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NO. 44500-0-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

In the Matter of the Detention of:

TODD M. PLACE,

a/k/a Todd McKown,

Petitioner.

PETITION FOR REVIEW

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A. *IDENTITY OF PETITIONER*

Todd M. Place, a/k/a Todd McKown asks this court to accept review of the decision designated in Part B of this motion.

B. *DECISION*

Petitioner seeks review of each and every part of the decision of the Court of Appeals, Division II, affirming the Thurston County Superior Court's decision denying his CR 60 motion to vacate his stipulated order committing him as a sexually violent predator (SVP). A copy of the Court of Appeals' unpublished decision is attached along with a copy of the court's order denying Petitioner's Motion to Publish.

C. *ISSUES PRESENTED FOR REVIEW*

> Is a Superior Court's order committing a person as a sexually violent predator void if that court entered the order without any statutory authority?

D. *STATEMENT OF THE CASE*

On November 20, 2000, Thurston County Superior Court Judge Richard Strophy entered Findings of Fact, Conclusions of Law and an Order committing Petitioner Todd McKown as a sexually violent predator under RCW 71.09. CP 2-14. The court entered this order pursuant to a Stipulation to Facts signed by the defendant, his attorney, and an Assistant Attorney General, the last of whom had filed the original petition at the request of the Thurston County Prosecutor. *Id.* The stipulation and findings of fact

revealed that the petitioner had two prior convictions for sexually violent offenses: (1) 1990 Oregon Juvenile convictions for First Degree Sexual Abuse and First Degree Attempted Sodomy, and (2) a 1995 Skagit County Washington conviction for First Degree Child Molestation. CP 8-9.

On November 30, 2012, Respondent moved to dismiss the order finding him a sexually violent predator. CP 41-47. Petitioner argued that under the Washington Supreme Court decision in *In re Martin*, 163 Wn.2d 501, 182 P.3d 951 (2008), the commitment order was void because RCW 71.09.030 did not authorize the Thurston County Prosecutor to either file the action against Petitioner or ask the Attorney General to file it. *Id.* Following a hearing the Thurston County Superior Court denied the motion. RP 21-23. At the end of the motion and argument by counsel the court stated the following in support of its decision:

> THE COURT: I will rule. This motion was brought as a motion to dismiss. Within the context of the motion, as well as in comments today by counsel, it does appear to the Court to be a CR 60 motion.
>
> CR 60 permits relief from a final order upon certain criteria. The Court was most concerned about the subject matter jurisdiction argument, because that, as the Court understands, is not necessarily waivable or consentable.
>
> I hear counsel for Mr. McKown today to concede that this is not a subject matter jurisdiction, and I will say, although I don't need to now, that the Court agrees. The Court agrees based on the reading of *In Re Martin*, and coupling *In Re Martin* together with I believe it is *In Re Doherty*, which is a case cited by *Martin*, that this is not a subject matter jurisdiction issue.

> In the Court's opinion, that determines the matter before it today. Without it being a subject matter jurisdiction issue, in the Court's opinion, the aspect of CR 60 that does not permit motions like this brought beyond a lengthy period of time applies and that the 12 years in the interim is too long for the Court to grant the motion to dismiss under CR 60, considering it's not a subject matter jurisdiction issue.
>
> I hear the State conceding that there are problems with the way this was done in 1999, perhaps explainable, perhaps not, given that Martin was some time to be decided, but I don't see those issues with the way this was done in 1999 as something the Court can rectify under CR 60 here some 12 years later.
>
> There are arguments being made to the Court with respect to ongoing jurisdiction that I do agree with the State's counsel is not properly before the Court at this time. Therefore, I'm going to not consider that aspect of the argument for my ruling today. So the respondent's motion is denied.

RP 21-23[1] (italics added for clarity).

As far as counsel for Mr. McKown can tell from the record below, the trial court has not entered findings of fact or conclusions of law in support of its oral ruling, although the court did sign a two page written order denying the Motion to Dismiss. CP 33-34. Petitioner filed a timely Notice of Appeal from this ruling. CP36-39.

