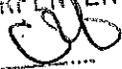


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No. 83544-6

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT PETITION OF:

JEFFREY COATS,

PETITIONER.

SUPPLEMENTAL BRIEF

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A. INTRODUCTION

Jeffrey Coats (hereinafter “Coats”) challenges his 1994 Pierce County judgment of convictions for Conspiracy to Commit Robbery in the First Degree, Robbery in the First Degree, and Conspiracy to Commit Murder in the First Degree. The issue is whether Coats’s petition is timely or time barred.

Mr. Coats contends that his PRP is timely because his judgment contains an error of law obvious from the face of that document—an incorrect maximum punishment. That error of law constitutes a “facial invalidity.” That facial invalidity *reveals* an invalid guilty plea. Coats’s guilty plea was invalid because he was misinformed about a direct consequence of his plea—namely, the maximum possible punishment for one of the three crimes bundled in his package plea deal.

In response, the State argues that a judgment is “facially invalid” only where the error on the judgment *by itself* causes a current and demonstrable harm to the defendant. The State’s argument is contrary to a long-standing line of authority, which this Court would need to overrule in order to side with the State.

On the other hand, Coats’s argument is consistent with and simply seeks to apply existing precedent. This Court should vacate Coats’s invalid judgment and remand for Coats to withdraw his invalid guilty pleas.

B. FACTS

The facts are simple and settled.

On March 17, 1995, Jeffrey Coats pleaded guilty to one count of Robbery in the First Degree, one count of Conspiracy to Commit Robbery in the First Degree, and one count of Conspiracy to Commit Murder in the First Degree committed when Coats was 14 years old. *See Statement of Defendant on Plea of Guilty* attached as Appendix B to PRP. All three charges were contained in a single amended information. Coats entered guilty pleas to all three charges in one proceeding—on one plea form. Coats's written plea statement contains misinformation about the maximum sentence for conspiracy to commit robbery, incorrectly listing the maximum as "20 yr/\$50,000."

Coats's *Judgment*, which is also attached as an appendix to his PRP, indicated that the maximum punishment for all three crimes, including the conspiracy to commit robbery count, is "LIFE."

The correct maximum for conspiracy to commit robbery was 10 years and/or a \$20,000 fine.

C. ARGUMENT

1. INTRODUCTION

Coats's *Judgment* is facially invalid because it contains an error of law. The "face" of Coats's judgment reveals that the sentencing court set a maximum penalty of "life" for a crime which only carries a maximum of 10 years. As a result, Coats's sentence is illegal. Thus, Coats's petition is not time barred.

The error on the judgment reveals an error in obtaining the conviction. Because Coats's petition is not time barred, he can attack the validity of his guilty plea. Coats's plea was based on misinformation about the maximum punishment, a direct consequence of his plea. As a result, his guilty plea was neither knowing nor voluntary. Finally, because Coats pled guilty to multiple charges in a single plea agreement, he should be permitted to withdraw all of his guilty pleas.

2. THE FACIAL INVALIDITY EXCEPTION TO THE TIME BAR

In the case at bar, the maximum penalty listed on Coats's *Judgment* is clearly erroneous. Coats's *Judgment* lists the dates of the crime ("8/30/94 to 9/6/94") and name (Conspiracy to Commit Robbery in the First Degree) of Coats's crime of conviction and then states that the maximum term is "LIFE." Robbery in the First Degree is a Class A offense. RCW 9A.56.200. Conspiracy to commit robbery drops the crime to a Class B offense, with a corresponding maximum sentence of 10 years and/or \$20,000. RCW 9A.28.040.

From this information alone, it is obvious that the maximum sentence that appears on Coats's judgment is erroneous and contrary to the law. The face of Coats's *Judgment* reveals the error without further elaboration.

RCW 10.73.090 establishes a one-year time limit for collateral attack on a judgment. Much more than one year has elapsed since this conviction was final. However, the one-year time limit does not apply to a judgment invalid on its face. RCW 10.73.090; *In re Restraint of Goodwin*, 146 Wn.2d 861, 866, 50 P.3d 618 (2002).

The "facial invalidity" rule finds its roots in this State's long-standing rule of law that a trial court retains the power and duty to correct an invalid sentence when the invalidity is apparent on the face of the judgment and sentence. *See State Smissaert*, 103 Wn.2d 636, 639, 694 P.2d 654 (1985); *McNutt v. Delmore*, 47 Wn.2d 563, 565, 288 P.2d 848 (1955) ("When a sentence has been imposed for which there is no authority in law, the trial court has the *power and duty* to correct the erroneous sentence, when the error is discovered"). (emphasis added). Sentencing provisions outside of the authority of the trial court have historically been described as "illegal" or "invalid." *Smissaert*, 103 Wn.2d at 639.

