

FILED
SUPREME COURT
STATE OF WASHINGTON
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SUPREME COURT NO. 97097-1

NO. 35456-3-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MAXWELL DELVON JONES,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SPOKANE COUNTY

The Honorable James M. Triplet, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner, Maxwell Delvon Jones, asks this Court to review the decision of the Court of Appeals referred to in section B.

B. COURT OF APPEALS DECISION

Jones seeks review of the Court of Appeals' unpublished decision in State v. Maxwell Delvon Jones, filed March 19, 2019 ("Opinion" or "Op."), which is appended to this brief. (Appendix A).

C. ISSUE PRESENTED FOR REVIEW

1. Did the trial court abuse its discretion in denying Jones' CrR 7.8 motion for relief from judgment¹, when Jones sought to exclude certain challenged convictions from his offender score as constitutionally invalid, ruling that the use of the challenged convictions could be raised on through filing a personal restraint petition (PRP)? Correspondingly, must the case be remanded for resentencing?

D. STATEMENT OF THE CASE

Maxwell Jones filed a CrR 7.8 motion for relief from judgment on December 1, 2016. CP 107-71. Jones had been sentenced on January 7, 2016, after being found guilty of one count of first degree robbery. CP 76-77, CP 79-93, CP 107-13. In the CrR 7.8 motion, Jones requested the court re-sentence him after eliminating from consideration four un-

¹ The Order Denying Resentencing (CP 187-88) is attached as an Appendix B.

counseled felony convictions from 2003, which had counted towards his offender score at sentencing. *Id.*

In sentencing Jones on the robbery, the court had calculated Jones' offender score at 9+; and the applicable standard sentence range at 129-171 months. CP 83. The court imposed 171 months.² CP 85. Jones' CrR 7.8 motion asked the court to review and correct the standard sentence range on the basis that he was without legal counsel when he pleaded guilty in the cases at issue from 2003. CP 111. Without the uncounseled convictions, Jones' offender score would be 7, and the applicable sentencing range 87-116 months. CP 112.

Jones' CrR 7.8 motion provided:

The criminal history of this defendant covers the years from 2003 through 2014. It includes three case files and four counts of conviction from 2003. Those are 03-1-00656-5, attempted second degree assault; 03-1-01409-6, two counts of conspiracy to deliver a controlled substance (methamphetamine and MDMA); 03-1-03050-4, second degree possession of stolen property. All three aforementioned files were handled by the same deputy prosecutor. All three files appear to have been negotiated through a negotiated plea in November 2003. All three files show that at the time of the entry of the plea the defendant was without counsel. All three files show that defendant had counsel at some point prior to the entry of the guilty plea, and that this attorney was allowed by the court to withdraw from representation of the defendant.

² The sentence was ordered to be served concurrent with the 144 months Jones had received in his federal case, United States Case No. 13-CR-00052-WFN. CP 85; CP 154-58.

CP 108. Jones' CrR 7.8 motion attached the judgments, and provided key information from the 2003 cases where Jones had pleaded guilty when not represented by counsel. CP 108-09; CP 113; CP 114-145 (Attachments 1-3).

In support of his argument that the un-counseled convictions should not count in his offender score, Jones also attached the unpublished decision in *U.S. v. Jones* (holding that the district court could not count Jones' un-counseled convictions on remand for resentencing).³ In that case, the government had conceded that the un-counseled convictions were invalid for sentencing purposes. *Id.*; CP 111; CP 113; CP 154-58 (Attachment 4); RP1 27.

The state argued against setting the matter for resentencing. RP1 24, 28, 31-32; RP2 9, 20. The state argued that Jones was required to raise any issue over the use of prior convictions at sentencing with the Court of Appeals through filing a PRP. CP 184-86; RP1 23-24, 28; RP2 9, 20.

The court scheduled a hearing on the merits of the CrR 7.8 motion. RP2 at 23, 24. Before this hearing, the state submitted a third response to the CrR 7.8 motion, arguing that any challenge to the validity of a prior conviction presented at sentencing could not be properly addressed by the

³ The unpublished opinion is *UNITED STATES v. MAXWELL DELVON JONES*, COA No. 14-30257, D.C. No. 2:13-cr-00052-WFN-1.

trial court, but only by the Court of Appeals through filing a PRP. CP 184-86.

At the July 11th, 2017, hearing on the merits of Jones' CrR 7.8 motion, Jones argued that the un-counseled convictions should not count in his offender score and asked the court to set the case for resentencing. RP1 at 25. The court had been convinced by the state's last response that any question on the validity of the prior convictions at issue must first be submitted to the court of appeals, before the trial court could address it at re-sentencing. RP1 at 24, 28, 31-32.

The court denied the CrR 7.8 motion, ruling that Jones had to first collaterally attack the convictions at issue. CP 187-88, RP1 at 33. In its Order Denying Resentencing, the court entered the following finding: There is not good cause to invalidate the prior convictions as a part of the sentencing process in this case. CP 187. The court specifically ordered that, under Ammons , it was "improper for the trial court to determine the constitutionality or validity of prior felony convictions used in the defendant's offender score; any attack on those prior convictions must be properly addressed in a P.R.P." CP 188.

Jones appealed, challenging the trial court's ruling denying his CrR 7.8 motion, and requested his case be remanded back to the superior court

to consider his CrR 7.8 motion for re-sentencing at a hearing on the merits.

The Court of Appeals rejected Jones' argument that the trial court erred in denying his CrR 7.8 motion as to the challenged convictions. Op. at 1-7. Jones now asks this Court to accept review, reverse, and remand for resentencing.

E. REASONS REVIEW SHOULD BE ACCEPTED

- A. THIS COURT SHOULD GRANT REVIEW UNDER RAP 13.4(b)(4) BECAUSE THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING MR. JONES' CRR 7.8 MOTION, CONTRARY TO THE AMMONS DECISION.

The considerations which govern the decision to grant review are set forth in RAP 13.4(b). This Court should accept review of this issue under RAP 13.4(b)(1) and (2) because the decision of the Court of Appeals is in conflict with other decisions of this court and the Court of Appeals.

The trial court's finding that: "There is not good cause to invalidate the prior convictions as a part of the sentencing process in this case" was entered in error. CP 187. Similarly, the trial court erred by ordering that under State v. Ammons, 105 Wn. 2d 175, 183, 713 P.2d 719 (1986), it was improper for the trial court to determine the constitutionality or validity of prior felony convictions used in the defendant's offender

score; and that any attack on those convictions must be properly addressed in a PRP.” CP 188.

- a. Under Ammons, the trial court could consider whether the challenged convictions were improperly included in the defendant's offender score at the defendant's resentencing.

CrR 7.8 (b)(1)-(5) allows a court to relieve a party from a final judgment for the enumerated reasons, as well as any other reason justifying relief from the operation of the judgment. Jones asserted he was entitled to relief under CrR 7.8(b)(1), that there was a mistake or irregularity in the judgment. RP2 at 12-13.

Under the procedures set forth in CrR 7.8(c), it was proper for the court to address the merits of Jones’ CrR 7.8 motion. CrR 7.8(c)(2) requires the superior court to make an initial determination of whether the motion is timely and either: 1) makes a substantial showing the moving party is entitled to relief, or 2) requires a factual hearing in order to resolve the motion. Here, the court found the CrR 7.8 motion was timely and that Jones had made a substantial showing he was entitled to relief. RP2 at 15-16, 23. Under CrR 7.8(c)(2) and (3), if the motion is timely and an initial showing has been made that the moving party has made a substantial showing that he is entitled to relief or that resolution of the motion will require a factual hearing, the superior court may order a hearing on the

matter and direct the adverse party to show cause why the relief sought should not be granted. Here that hearing occurred on July 11, 2017.

Under CrR 7.8(c), after due consideration of the motion, the superior court may rule on the merits of the motion. Here, while the court followed the procedure outlined in CrR 7.8(c), its ultimate ruling on the merits of the motion, its Order Denying Resentencing, found it was improper for it to address the issue raised in Jones' motion (whether a mistake in sentencing required exclusion of the un-counseled convictions at re-sentencing). CP 187-88.

The trial court has the power and the duty to correct an erroneous sentence when the error is discovered. In re Pers. Restraint of Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980). The denial of a motion to vacate a judgment is assessed for an abuse of discretion. State v. Englund, 186 Wn. App. 444, 459, 345 P.3d 859, *rev. denied*, 183 Wn.2d 1011, 352 P.3d 188 (2015).

The court abused its discretion where it made its ruling based upon the wrong legal standard. A trial court abuses its discretion when it exercises discretion in a manner that is manifestly unreasonable or based upon untenable grounds or reasons. State v. Neal, 144 Wn.App. 600, 609, 30 P.3d 1255 (2001). An abuse of discretion occurs where the court bases

its decision on an incorrect legal standard. State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003).

Under CrR 7.8, the matter of revising Jones' offender score at re-sentencing was properly before the court. Because the three judgments offered to establish four of Jones' prior convictions indicated neither the presence of an attorney representing Jones nor his waiver of counsel they are facially invalid and could not be properly used when sentencing Jones. State v. Marsh, 47 Wn. App. at 292. Under Ammons, this was enough for the court to reach the re-sentencing issue raised in Jones' CrR 7.8 motion.

In its final order on the CrR 7.8 motion, the trial court had found that Ammons specifically prevented it from considering the constitutional validity of Jones' criminal history at sentencing. CP 187-88. State v. Ammons, 105 Wn.2d 175, 713 P.2d 719, 718 P.2d 796, *cert. denied*, 479 U.S. 930, 107 S.Ct. 398, 93 L.Ed.2d 351 (1986). Jones maintains that the proper way to handle the issue raised in his CrR 7.8 motion is for the sentencing court to correct the standard range by eliminating the convictions for cases where he pleaded guilty without counsel. CP 112. Jones argued re-sentencing was proper considering the trial court had counted the un-counseled convictions in calculating his offender score. CP 107-13. The CrR 7.8 motion is the appropriate mechanism for

reviewing and correcting the sentence range Jones received after being convicted of first degree robbery. CP 111-12.

- b. The challenged convictions were either “unconstitutionally obtained” or “constitutionally invalid on its face.”

At sentencing, the State has the burden of establishing a defendant's criminal history by a preponderance of the evidence. Ammons, 105 Wn.2d at 186; State v. Hunley, 175 Wn.2d 901, 909–10, 287 P.3d 584 (2012) (citing State v. Ford, 137 Wn.2d 472, at 479–80, 973 P.2d 452 (1999)). A prior conviction is presumed constitutional, and a defendant normally may not contest the legality of prior convictions during sentencing proceedings on a current offense. Ammons, 105 Wash.2d at 187, 713 P.2d 719. Holding otherwise would “unduly and unjustifiably overburden the sentencing court.” Ammons, at 188, 713 P.2d 719.

There are two exceptions to the rule that the constitutional validity of prior convictions cannot be challenged. A sentencing judge may not include in criminal history a prior conviction “[1] which has been previously determined to have been unconstitutionally obtained or [2] which is constitutionally invalid on its face”. Ammons, at 187, 713 P.2d 719.

Jones may challenge the constitutional validity of the prior convictions at issue under either of the exceptions provided in Ammons because (1) the convictions at issue were previously determined to have been unconstitutionally obtained; and (2) because such un-counseled convictions are constitutionally invalid. Ammons, at 187, 713 P.2d 719. A conviction that is constitutionally invalid on its face (facially invalid) may not be considered as part of criminal history when sentencing under the SRA. State v. Ammons, 105 Wn.2d at 187-88; *accord*, State v. Manussier, 129 Wn.2d 652, 682, 921 P.2d 473 (1996).