By unpublished decision entered July 1, 2014, the Court of Appeals Division II affirmed the decision of the Superior Court. *See attached* Unpublished Decision. The Court of Appeals thereafter denied a timely

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[1]The record on appeal includes a single volume verbatim report of the hearing on the Motion to Dismiss held in the Thurston County Superior Court on February 8, 2012. It is referred to herein as "RP [page #]."

motion to publish. *See attached* Order Denying Motion to Publish Opinion. Petitioner now respectfully requests that this court accept review and reverse the decision of the Court of Appeals and the Thurston County Superior Court.

E. *ARGUMENT WHY REVIEW SHOULD BE ACCEPTED*

This court should accept review under RAP 13.4(b)(1) because the decision of the Court of Appeals conflicts with decisions of this court and other published decisions of the Court of Appeals. The following sets out Petitioner's arguments in support of this conclusion.

Under CR 60(b)(5) a party may attack a void judgment. This rules states:

> (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
>
> . . .
>
> (5) The judgment is void;
>
> . . .
>
> The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.

CR 60(b).

As the rule states, a party seeking relief from judgment must bring the

motion within a "reasonable time," which cannot exceed one year for the bases listed in sections (1), (2) or (3). This time limit also applies in criminal cases under CrR 7.8(b), which is somewhat more restrictive than CR 60(b) in that the civil rule does include some bases for seeking relief not included under the criminal rule. *State v. Duncan*, 111 Wn.2d 859, 765 P.2d 1300 (1989). Prior to the adoption of the equivalent criminal rule CR 60(b) formed the basis for relief from judgments in criminal cases also. *State v. Scott*, 92 Wn.2d 209, 212, 595 P.2d 549 (1979).

Although CR 60(b) and CrR 7.8(b) require that all motions to vacate a judgment be brought within a reasonable time (not to exceed one year in certain listed instances), a party may seek to vacate a void judgment "regardless of the lapse of time." *Allstate Ins. Co. v. Khani*, 75 Wn.App. 317, 323-24, 877 P.2d 724 (1994) (citing *In re Marriage of Leslie*, 112 Wn.2d 612, 618-19, 772 P.2d 1013 (1989)). Thus, as the court notes in *Allstate Ins. Co. v. Khani*, "not even the doctrine of laches bars a party from attacking a void judgment." *Khani*, 75 Wn.App. at 324 (citing *Leslie*, 112 Wn.2d at 619-20). In addition, while a trial court's decision to grant or deny a motion to set aside a judgment is ordinarily reviewed under an abuse of discretion standard, *Khani*, 75 Wn.App. at 323, a trial court has a mandatory duty to vacate void judgments. *Scott v. Goldman*, 82 Wn.App. 1, 6, 917 P.2d 131 (1996); Khani, 75 Wn.App. at 323.

For example, in *Allstate Ins. Co. v. Khani, supra*, the defendant brought a motion under CR 60(b)(5) to vacate a default judgment (and subsequent order of garnishment) plaintiff Allstate Insurance Company obtained against him five years previous following the defendant's involvement in an automobile accident. In support of the motion the defendant argued that the judgment was void because of a defect in service. Although the trial court ultimately accepted the defendant's factual claim on the defect in service, it none the less denied relief on the basis that the defendant had been aware of the judgement for almost four years and had failed to bring the motion within a "reasonable time" as required under the rule. The defendant appealed.

The Court of Appeals reversed, finding (1) that both the judgment and subsequent proceedings based upon that judgment were "void" for want of personal jurisdiction, (2) that his action under CrR 7.8(b)(5) was not subject to a time limit, and (3) that the court had a non-discretionary duty to vacate the judgment. The Court of Appeals stated as follows on these issues:

> In the present case, the trial court expressly found Allstate's service of process was defective. Proper service of the summons and complaint is essential to invoke personal jurisdiction over a party, and a default judgment entered without proper jurisdiction is void. Because a party may move to vacate a void judgment at any time the trial court erred by finding that Khani failed to bring his motion within a reasonable time. Further, as discussed in detail below, the trial court's finding that Khani had actual notice of the default judgment through the DOL notice is irrelevant on these facts. More significantly, the trial court erred by denying Khani's motion because it failed to fulfill its nondiscretionary duty to vacate a void judgment. Thus, the trial court's order must be reversed and the case remanded with instructions to vacate the default

judgment and quash the writ of garnishment.

