3. In addition, the majority's description of *Clark* is inaccurate. Majority at 6-7 n.3. The court concluded in *Clark* that "a complete and conclusive answer to all of the" habeas petitioner's contentions was provided by the rule that "[p]roceedings to obtain a writ of *habeas corpus* are not available or permissible to review trial errors, but are limited by law to those cases where it appears that the judgment, including the sentence pursuant to which the petitioner for such writ is held in confinement, *is void on its face*" and that the issue whether the judgment was invalid was "'to be resolved by an examination of the

facial voidness or validity, the court could take judicial notice that a particular court was a court of general jurisdiction. *E.g.*, *Grieve*, 22 Wn.2d at 910. The court could also take judicial notice of relevant statutes. *E.g.*, *Clark*, 24 Wn.2d at 111; *Behrens*, 24 Wn.2d at 133 (proceeding to obtain a writ of habeas corpus was not available where the judgment did "not show upon its face, nor when read in connection with any applicable statute, that it [wa]s void").

In enacting RCW 10.73.090(1), the legislature understood the scope of the right to collaterally attack a judgment in a criminal case as protected by the suspension clause and as it had developed at common law. I believe history helps to show that RCW 10.73.090(1) and .100 evidence legislative intent to restrict the flow of personal restraint petitions to a degree consistent with those rights as they existed early in our state's history, while at the same time permitting without time limit petitions asserting the grounds set out in RCW 10.73.100. The historical context suggests that before the one-year time bar can be avoided, absent application of any of the exceptions in RCW 10.73.100, the judgment and sentence *on its face* must show invalidity that will excuse the time bar.

In summary, the plain language of RCW 10.73.090(1), its purpose, and its context in relation to the history of the right to petition for a writ of habeas corpus, precursor to personal restraint petitions, support the conclusion that when applying this provision a

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judgment pleaded only, *and not by opening up the record* or by the taking of testimony.'" *Clark*, 24 Wn.2d at 116-17 (emphasis added) (quoting *Grieve*, 22 Wn.2d at 904).

court should not go behind the judgment and sentence and examine the record or other documents that a petitioner argues shows invalidity of a judgment and sentence that is, on its face, valid. As established early on, a court may take judicial notice of relevant statutes in making a determination of facial validity.

A person convicted of a crime has the right of appeal and a far-ranging substantive right to seek collateral relief within the year after the judgment becomes final. He or she also may seek collateral relief on the grounds set out in RCW 10.73.100, which encompasses a range of serious challenges that may be made at any time in an attempt to obtain relief from confinement. Finally, as Justice Stephens' concurrence explains, RCW 10.73.090(1) itself describes grounds that may be argued without regard to the one-year time bar.

I would reverse our case law that has allowed consideration of personal restraint petitions that do not meet these standards and would hold that RCW 10.73.090(1) means exactly what it says. Invalidity of the judgment and sentence must be apparent on the face of the judgment and sentence. If it is not, the petition must be denied unless it asserts solely grounds stated in RCW 10.73.100. The court should not look at charging documents, except in the rare case confusion appears *on the face* of the judgment and sentence regarding for what crime the petitioner was sentenced, and should not examine plea documents, instructions, or any other portion of the record. Statutes may be considered, as these are always the proper subject of judicial notice. As stated earlier, this would not prevent an individual from petitioning for collateral relief on any

substantive basis. It would, however, prevent the individual from doing so in an untimely manner.

Turning to the present case, Mr. Coats maintains that his judgment and sentence erroneously states that his maximum sentence for conspiracy to commit robbery is life in prison, when in fact by statute it was 10 years. He urges that this error is an invalidity on the face of the judgment and sentence that not only avoids the one-year time bar for a claim based on this invalidity, but also avoids the time bar with respect to any and all other challenges he brings to his conviction and sentence. He contends, specifically, that the error opens the door to his attack on the voluntariness of his guilty plea.

