
Sup. Ct. No.: 78156-7

C.O.A.No.: 246817

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Personal Restraint Petition of:

SCOTT W. SKYLSTAD.

PETITION FOR DISCRETIONARY REVIEW

Scott W. Skylstad

SCOTT W. SKYLSTAD
#931646, CC2
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06 JAN -4 AM 8:03
BY C. J. HERRITT
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STATE OF WASHINGTON
SUPERIOR COURT
CLALLAM COUNTY

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APPENDIXES

- A. ~ AMENDED JUDGMENT AND SENTENCE (FILED JUL 28 2004)
- B. ~ UNPUBLISHED OPINION (FILED OCT 11 2005)
- C. ~ ORDER DISMISSING PERSONAL RESTRAINT PETITION (FILED
DEC 15 2005)
- D. ~ PERSONAL RESTRAIN PETITION, along with PETITIONERS
OPENNING BRIEF, and EXHIBITS A through D (FILED OCT
11 2005)

I. IDENTITY OF PETITIONER

Petitioner, SCOTT W. SKYLSTAD, asks this court to accept review of the court of appeals decision terminating review, designated in part II of this petition, and further, asks that this court decide and determine the Personal Restraint Petition of: SCOTT W. SKYLSTAD, that is set out in full in appendix D hereto, being that the appeals court does not wish to give fair and proper consideration thereto.

II. COURT OF APPEALS DECISION

The Petitioner seeks review of the Court of Appeals decision filed 12/15/2005, which was an order dismissing Personal Restraint Petition. A copy of the Courts order of dismissal is attached as appendix C.

The amended judgment and sentence was filed 07/28/2004, inwhich Petitioner was resentenced to an additional five (5) years from the original sentence. Mr. Skylstad appealed from that sentence. A copy of the court's unpublished opinion is attached as appendix B. A copy of the amended judgment and sentence is attached as appendix A.

The Personal Restraint Petition of SCOTT W. SKYLSTAD was filed on 11/21/2005 (while the appeal of the amended

judgment and sentence is still pending. [see Sup. Ct. No.: _____]). The Personal Restraint Petition of: SCOTT W. SKYLSTAD is set out in full in appendix D and reincorporated herein.

This petition for review is timely.

III. ISSUES PRESENTED FOR REVIEW

a. Assinment Of Error

1. The lower court erred in the dismissal as being "untimely under RCW 10.73.090", when the one (1) year time clock has not even begun to run do to the fact that there has been no final judgment on the appeal of the amended judgment and sentence.

b. Issues Of PRP

1. Ineffective Assistance of Counsel
2. Prosecutor Misconduct
3. Cumulative affect of Errors Denied Fair Trial

The facts, law, and arguments are set out in full in appendix D hereto, and are reincorporated herein in full.

IV. STATEMENT OF CASE

Petitioner SCOTT W. SKYLSTAD was convicted of a robbery and attempting to elude. Mr. Skylstad appealed. The Division Court remanded for resentencing for an additional five (5) years on an additional enhancement. Mr. Skylstad then appealed the amended judgment and sentence of the ex post facto enhancement. That appeal is still pending in this court.

The lower court erred in not reasonably applying all the facts of final judgment provisions to Petitioners Personal Restraint Petition when ordering dismissal thereof.

Petitioner contends that pursuant to RAP 16.4 (c), (2) and (3) his restraint is unlawful. Mr. Skylstad reincorporates the STATEMENT OF CASE as setforth in appendix D herein.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This court should accept review of this issue because the decision of the court of appeals is in conflict with the decision of this court. RAP 13.5 (b) (1). Further, the issues of the PRP are of Constitutional magnitude (violations of the UNITED STATES CONSTITUTION) and should be reviewed pursuant to RAP 16.4 (c) (2) and (3). Relief should be granted pursuant to RAP 16.4 (a). This court is asked to review the

record of the court of appeals for the proper determination of the dismissal, as well as the issues, facts, and law set forth in Mr. Skylstad's PRP pursuant to RAP 13.7 (a). (The record is complete in appendixs A through D)

Petitioner further argues that RCW 10.73.090 does limit the time that a defendant/petitioner may collaterally attack a conviction or sentence. It provides in relevant part:

"(1) No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final...

(3) for the purpose of this section, a judgment becomes final on the last of the following dates:

(b) The date date that an appellate court issues it's mandate disposing of a timely direct appeal from the conviction."

RCW 10.73.090 (1),(3), and (b).

In a legal text, "conviction" is defined to mean the "judgment and sentence", specifically it states:

"In a general sense, the result of a criminal trial which ends in a judgment or sentence that the accused is guilty as charged. The final judgment on a verdict or finding of guilty, a plea of guilty, or plea of nolo contendere, but does not include a final judgment which has been expunged by pardon, reversed, set aside, or otherwise rendered nugatory."

DELUXE BLACK'S LAW DICTIONARY, Sixth Edition, page 333-34.

It has been well settled by the Washington State Supreme Court in State v. Pascal, 108 Wn.2d 125, 131; 736 P.2d 1065 (1987) that: "[T]he remedy for an erroneous sentence is to... file a timely... appeal, which negates a reasonable expectation of finality." Id. "...[B]y appealing a portion of the sentence, the defendant in effect challenges the entire plan, and, thus, has no legitimate expectation in the finality of any ... part of the original sentence, whether or not that part is legal" citations omitted, quoting Washington v. Larson , 56 Wash.App 323, 783 P.2d 1093 (Wa.App. 12/18/1989). "In an ordinary sentence, the analytical touchstone... is the defendant's legitimate expectation of finality in the sentence, which may be influenced by many factors such as the ... pendency of an appeal or review of the sentencing determination..." quoting Washington v. Hardesty, 129 Wash.2d 303, 915 P.2d 1080 (Wa. 05/09/1996) [at 313].

Here, Mr. Skylstad appealed from the amended judgment and sentence of an ex post facto enhancement. (see appendix A-C) That appeal has NOT yet been finalized and is still pending - "which negates a reasonable expectation of finality". Id. Thus, the RCW 10.73.090 one (1) year time clock has NOT yet started and the filing of this PRP is therefore timely.

Further, pursuant to RCW 10.73.110, the court was required by law to advise defendant/petitioner of the collateral attack time

limitation. This notice states in relevant part:

"COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for a new trial or arrest of judgment, must be filed within one year of the final judgment in this matter ..."

see: AMENDED JUDGMENT AND SENTENCE (appendix A), page 9, part 5.1.

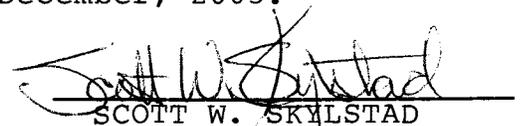
As shown here, there has been NO "final judgment" due to the ex post facto sentence appeal that is still pending - "which negates a reasonable expectation of finality". Id.

As described herein, Mr. Skylstad's PRP was filed prior to the commencement of the one (1) year time clock of RCW 10.73.090; therefore, the PRP is timely, the restraint is unlawful, and Mr. Skylstad is entitled to relief.

VI. CONCLUSION

Based on the above facts and authorities, the petitioner, SCOTT W. SKYLSTAD, respectfully asks this court to grant review and reverse the decision of the court of appeals, finding that the PRP is NOT time barred, and accept review in-full of the PRP (as shown in appendix D).

Respectfully submitted this 28 day of December, 2005.


SCOTT W. SKYLSTAD