The error in *Smissaert*, like this case, concerned the maximum possible punishment. In *Smissaert*, a jury found the defendant guilty of murder, and the court sentenced him to a maximum term of 20 years in

prison. The Board of Prison Terms and Paroles later notified the court that the relevant statute required a maximum sentence of life imprisonment. Approximately two years after the initial sentencing, the trial court corrected the sentence to reflect the statutorily required maximum term. *Smitsaert*, 103 Wn.2d at 638. In affirming the entry of a corrected sentence, this Court relied on the trial court's authority to correct an invalid sentence, even if the correction involved a more onerous judgment. *Smitsaert*, 103 Wn.2d at 639. *See also State Traicoff*, 93 Wash.App. 248, 255, 967 P.2d 1277 (1998) (the failure to appeal an erroneous term of community placement by the State or DOC does not vest the defendant with a legitimate expectation of finality in an erroneous term of community placement).

A trial court only possesses the power to impose sentences provided by law. *In re Pers. Restraint of Carle*, 93 Wn.2d 31, 33-34, 604 P.2d 1293 (1980) (“Because the trial court herein imposed an erroneous sentence, and since the error has now been discovered, the court has both the power and the duty to correct it.”).¹

Recent caselaw has not overruled this solid line of precedent.

The State may argue otherwise, pointing to *In re Restraint of McKiernan*, 165 Wn.2d 777, 203 P.3d 375 (2009). Indeed, the State often

¹ It is important to note that Coats alternatively argues that the maximum sentence expressed on his judgment exceeds the jurisdiction of his sentencing court. This is a separate exception to the time bar. RCW 10.73.100(5).

reduces *McKiearnan* to a single sentence: a facial invalidity showing requires a “more substantial defect” than a “technical misstatement” that had “no actual effect” on petitioner. *Id.* at 783.

The easiest way to read *McKiearnan* in harmony with prior caselaw (which it never purports to overrule) is to note that the judgment in *McKiearnan* contained *no error* at all. *Id.* at 779 (“We conclude that he was not substantively misinformed as to the maximum sentence, his judgment and sentence is not invalid on its face, and his petition is time barred.”). Instead, this Court held that the statement of the maximum term of incarceration as stated on *McKiearnan*’s judgment was correct—because it accurately stated that “life” was the maximum. *Id.* at 782-83. In short, the *McKiearnan* court found no facial invalidity because it concluded there was no error on the face of the judgment. Simply put, “*McKiearnan* was aware of the maximum amount of time he could serve in confinement.” *Id.* at 782-83.

Thus, *McKiearnan* represents nothing more than a reaffirmation of this Court’s earlier holding in *Pers. Restraint of Hemenway*, 147 Wn.2d 529, 533, 55 P.3d 615 (2002): where there is no error on the judgment any error on a guilty plea form is time barred, if raised more than a year after finality.

It is important to read *McKiearnan* along with *In re PRP of Bradley*, 165 Wn.2d 934, 205 P.3d 123 (2009), which was decided only weeks later.

In *Bradley*, this Court accepted the State's concession that the judgment, which contained an incorrect standard range on one of several counts of conviction, was facially invalid despite the fact that the error resulted in no actual harm to Bradley. Because the judgment contained an obvious error of law that revealed an invalid plea, this Court held that Bradley's petition was timely and that he should be permitted to withdraw his entire "package deal" of guilty pleas.

This case is virtually indistinguishable from *Bradley*. Both involve judgments which contain obvious errors of law. In both cases, the error of law reveals an invalidity in the guilty plea. In both cases, the error on the judgment produced no independent harm. Instead, the error on the judgment revealed a fundamental defect in the conviction—an invalid guilty plea.

This Court has never held that harm or prejudice must flow from the error or facial invalidity on the judgment alone. For example, the use of the word "murder" in the *Hinton* cases had no actual effect on the rights of those petitioners, but this Court nevertheless held the judgments were invalid on their face. *In re Pers. Restraint of Hinton*, 152 Wn.2d 853, 100 P.3d 301 (2004). There is nothing in *McKiearnan* suggesting that this Court intended to overrule *Hinton*. See also *In re Thompson*, 141 Wn.2d 712, 10 P.3d 380 (2000) (judgment's listing of the name of the crime of

conviction did not harm Petitioner, but instead revealed a conviction for a crime that did not exist).