As mentioned, both the majority and Justice Stephens' concurrence conclude that errors rendering a judgment invalid as contemplated for purposes of RCW 10.73.090(1) occur when a court exceeded its authority in entering the judgment or sentence.[9]

However, in a confusing analysis, the majority appears to consider harm to the petitioner as part of the inquiry into whether a judgment and sentence is invalid on its face. The majority disclaims having done so, but I believe its analysis is to the contrary. On the facts, the majority concludes that no invalidity appears on the face of the judgment and sentence because, although the maximum term for the conspiracy to commit robbery conviction is erroneously stated on the face of the judgment and

[9] Justice Stephens' concurrence states that sentences in excess of statutory authority can occur when a court imposes a sentence for a crime that it lacks authority to punish and when the sentence imposed is in excess of the court's statutory authority. Concurrence (Stephens, J.) at 2. These are essentially the same; in both instances the court lacks authority to impose the particular sentence or, stated differently, in both instances the court imposes a sentence in excess of its authority.

sentence, the petitioner was in fact sentenced within the standard range of possible sentences for that offense. The inference is that because Coats will suffer no actual consequence as a result of the error, the judgment and sentence is not invalid on its face.

But the fact is that the court had no authority to impose a sentence with a maximum of life for the conviction of conspiracy to commit robbery, i.e., the court had no authority to render the particular judgment. As the concurrence accurately points out, the issue of harm, i.e., prejudice, bears on whether the petitioner is entitled to relief, and this is an issue that is simply not addressed if a petition is dismissed because it is untimely.

The majority also erroneously indicates that RCW 10.73.090 is a substantive provision rather than a procedural bar; indeed, the majority expressly refers to a *showing of prejudice* "before *relief* is appropriate due to an error on the face of a judgment and sentence." Majority at 23 (emphasis added). RCW 10.73.090 is not a substantive provision governing relief from restraint. It is a procedural time bar, as I have noted. The fact that particular grounds are identified in RCW 10.73.090(1) and .100 that avoid the time bar does not alter the nature of RCW 10.73.090(1) as a procedural time bar. Put another way, RCW 10.73.090 together with RCW 10.73.100 do not establish when relief will be granted, but instead establish what types of challenges may be considered more than one year after a petitioner's judgment and sentence is final.

Finally, the majority refuses to "articulate an unyielding definition" of the term "valid on its face" as it is used in RCW 10.73.090(1). Majority at 12. The majority thus

disregards the court's obligation to interpret this language and provide a definite and fixed meaning and provides no useful guidance for future cases.

Unlike the majority, Justice Stephens' concurrence correctly concludes that prejudice or harm is irrelevant to the question whether the judgment and sentence is valid or invalid on its face, and properly concludes that in imposing a maximum sentence in excess of the statutory maximum, the trial court imposed a sentence that it lacked authority to impose. Existence of such invalidity, in and of itself, avoids the procedural time bar. However, a petitioner is not entitled to relief unless he or she can establish prejudice resulting from the error. Thus, prejudice is relevant to consideration of the substantive merits of a petitioner's claim for relief from restraint, but only after a court determines that the petition is not procedurally time barred.

The 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.[1] This avoids the time bar for this claim. However, the error does not affect Mr. Coats's actual confinement. Coats is therefore unable to establish prejudice resulting from the trial court's error regarding the maximum sentence for the conviction of conspiracy to commit robbery and can obtain no relief from detention based upon the

[1] The majority disagrees with the "factual predicate underlying" my conclusion that the trial court erred in imposing a maximum sentence in excess of that which is authorized and this invalidity appears on the face of the judgment and sentence. Majority at 23 n.14. The majority says that the trial judge did not impose a sentence in excess of that authorized. *Id*. However, as I point out above, the trial court had no authority to impose a maximum sentence of life for the conviction for conspiracy to commit robbery because by statute the maximum is ten years. The trial court erred in imposing this maximum life sentence and the judgment and sentence discloses this invalidity on its face.

invalidity that appears on the face of his judgment and sentence.

Coats's challenge to the validity of his guilty plea should not be considered. I agree with the majority and Justice Stephens' concurrence that the one-year time bar is not avoided for any and all post-conviction challenges once a petitioner shows an invalidity on the face of the judgment and sentence as contemplated by RCW 10.73.090(1). Any such conclusion would be antithetical to the entire scheme and purpose of the statutes. Provided that the judgment and sentence is entered by a court of competent jurisdiction, the time bar can be avoided only if each ground asserted either involves an invalidity appearing on the face of the judgment and sentence within the meaning of RCW 10.73.090(1) or falls within the scope of RCW 10.73.100. The challenge to Coats's guilty plea does neither.

Because Coats cannot show prejudice resulting from the invalidity regarding his sentence that appears on the face of the judgment and sentence, and because his challenge to his guilty plea is time barred, his personal restraint petition is appropriately dismissed.

AUTHOR:
Chief Justice Barbara A. Madsen

WE CONCUR: