

FILED
MAY 20, 2014
Court of Appeals
Division III
State of Washington

NO. 32077-4-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

ROBERT ALAN GABRIEL, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 04-1-01146-2

BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENT OF ERRORS

1. **The trial court had authority to vacate the certificate of discharge pursuant to CrR 7.8(b)(4), and the one year time limit of RCW 10.73.090 does not apply.**
2. **CrR 7.8(a) and CrR 7.8(b)(5) are not being relied upon by the State as authority for the court's order to vacate the certificate of discharge.**

II. STATEMENT OF THE CASE

The State agrees with the Statement of the Case included in the Appellant's Brief at pages 2 – 4.

III. ARGUMENT

1. **The trial court had authority to vacate the certificate of discharge pursuant to CrR 7.8(b)(4), and the one year time limit of RCW 10.73.090 does not apply.**

The trial court's authority to issue a certificate of discharge is purely statutory. Under RCW 9.94A.637, a defendant is entitled to a certificate of discharge once he has satisfied the requirements of his sentence, including paying all legal financial obligations. The statute does not give the court authority to issue a certificate of discharge if any of the requirements listed in the statute are lacking. *See* RCW 9.94A.637. Consequently, when the trial court in this case issued the certificate of

discharge, despite the unpaid restitution balance, the court exceeded its statutory authority rendering the certificate of discharge both “void” and “invalid on its face.” *State v. Zavala-Reynoso*, 127 Wn.App. 119, 110 P.3d 827 (2005), *See also In re Pers. Restraint of LaChapelle*, 153 Wn.2d 1, 6, 100 P.3d 805 (2004); *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 50 P.3d 618 (2002).

CrR 7.8(b)(4) allows the court authority to vacate a judgment whenever it is determined that the judgment is “void.” A judgment is “void,” for purposes of CrR 7.8(b)(4), if it was entered by a court lacking the inherent power to make or enter the particular order involved. *State v. Zavala-Teynoso*, 127 Wn.App. at 122. For example, a judgment and sentence is “void” if the pronounced sentence exceeds the statutory maximum allowable for the convicted offense. *Id.* at 123. In this case, because the defendant had not yet satisfied his sentence, the court lacked authority to issue the certificate of discharge rendering it “void” upon entry. As such, the court had authority to subsequently vacate the order of discharge under CrR 7.8(b)(4).

Similarly, the one year time limit imposed by RCW 10.73.090 does not apply in this case because the judgment and sentence is not “valid on its face.” A judgment and sentence is not “valid on its face” if, in entering the judgment and sentence, the court either exercised a power it

did not have, or exceeded its legal authority. *In re Pers. Restraint of Scott*, 173 Wn.2d 911, 915-18, 271 P.3d 218 (2012), *See also In re Pers. Restraint of Coats*, 173 Wn.2d 123, 267 P.3d 324 (2011). Although case law makes reference to the phrase “valid on its face,” reviewing courts routinely look beyond the four corners of the judgment and sentence to determine the facial validity of the document. *Coats*, 173 Wn.2d at 138-140. For example, a judgment and sentence was held to be “invalid on its face” where the court miscalculated a defendant’s offender score by including convictions that should have “washed-out,” and thus, imposed a sentence that exceeded its statutory authority. *Goodwin*, 146 Wn.2d 861, *See also LaChapelle*, 153 Wn.2d at 6.

As argued above, the trial court exceeded its statutory authority when it issued the certificate of discharge in favor of a defendant who had not yet satisfied the statutory requirements, rendering it not only “void,” but also “invalid on its face.” Accordingly, the one year time limit of RCW 10.73.090 does not apply.

2. CrR 7.8(a) and CrR 7.8(b)(5) are not being relied upon by the State as authority for the court’s order to vacate the certificate of discharge.

In the court’s findings, it cited specifically to CrR 7.8(a), and/or CrR 7.8(b)(4) or (5) as the basis for its authority to vacate the erroneously

entered certificate of discharge. The State, however, is not relying on CrR 7.8(a) or 7.8(b)(5). While the error that ultimately lead to the court's premature issuance of a certificate of discharge was a clerical one, the State chooses not rely on CrR 7.8(a). "[A]n intentional act of the court, even if in error, cannot be corrected under CrR 7.8." *State v. Rooth*, 129 Wn.App. 761, 771, 121 P.3d 755 (2005), *See also State v. Klump*, 80 Wn.App. 391, 909 P.2d 317 (1996). Because the court's entry of the certificate of discharge was intentional, albeit based upon misinformation, it appears that CrR 7.8 would not apply.

Moreover, CrR 7.8(b)(5) does not apply where, as here, the circumstances justifying relief existed at the time the judgment was entered. *Zavala-Reynoso*, 127 Wn.App. 119. Since the defendant clearly owed restitution at the time the certificate of discharge was entered, CrR 7.8(b)(5) does not apply.

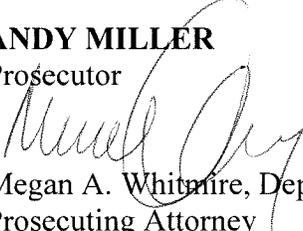
Although the defendant argues that the Benton County Clerk's Office committed "intentional misconduct," "ineptness," and "malfeasance," these accusations are not supported by the record. (App. Brief at 9, 11). Rather, it is clear that the misinformation upon which the court relied was the result of a clerk's oversight or omission.

IV. CONCLUSION

On May 3, 2012, when the court authorized a certificate of discharge, the defendant was statutorily ineligible because he still owed restitution. Consequently, the court lacked authority to authorize the certificate of discharge rendering it both “void” and “invalid on its face.” Ultimately, the trial court properly vacated the certificate of discharge pursuant to CrR 7.8(b)(4), and such action was not time-barred by RCW 10.73.090.

RESPECTFULLY SUBMITTED this 20th day of May, 2014.

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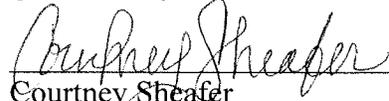
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