In deciding that the holding in Ammons prevented it from deciding whether re-sentencing was appropriate, the trial court did not analyze whether the two exceptions outlined in Ammons applied in this case. RP1 24-33; CP 187-88. The defense did not present argument regarding the applicability of Ammons. RP1 24-25, 27-28.

Jones fits within either exception outlined in Ammons. There was the unpublished Ninth Circuit decision holding that Jones' un-counseled convictions could not be used against him at sentencing, a previous judicial determination that the prior convictions were unconstitutionally obtained. In addition, as to the second exception, the prior convictions at issue were un-counseled guilty pleas and therefore constitutionally invalid (facially invalid) because Jones' Sixth Amendment right to counsel at a

critical stage was violated. Prior convictions used at sentencing are facially invalid if they fail to show the defendant was represented at sentencing. A prior conviction is constitutionally invalid on its face if, without further elaboration, the judgment and sentence manifests infirmities of a constitutional magnitude. Ammons, 105 Wn.2d at 188. For example, the Court of Appeals has held that "where the judgment and sentence itself does not reflect representation by counsel or waiver, it is deficient on its face." State v. Marsh, 47 Wn.App. 291, 294, 734 P.2d 545 (1987), overruled in part by In re Petition of Williams, 111 Wn.2d 353, 368, 759 P.2d 436 (1988) (rejecting Marsh analysis "[t]o the extent that [it] holds or suggests that the State must prove the constitutional validity of prior convictions at a sentencing hearing").

Here, the convictions were facially invalid because the judgments fail to show Jones was represented by counsel who was present when Jones pleaded guilty in those matters. CP 114-53 (attachments 1-3). None of the judgments for the four 2003 convictions reflect that defense counsel appeared at sentencing -- the defense attorney signature lines were all left blank. CP 126, 139, 152. There was nothing to indicate either the presence of an attorney representing Jones during sentencing or a waiver of counsel. *See* State v. Marsh, 47 Wn. App. at 292. Jones' defense counsel in those matters had been allowed to withdraw. CP 108.

Under either exception outlined in Ammons, it was proper for the court to reach the re-sentencing issue raised in Jones' CrR 7.8 motion because the un-counseled convictions could not be used at sentencing. Jones was not seeking to vacate the un-counseled convictions from 2003. Rather, Jones was requesting a re-sentencing where the convictions at issue could not be used.

The un-counseled convictions are facially invalid under federal and state caselaw. The case of Burgett v. Texas, 389 U.S. 109, 88 S.Ct. 258, 19 L.Ed.2d 319 (1967), and subsequent U.S. Supreme Court and Washington caselaw partially modifying the rules in Burgett, illustrate the special significance of the absence of a showing of counsel, in the context of facial invalidity. In Burgett, the Supreme Court had reversed a conviction under a Texas recidivist statute because some of the prior convictions, which constituted a necessary element of the recidivist offense, facially raised a presumption the judgments were entered in the absence of counsel. Burgett v. Texas, 389 U.S. at 261-62. State v. Marsh, 47 Wn. App. at 293. Burgett was later abrogated in part by the case of Parke v. Raley, 506 U.S. 20, 20-21, 113 S.Ct. 517, 518-19, 121 L.Ed.2d 391 (1992), wherein the U.S. Supreme Court ruled that, as to prior convictions used at sentencing, that the defendant was required to show

facial invalidity, rather than requiring the government to prove the constitutionality of prior convictions.

Where the judgment and sentence itself does not reflect representation by counsel or waiver, it is deficient on its face. Without more, such a conviction does not meet the State's burden under Ammons. State v. Marsh, 47 Wn. App. at 295, see also 293-94 and n. 2 (noting that “[i]n Burgett, the court held that a conviction which does not indicate either presence of counsel or waiver may not be used to enhance punishment”).

Thus, not only was it appropriate for the court to hold a re-sentencing on the basis articulated in Jones CrR 7.8 motion, the court must properly exclude the un-counseled convictions from Jones' criminal history when calculating his offender score. Remand to the superior court is the appropriate remedy. State v. Smith, 144 Wn. App. 860, 864, 184 P.3d 666 (2008).