Allstate Ins. Co. v. Khani, 75 Wn.App. at 324-325 (quotes and citations omitted).

In the case at bar Division II of the Court of Appeals ruled that the judgment Petitioner attacked was not void because (1) only judgments entered without personal and/or subject matter jurisdiction were void, and (2) since Respondent agreed that the court entering the judgment had both personal and subject matter jurisdiction his argument failed. The court held:

> McKown did not prove the absence of personal jurisdiction or subject matter jurisdiction, but rather proved something different: the absence of filing authority.

Unpublished Opinion, page 8.

In fact this holding is incorrect and conflicts with prior decisions of the Court of Appeals and this court. The following sets out this argument.

Generally speaking, a judgment is void if the trial court entered it without personal jurisdiction, without subject matter jurisdiction or without authority, statutory or otherwise. *Dike v. Dike*, 75 Wn.2d 1, 448 P.2d 490 (1968). *See also, Marley v. Department of Labor & Indus.*, 72 Wn.App. 326, 334, 864 P.2d 960 (1993) (A void judgment is one that "exceed[s] . . . statutory authority" while an erroneous judgment is one that "erroneous[ly] interpret[s] . . . the statute . . . .")

For example, in *Doe v. Fife Mun. Court*, 74 Wn.App. 444, 874 P.2d 182

(1994), defendants who had paid court costs under orders of deferred prosecution brought a civil action against the courts that had granted those orders seeking to recover those costs upon a theory that the deferred prosecution statute in effect at the time did not allow for the assessment of costs. In making this argument plaintiffs cited to the decision of the Court of Appeals in *State v. Friend*, 59 Wn.App. 365, 797 P.2d 539 (1990), which held that the deferred prosecution statute did not authorize the imposition of costs.

The defendant Municipal Courts responded by filing motions for summary judgment upon an argument that collateral estoppel barred the relief requested because the plaintiffs had failed to seek recovery of the costs during the pendency of the deferred prosecutions when the costs were imposed. Although the defendants did not contest the plaintiffs' interpretation of the decision in *Friend*, they none the less argued that the various impositions of costs were merely erroneous and as such were subject to collateral estoppel. Plaintiffs replied arguing that the impositions of costs were void, and as such plaintiffs could seek relief from them at any time.

In addressing these arguments the Court of Appeals noted that the validity of the opposing arguments rested upon the determination whether the orders for costs were void or merely voidable or erroneous. In the former case collateral estoppel did not apply while in the latter case it did. The court

framed this issue as follows:

> The critical question here is whether the judgment ordering payment of court costs was void or merely erroneous. As we have observed, if the judgments were void, then the [plaintiffs] are not collaterally estopped from maintaining an independent action to recover the costs. If, however, the judgments were merely erroneous, then the [plaintiffs'] action could be barred by principles of collateral estoppel.

Doe v. Fife Mun. Court, 74 Wn.App. at 449 (footnote omitted).

In addressing this question, the court first noted that in these cases the trial court did have both personal and subject matter jurisdiction over the plaintiffs when it imposed the costs. However, that did not mean that the imposition of costs, which was in excess of the courts' statutory authority, were not void. The court held:

> Although we recognize that the judgments of the courts of limited jurisdiction were not entirely void, one portion of an order or judgment can be considered void, if a court acted without jurisdiction as to a portion of that order or judgment. *In re Marriage of Leslie*, 112 Wn.2d 612, 618-21, 772 P.2d 1013 (1989). In *Leslie*, the trial court had awarded relief that exceeded the relief requested in the complaint, and the court held that only "that portion" of the judgment was void. *Leslie*, at 618, 772 P.2d 1013. That is the case here. The deferred prosecution orders were valid except for the portion of the judgments imposing costs, which was void.

Doe v. Fife Mun. Court, 74 Wn.App. at 451.

The decision in *In re Marriage of Leslie*, 112 Wn.2d 612, 772 P.2d 1013(1989), is also instructive on what constitutes a void judgment under circumstances in which the court undoubtedly has personal and subject matter jurisdiction over the parties and action. In this case a father who had

previously submitted to entry of a default divorce degree much later moved under CR 60(b)(5) to vacate that portion of the decree that required him to pay certain medical expenses. He argued that the imposition of the medical expenses requirement in the original decree was void because it exceeded the scope of the request for relief in the original complaint. The trial court denied the motion on the basis that it had not been brought within a reasonable period of time as is required under CR 60(b). The court also denied relief on the basis of laches, finding that (1) the father had knowledge of the substance of the decree, (2) the father had unreasonably delayed in bringing the motion to vacate, and (3) the mother would suffer damage as a result of this unreasonable delay were the court to grant the relief requested. The father appealed from this order and the Court of Appeals affirmed.

On further review this court reversed these rulings, finding the following: (1) a trial court may not grant relief in excess of that requested in the complaint when it enters a default judgment, (2) any portion of a default judgment that exceeds the relief requested in the complaint is void, and (3) an action under CrR 60(b)(5) to seek relief from the void portion of a judgment may be brought at any time and is not subject to a laches defense.

In the case at bar Mr. McKown's attorney admitted during argument on his motion that the Thurston County Superior Court generally had both subject matter jurisdiction and personal jurisdiction in the case. However

counsel argued that under the decision in *In re Martin*, 163 W.2d 501, 182 P.3d 951 (2008), the order of commitment was void because the Thurston County Superior Court exceeded its statutory authority when it heard the case. Thus, counsel argued that the order was void as opposed to merely erroneous and could be attacked at any time. The following examines the *Martin* decision.

In *Martin, supra*, the Washington Attorney General (AG) filed a Petition to Commit the respondent as a sexually violent predator in Thurston County Superior Court at the request of the Thurston County Prosecutor. Among other things the petition alleged that the respondent had two prior qualifying sexually violent convictions: one in Oregon and one in Clark County Washington. The Respondent later moved to dismiss the petition on an argument that the Thurston County Prosecutor did not have authority to file it or request that the Attorney General file it. Specifically, Respondent argued that (1) under RCW 71.09.030 the only party authorized to file or request that the AG file a petition to commit a person as a sexually violent predator was the prosecutor of the Washington county in which one of the underlying offenses was committed, and (2) that since his underlying Washington offense was committed in Clark County, only the Clark County Prosecutor could file the action or request that the AG file it.

The trial court denied the respondent's motion and then entered an order

committing the respondent as a sexually violent predator upon stipulated facts. The respondent appealed but the Court of Appeals affirmed. The respondent then sought and obtained review before the Washington Supreme Court. In addressing the issues before it, the court first noted that under the clear language of RCW 71.09.030 only the prosecutor from the Washington County in which one of the underlying offenses was committed had authority to file the action. The court then went on to address the state's argument, adopted by the Court of Appeals, that RCW 71.09.030 created subject matter jurisdiction over commitment proceeding in any Washington Superior Court and merely required that the venue rest in the county in which one of the underlying offenses was committed. Thus, the Court of Appeals held that the respondent's failure to bring a motion for change of venue waived the issue.

Although this court agreed with the analysis on subject matter jurisdiction, it found this fact irrelevant. This court stated:

> The State argues RCW 71.09.030 creates subject matter jurisdiction over commitment petitions but does not specify a venue for when the sexually violent offense occurs out-of-state. The Court of Appeals agreed with the State, holding the language in RCW 71.09.030 providing the prosecuting attorney of the county where the respondent was convicted or charged was "only venue language" requiring a motion to change venue.
>
> This argument about subject matter jurisdiction and venue obfuscates the real question before us, which is to determine whom the statute authorizes to file the petition, not where the petition is filed. Certainly naming a specific prosecutor as the filing authority establishes venue; however, venue does not supersede the expression of authority. If the prosecutor who instituted the proceeding was not authorized to do so,

> "logically it follows that he cannot insist upon a [motion to change venue] any more than he can claim the right to institute the suit in the first instance."