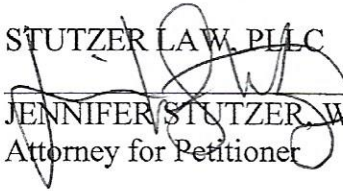
F. CONCLUSION

This Court should accept review under RAP 13.4(b)(1) and (2) and reverse the trial court's ruling and remand for resentencing.

DATED this 18th day of April, 2019.

Respectfully submitted,

STUTZER LAW PLLC



JENNIFER STUTZER, WSBA No. 38994
Attorney for Petitioner

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
RESPONDENT,)	SUPREME COURT NO. _____
)	
v.)	COA NO. 35456-3-III
)	
MAXWELL DELVON JONES,)	
)	
APPELLANT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, JENNIFER STUTZER, STATE THAT ON THE 18th DAY OF APRIL, 2019, I CAUSED THE ORIGINAL **PETITION FOR REVIEW** TO BE FILED IN THE **WASHINGTON STATE SUPREME COURT** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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OPPOSING COUNSEL
VIA COURT'S PORTAL

SIGNED IN SEATTLE, WASHINGTON THIS 18TH DAY OF APRIL, 2019.

X _____



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STATE OF WASHINGTON
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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	
)	No. 35456-3-III
Respondent,)	
)	
v.)	
)	
MAXWELL D. JONES,)	UNPUBLISHED OPINION
)	
Appellant.)	

KORSMO, J. — Maxwell Jones challenges the offender score used at sentencing, contending three of his prior offenses were found to be constitutionally invalid by a federal court. That is not the case. Because this appeal is not the proper action for challenging the prior convictions, his remedy is a personal restraint petition (PRP). We affirm the trial court.

FACTS

Mr. Jones was found guilty at a 2015 bench trial of first degree robbery. Considering ten prior adult felony convictions, the trial court sentenced him with an offender score of 9+. His standard range was 129-171 months in prison. The trial court imposed a term of 171 months.

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He appealed to this court, alleging error in the calculation of his offender score. This court affirmed. *State v. Jones*, No. 34038-4-III (Wash. Ct. App. Apr. 27, 2017) (unpublished) <http://courts.wa.gov/opinions/pdf/340384.pdf>.

Jones then timely moved for relief from judgment in the trial court pursuant to CrR 7.8, alleging that four of his prior convictions from 2003 were obtained in violation of his right to counsel. In support of his allegation, he attached the judgment and sentences from the three cases, as well as a memorandum opinion from the Ninth Circuit United States Court of Appeals. The judgment and sentence forms were signed by Jones, but not by a defense attorney.

The Ninth Circuit opinion vacated a federal sentence being served by Jones, explaining:

At sentencing, the district court relied on three 2003 Washington state court convictions for which Jones had pled guilty pro se in calculating Jones's base offense level and criminal history category. . . .

In a prior, unrelated federal prosecution of Jones, the Government conceded that Jones's uncounseled 2003 convictions were constitutionally invalid. . . . On remand, the district court may not use the three uncounseled 2003 state convictions to calculate Jones's base offense level or criminal history category.

United States v. Jones, 653 Fed. Appx. 861, 862 (9th Cir. 2016).

The trial court, however, rejected the CrR 7.8 motion, reasoning that Washington precedent prohibited trial courts from considering the constitutionality of prior convictions at sentencing. Any relief would have to come from a PRP.

Mr. Jones timely appealed to this court. A panel considered his appeal without hearing argument.

ANALYSIS

The sole issue presented by this appeal is whether the trial court erred by denying the CrR 7.8 motion. The trial court correctly determined that it could not consider the constitutionality of the prior convictions at the current sentencing.