In re Martin, 163 Wn.2d at 515 (citations omitted).

This court then reversed the decisions of the trial court and the Court of Appeals. This court's order read as follows:

> We hold RCW 71.09.030 unambiguously authorizes a specific prosecuting attorney to file, or request the filing of, a sexually violent predator petition, namely the prosecuting attorney who convicted or charged the alleged sexually violent predator. The Thurston County prosecutor lacked the authority to commence the commitment proceedings against Martin because the Thurston County prosecutor never convicted or charged Martin. Before the State can commit a person for what may arguably be the remainder of his life, the State must be put through the inconvenience of fully complying with the statute.
>
> We reverse the Court of Appeals decision and remand to Thurston County Superior Court with directions to grant (petitioner's) motion to dismiss the State's petition.

In re Martin, 163 Wn.2d at 516.

The relevant facts in the case at bar are essentially identical to those in *Martin*. In both cases the AG filed the petition for commitment in Thurston County Superior Court at the request of the Thurston County Prosecutor. In both cases the state's petition relied upon the respondents' commission of two prior sexually violent offenses. Finally, in both cases neither of those underlying offenses occurred in Thurston County. Thus, in the same manner that the trial court erred when it granted the petition in *Martin*, so the trial court erred when it granted the petition in the case at bar.

Of course there is one salient fact that distinguishes *Martin* from the case at bar. In *Martin* the respondent brought a motion to dismiss during the pendency of the proceedings and in the case at bar Petitioner brought a motion to dismiss 12 years after entry of the commitment order. The trial court denied the motion based upon this one fact, holding as follows:

> In the Court's opinion, that determines the matter before it today. Without it being a subject matter jurisdiction issue, in the Court's opinion, the aspect of CR 60 that does not permit motions like this brought beyond a lengthy period of time applies and that the 12 years in the interim is too long for the Court to grant the motion to dismiss under CR 60, considering it's not a subject matter jurisdiction issue.

RP 22.

This ruling by the trial court was erroneous because it failed to recognize that under CR 60(b)(5) a judgment can also be void based upon the court acting without authority. As the decisions in *Doe v. Fife Mun. Court* and *In re Marriage of Leslie* explain, when a court acts in excess of its authority (imposing unauthorized costs in *Doe* and granting relief not requested in a complaint in *Leslie),* that portion of the judgment entered without authority is void. This conclusion follows even though the court might generally have subject matter jurisdiction over the controversy and personal jurisdiction over the parties. Under the decision in *Martin* this is precisely the situation in the case at bar. The trial court acted without authority when it ruled in a case initiated by a party acting without legislative authority to so act. As such, the judgement the court entered was and remains void and may be challenged at

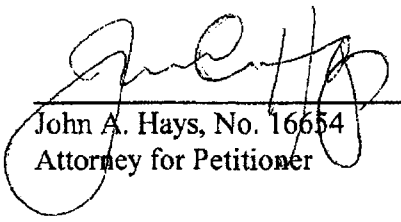
any point in time, including 12 years after its entry. Thus, in this case, the trial court erred when it denied the petitioner's motion to vacate the order of commitment, and the Court of Appeal's decision affirming this decision conflicts with the cases cited herein.

F. *CONCLUSION*

For the reasons set out in this motion, this court should accept review of this case and reverse the decision of the Court of Appeal.

Dated this 15th day of July, 2014.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Petitioner

COURT OF APPEALS OF WASHINGTON, DIVISION II

In re the Detention of: **TODD M. PLACE,** **a/k/a Todd McKown,** **Petitioner.**	**NO. 44500-0-II** **AFFIRMATION OF SERVICE**

The under signed states the following under penalty of perjury under the laws of Washington State. On this, I personally e-filed and/or placed in the United States Mail the Brief of Appellant with this Affirmation of Service Attached with postage paid to the indicated parties:

1. Jeremy Bartels, No. 36824
   Assistant Attorney General
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2. Todd M. Place (aka McKown)
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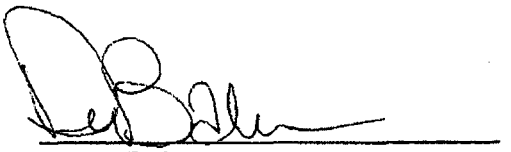
Dated this 15th day of July, 2014 at Longview, Washington.



Donna Baker

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Detention of TODD M. PLACE, a/k/a Todd McKown,	No. 44500-0-II UNPUBLISHED OPINION

JOHANSON, C.J. — Todd McKown[1] challenges the Thurston County Superior Court's denial of his motion to vacate a stipulated order committing him as a sexually violent predator (SVP). McKown argues that the order was void and, thus, his CR 60 motion was not time barred. He correctly points out that the commitment action had been initiated by the Thurston County Prosecutor without statutory authority to do so and argues that the prosecutor's action made the order void. The trial court disagreed with McKown and denied the motion to vacate, citing the 12-year time gap between the entry of the order and McKown's motion. We affirm the trial court; a judgment is void only if made without subject matter jurisdiction or personal jurisdiction, and neither is the case here.

[1] The petitioner's birth name is Todd M. Place, and he was referred to as such during the original proceedings in 2000. He now prefers to be known as Todd McKown. Out of respect for the appellant, this opinion will refer to him as McKown throughout.

FACTS

For most of his life, McKown has been receiving treatment for "extreme behavioral problems." Clerk's Papers (CP) at 8. McKown has been implicated in sexual misconduct ranging from voyeurism and "flashing" to forcible intercourse, and he claims to have assaulted a total of 37 victims, with ages ranging from 3 to 50. He has been convicted of sexually violent offenses on two occasions. In 1989, while in the custody of the Oregon Youth Authority, McKown absconded from an Oregon Youth Authority school with a nine-year-old student and raped him. As a result, he was convicted of first degree sexual abuse and first degree attempted sodomy. Then, in Skagit County, Washington in 1995, McKown was caught fondling his 10-year-old cousin. He admitted that he would have raped his cousin if he had not been discovered and stated to police, "'Next time I am going to turn to murder. Next time I won't be Mr. Nice Guy. This ain't even a quarter or a third of what I can do. Not even a tenth. I like blood, death, murder, and violence.'" CP at 9. McKown subsequently pleaded guilty to communicating with a minor for immoral purposes and was incarcerated.

In 1999, McKown was due to be released from prison when the Thurston County Prosecuting Attorney's Office contacted the Washington Attorney General's Office to request that McKown be committed as an SVP pursuant to ch. 71.09 RCW. As the parties now acknowledge, the Thurston County Prosecuting Attorney's Office had no authority to make this request because McKown had not been charged or convicted in Thurston County. CP at 45-46 (citing *In re Det. of Martin*, 163 Wn.2d 501, 506, 182 P.3d 951 (2008)). Nevertheless, the Washington Attorney General's Office proceeded to file a petition to civilly commit McKown as an SVP. In support of this petition, the State retained a psychologist who found that McKown suffered from "Pedophilia, as well as a Depressive Personality Disorder with Borderline

Personality Features and Avoidant Personality Features." CP at 10-11. She further found that McKown's condition made him "likely to engage in predatory acts of sexual violence" if he were not treated under "total confinement in a secure facility." CP at 11.

Subsequently, McKown and the State stipulated to the facts concerning McKown's deviant behaviors and stipulated that these facts "establish beyond a reasonable doubt that [McKown] is a[n SVP], as that term is defined in RCW 71.09.020." CP at 11. They further stipulated to the subject matter jurisdiction and the personal jurisdiction of the court. Finally, they stipulated to an order declaring McKown an SVP and committing him to the custody of the Department of Social and Health Services for treatment and counseling in a secure facility. The trial court entered the stipulated order on November 20, 2000.

McKown has never challenged these findings of fact or conclusions of law on the merits. Rather, in 2012, McKown moved to dismiss his stipulated order of commitment on two theories. First, he argued that the Thurston County Prosecuting Attorney's Office lacked authority under the SVP statute to have the Attorney General's Office initiate the proceeding against him, and that he was entitled to relief under CR 60(b)(5), (11), and (c). Second, McKown argued that the trial court lacked subject matter jurisdiction to hear the SVP proceeding, but he later abandoned that argument.