This court reviews a trial court's CrR 7.8 ruling for abuse of discretion. *State v. Robinson*, 193 Wn. App. 215, 217, 374 P.3d 175 (2016). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

A felony sentence in Washington is dependent on two factors—the seriousness level of the offense and the offender's prior criminal convictions. RCW 9.94A.515; RCW 9.94A.525. The intersection of the seriousness level and the offender score provides the standard range. RCW 9.94A.510. Thus, a reduction in the offender score typically results in a reduced sentence range.

The governing authority on the issue of counting prior offenses, as recognized by the trial judge, is *State v. Ammons*, 105 Wn.2d 175, 187, 713 P.2d 719 (1986). There the court recognized that the State did not have to establish the constitutional validity of prior convictions used to establish a defendant's offender score. *Id.* at 187. A defendant "has no right to contest a prior conviction at a subsequent sentencing," but, instead, must seek

to challenge the prior conviction by collateral attack. *Id.* at 188. If successful, the defendant then may obtain resentencing. *Id.*

Ammons recognized two exceptions—the trial court could not use a conviction that (1) had previously been determined to have been unconstitutionally obtained, or (2) which was constitutionally invalid on its face. *Id.* at 187-188. Here, Mr. Jones argues that his challenged convictions fail both of the *Ammons* exceptions.

He first contends that the Ninth Circuit ruling determined that the prior convictions were unconstitutionally obtained. He overstates the extent of that ruling. In his case, the United States Attorney had conceded that three of the prior convictions were constitutionally invalid. *Jones*, 653 Fed. Appx. at 862. The Ninth Circuit accepted that concession, but did not invalidate those prior convictions. *Id.* Those earlier cases were not before the court.

The first *Ammons* exception applies only if the prior conviction was invalidated. *State v. Jones*, 110 Wn.2d 74, 78, 750 P.2d 620 (1988). Implicitly, the first *Ammons* exception is based on the theory of collateral estoppel. *Id.* In order for collateral estoppel to apply, “the party against whom the plea of collateral estoppel is asserted must have been a party or in privity with a party to the prior litigation.” *State v. Williams*, 132 Wn.2d 248, 254, 937 P.2d 1052 (1997).

State courts are required to accord full faith and credit to the judgment of a federal court. *Woodley v. Myers Capital Corp.*, 67 Wn. App. 328, 336, 835 P.2d 239 (1992).

“The federal constitution’s full faith and credit clause, U.S. Const. art. 4, § 1, may require that a federal court’s prior judgment be given a preclusive effect in a subsequent state action.” *Id.* If all the elements of collateral estoppel are present, a state court must give preclusive effect to a federal court judgment. *See Spahi v. Hughes-Nw., Inc.*, 107 Wn. App. 763, 774-775, 27 P.3d 1233 (2001). Collateral estoppel does not apply “where the issue is the role of prior state convictions in a federal sentencing scheme.” *United States v. Guthrie*, 931 F.2d 564, 571 (9th Cir. 1991).

For several reasons, collateral estoppel does not apply to the federal ruling. The primary reason is that the 2003 convictions were not before the federal court; the issue there was simply whether those convictions applied under the federal sentencing statutes to the current case before the trial court. In addition, the State was not a party to the federal prosecution, nor in privity with the United States. Thus, even if the federal ruling had reached the issue of validity of the 2003 convictions, collateral estoppel would not apply.

Mr. Jones also argues that the prior offenses are invalid on their face because the judgment forms indicate that he had no counsel. However, that fact does not establish facial invalidity.

“Constitutionally invalid on its face means a conviction which without further elaboration evidences infirmities of a constitutional magnitude.” *Ammons*, 105 Wn.2d at 188. “The face of the conviction includes any plea agreement.” *State v. Gimarelli*, 105

Wn. App. 370, 375, 20 P.3d 430 (2001). “The conviction need not show that a defendant’s rights were not violated; rather, for the conviction to be constitutionally invalid on its face, the conviction must affirmatively show that the defendant’s rights were violated.” *Id.* Thus, a “conviction that is merely silent about whether a defendant’s rights were protected is not facially invalid.” *State v. Booker*, 143 Wn. App. 138, 144, 176 P.3d 620 (2008).