After hearing oral argument, the trial court denied McKown's motion, holding that

> the aspect of CR 60 that does not permit motions like this brought beyond a lengthy period of time applies and that the 12 years in the interim is too long for the Court to grant the motion to dismiss under CR 60, considering it's not a subject matter jurisdiction issue.

Report of Proceedings at 22. The trial court noted that while there might have been procedural defects in the way the SVP proceeding was initiated, 12 years after the fact was too late to rectify those defects.

McKown appealed the trial court's denial, raising only one issue on appeal—he argued that the 2000 stipulated order was void and could be vacated under CR(60)(b) at any time.

ANALYSIS

I. STANDARD OF REVIEW

This court reviews a trial court's decision on a motion to vacate a judgment for abuse of discretion. *Haller v. Wallis*, 89 Wn.2d 539, 543, 573 P.2d 1302 (1978); *In re Marriage of Herridge*, 169 Wn. App. 290, 296, 279 P.3d 956 (2012); *In re Marriage of Newlon*, 167 Wn. App. 195, 199, 272 P.3d 903 (2012); *Barr v. MacGugan*, 119 Wn. App. 43, 46, 78 P.3d 660 (2003). "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

II. VOIDNESS

Although 12 years passed between McKown's commitment and his motion to vacate, McKown correctly argues that a void judgment is not subject to a time bar and may be vacated at any time. *In re Marriage of Leslie*, 112 Wn.2d 612, 618, 772 P.2d 1013 (1989). The issue is whether this stipulated order was void. As we discuss below, a judgment is void if the issuing court lacks subject matter jurisdiction or personal jurisdiction. Because the superior court had jurisdiction, we reject McKown's argument and affirm the trial court.

A. UNTIMELY RELIEF FROM A JUDGMENT

CR 60(b) provides that a motion to vacate must be made "within a reasonable time." But as the courts have consistently recognized, a motion to vacate a void judgment under CR 60(b)(5) is an exception to the reasonable time requirement. In *Leslie*, the trial court entered a default judgment in favor of the respondent, awarding expenses that the respondent had not requested. 112 Wn.2d at 614. The petitioner moved for relief from the default eight years later and the court denied the motion. *Leslie*, 112 Wn.2d at 616-17. We affirmed the denial, holding that eight years was "'not a reasonable time as contemplated by CR 60(b)(5).'" *Leslie*, 112 Wn.2d at 617 (quoting *In re Marriage of Leslie*, noted at 50 Wn. App. 1061 (1988)). The Supreme Court reversed, holding that the original judgment was void[2] to the extent it provided relief not requested in the complaint and that void judgments could be vacated "irrespective of the lapse of time." *Leslie*, 112 Wn.2d at 618 (citing *John Hancock Mut. Life Ins. Co. v. Gooley*, 196 Wash. 357, 370, 83 P.2d 221 (1938)).

Similarly, in *Allstate Insurance Co. v. Khani*, 75 Wn. App. 317, 320, 877 P.2d 724 (1994), the appellant was not properly served and subsequently the court entered a default judgment against him. The trial court denied his motion to vacate, noting that the appellant had "'waited for over four years before doing anything about [the default] or taking any action to have it set aside.'" *Allstate*, 75 Wn. App. at 322. Another division of this court reversed, holding that the judgment was void because service had been improper, depriving the lower

[2] The Supreme Court held that the trial court's order was made without "jurisdiction," but did not specify what kind of jurisdiction was lacking. *Leslie*, 112 Wn.2d at 617. In any event, *Leslie* was decided before the Supreme Court clarified in *Marley v. Dep't of Labor & Industries*, 125 Wn.2d 533, 541, 886 P.2d 189 (1994), that a judgment could only be void for lack of personal jurisdiction or subject matter jurisdiction.

court of personal jurisdiction. *Allstate*, 75 Wn. App. at 324 (citing *In re Marriage of Markowski*, 50 Wn. App. 633, 635-36, 749 P.2d 754 (1988)). Under the *Leslie* rule, the appellant was then entitled to relief regardless of the passage of time.

If the Thurston County stipulated order was indeed void, then the 12-year interim between the entry of the order and McKown's motion to vacate is no more relevant than the 8-year interim in *Leslie* or the 4-year interim in *Allstate*. Accordingly, the determinative question is whether the order committing McKown was void or not. We turn to the issue of voidness now.

B. VOIDNESS

Voidness is a narrow concept. The Supreme Court has made clear that "a court enters a void order only when it lacks personal jurisdiction or subject matter jurisdiction over the claim." *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 541, 886 P.2d 189 (1994). McKown does not argue that the court lacked either personal jurisdiction over the party or subject matter jurisdiction over the claim—indeed, he stipulated to both—but rather raises the alternate theory that the superior court lacked "authority, statutory or otherwise." Br. of Appellant at 9. In support of this theory, he cites *Dike v. Dike*, 75 Wn.2d 1, 7, 448 P.2d 490 (1968) (differentiating error of law from "power to make the order or rulings complained of") (quoting *Robertson v. Commonwealth*, 181 Va. 520, 536, 25 S.E.2d 352 (1943)). His reliance on *Dike* is not well taken. The Supreme Court clarified in *Marley* that the authority to enter an order is not in itself part of the test for voidness, but merely "a subset of subject matter jurisdiction, adopted by this court to account for the unique qualities of contempt orders." 125 Wn.2d at 540. That is, there are only two ways that a judgment can be void and thus exempt from the time bar: lack of personal jurisdiction and lack of subject matter jurisdiction.

At no point did McKown allege that the superior court lacked personal jurisdiction to enter the order committing him and nothing in the record suggests that the court lacked personal jurisdiction. Furthermore, McKown voluntarily abandoned his subject matter jurisdiction arguments prior to this appeal. But even if he did not, the procedural defects he asserts did not deprive the court of subject matter jurisdiction. As our Supreme Court tells us, the "authority to enter a given order" is something quite different from subject matter jurisdiction. *Marley*, 125 Wn.2d at 539. Indeed, our Supreme Court has held—on similar facts to this case—that the prosecutor's "filing authority" was not a matter of subject matter jurisdiction; rather, the appellant's subject matter jurisdiction and venue arguments were "irrelevant to the question" of whether the prosecutor had authority to initiate an SVP proceeding. *Martin*, 163 Wn.2d at 515-16. This is because subject matter jurisdiction—that is, the inherent authority to hear a particular type of case—is a broad concept that will be found absent "only in 'compelling circumstances, such as when it is explicitly limited by the Legislature or Congress.'" *In re Marriage of Kelly*, 85 Wn. App. 785, 790, 934 P.2d 1218 (quoting *In re Marriage of Major*, 71 Wn. App. 531, 534, 859 P.2d 1262 (1993)), *review denied*, 133 Wn.2d 1014 (1997). McKown does not argue that the legislature limited subject matter jurisdiction in this case. Rather, he argues that the prosecutor lacked authority to bring the case—a very different proposition from the *court* lacking authority to *hear* the case.

The superior court erred when it entered the order committing McKown at the behest of a prosecutor that had no authority to initiate the proceeding. *See Martin*, 163 Wn.2d at 516. If McKown had timely challenged his commitment, he may have been entitled to relief. He did

not; he waited 12 years. Absent any briefing that the delay was reasonable,[3] McKown is entitled to relief only if the superior court's judgment was not merely erroneous, but *void*—that is, if the court lacked personal jurisdiction or subject matter jurisdiction. McKown did not prove the absence of personal jurisdiction or subject matter jurisdiction, but rather proved something different: the absence of filing authority. The trial court did not abuse its discretion when it ruled that this showing was not enough to overcome the CR 60 time bar. We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Johanson, C.J.
JOHANSON, C.J.

We concur:

Worswick J
WORSWICK, J.

Melnick J.
MELNICK, J.

[3] McKown argued to the trial court that his delay was reasonable because he had obtained new counsel. The superior court disagreed and McKown did not raise the issue on appeal.