Both the state and federal constitutions guarantee the right to representation by counsel and the right to represent one’s self. *State v. Modica*, 136 Wn. App. 434, 440-441, 149 P.3d 446 (2006). A criminal defendant may waive his right to counsel and proceed pro se. *Id.* at 441. Thus, the absence of an attorney’s name on the judgment and sentence does not itself establish that a conviction is invalid on its face.

Ultimately, Mr. Jones’s argument boils down to a contention that his waiver of counsel in 2003 was invalid. However, he does not prove that contention merely by showing that he was sentenced in the 2003 cases without an attorney. He will have to do that via a PRP where the waiver colloquy is put before a court that can assess the validity of the waiver of counsel.¹


¹ Although collateral attacks must be brought within one year of a judgment and sentence becoming final, that limitation does not apply to judgments that are invalid on their face. RCW 10.73.090; RCW 10.73.100(2).

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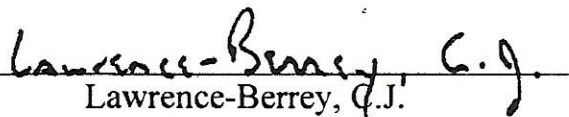
The trial court correctly held that Mr. Jones could not challenge the use of the prior convictions at sentencing in this action.

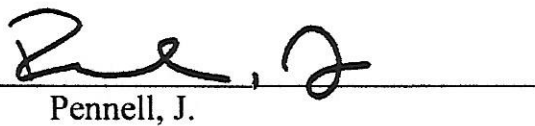
Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.


Korsmo, J.

WE CONCUR:


Lawrence-Berrey, C.J.


Pennell, J.

APPENDIX B

SN: 77

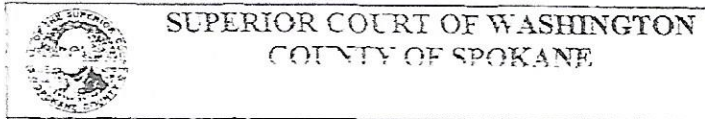
PC: 2

FILED

JUN 11 2017

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

(Clerk's Date Stamp)



SUPERIOR COURT OF WASHINGTON
COUNTY OF SPOKANE

STATE OF WASHINGTON

Plaintiff.

vs.

JONES, MAXWELL

Defendant.

CAUSE NO.: 13-1-01269-4

ORDER DENYING RE-SENTENCING

I. BASIS

THE DEFENDANT moved the court for: AN ORDER INVALIDATING
THREE PREDER RELAY CONVECTIONS FROM 2003.

II. FINDING

After reviewing the case record to date, and the basis for the motion, the court finds that:


THERE IS NOT A GOOD CAUSE TO INVALIDATE
THE PREDER CONVECTIONS AS A PART OF THE
SENTENCING PROCESS IN THIS CASE.

III. ORDER


IT IS ORDERED that:

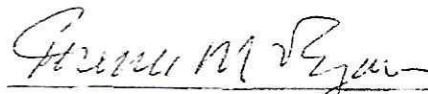
DUE TO THE WASHINGTON STATE SUPREME COURT'S DECISION IN STATE V. AMMONS, 105 WAI. 2d 175, 188, 713 P.2d 719 (1986), IT IS IMPROPER FOR THE TRIAL COURT TO DETERMINE THE CONSTITUTIONALITY OR VALIDITY OF PRIOR FELONY CONVICTIONS USED IN THE DEFENDANT'S OFFENSE SCORE; ANY ATTACK ON THOSE PRIOR CONVICTIONS MUST BE PROPERLY ADDRESSED IN A P.R.P.

Dated: July 11, 2017


HONORABLE JAMES M. TRIPLET
Superior Court Judge

Presented By:


DPA, 36642 FOR TAF.


ATTORNEY FOR DEFENDANT
WSBA # 4658

STUTZER LAW PLLC

April 18, 2019 - 4:59 PM

Filing Motion for Discretionary Review of Court of Appeals

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: State of Washington v. Maxwell Delvon Jones (354563)

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