It makes little sense to require a showing of prejudice flowing from both the judgment and the underlying conviction. A ‘facial invalidity’ finding alone does not merit relief. It only serves as a gateway—making an otherwise untimely petition timely.

Thus, the proper question is whether an error of law found on the face of the *Judgment* identifies a defect in the guilty plea which merits relief. Here, it does.

3. FACIAL INVALIDITY REVEALING AN INVOLUNTARY PLEA

When a judgment reveals an infirmity “on its face,” the reviewing court can then look to other documents to determine whether there is “fundamental defect which inherently results in a complete miscarriage of justice.” See *In re Pers. Restraint of Thompson*, 141 Wh.2d at 719 (quoting *In re Pers. Restraint of Fleming*, 129 Wash.2d 529, 532, 919 P.2d 66 (1996)).

When a defendant pleads guilty, he must do so knowingly, voluntarily, and intelligently. *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996); Whether a plea satisfies this standard depends primarily on whether the defendant correctly understood its consequences. *State v. Walsh*, 143 Wn.2d 1, 8, 17 P.3d 591 (2001); *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988).

A defendant must be properly informed of all direct consequences of his guilty plea. *See State v. Ross*, 129 Wn.2d at 285; *State v. Barton*, 93 Wn.2d 301, 305, 609 P.2d 1353(1980) (“Defendant must be informed of all the direct consequences of his plea prior to acceptance of a guilty plea.”). In *Pers. Restraint of Hoisington*, 99 Wn. App. 423, 993 P.2d 296 (1999), this Court stated that “a guilty plea entered on a plea bargain that is based upon misinformation about sentencing consequences is not knowingly made.” 99 Wn. App. at 428.

The maximum possible sentence is a “direct” consequence of a guilty plea. *State v. Vensel*, 88 Wn.2d 552, 555, 564 P.2d 326 (1977) (“We believe it is important at the time a plea of guilty is entered, whether in justice or superior court, that the record show on its face the plea was entered voluntarily and intelligently, and affirmatively show the defendant understands the maximum term which may be imposed.”). *See also State v. Weyrich*, 163 Wn.2d 554, 182 P.3d 965 (2008) (Defendant misinformed about maximum punishment permitted to withdraw his plea because maximum term is direct consequence of plea, notwithstanding imposition of sentence within correct standard range).

Where a defendant is misinformed about a “direct consequence of a guilty plea” he does not need to demonstrate that the misinformation materially affected his decision to plead guilty. *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004). According to *Isadore*, a

defendant “need not make a special showing of materiality” in order for misinformation to render a guilty plea invalid, but instead must show that the misinformation concerned “a *direct* consequence of [the] guilty plea.” 151 Wn.2d at 296 (emphasis added).

As noted previously, this case is squarely controlled by *Bradley*. In *Bradley*, this Court permitted the petitioner to withdraw not one, but all of his guilty pleas where, as part of a “package deal,” the defendant was correctly informed of the consequences of one charge, but not of another charge. *See also State v. Turley*, 149 Wn.2d 395, 399-401, 69 P.3d 338 (2003). A plea bargain is a “package deal” if the agreements as to the individual charges are indivisible from one another. *See id.* at 400. This Court looks to objective manifestations of intent in determining whether a plea agreement was meant to be indivisible. *Id.* Where “pleas to multiple counts or charges were made at the same time, described in one document, and accepted in a single proceeding,” the pleas are indivisible from one another. *Id.*

There can be no question but that Coats’s three pleas were part of one package deal.

4. WITHDRAWAL OF PLEA

A defendant may withdraw his guilty plea if it was invalidly entered or if its enforcement would result in a manifest injustice. *Isadore, supra*;

CrR 4.2(f). “An involuntary plea produces a manifest injustice.” *Isadore*, 151 Wn.2d at 298.

Where a plea agreement is based on misinformation, the defendant may choose specific enforcement of the agreement or withdrawal of the guilty plea.” *Walsh*, 143 Wn.2d at 8-9. *See also In re Pers. Restraint of Hoisington*, 99 Wn. App. 423, 993 P.2d 296 (2000). The defendant's choice of remedy controls, unless there are compelling reasons not to allow that remedy. *Miller*, 110 Wn.2d at 535.

As noted above, Coats chooses withdrawal of his plea.

D. CONCLUSION

Based on the above, this Court should vacate Coats's judgment and remand this case to Pierce County Superior Court to permit him to withdraw his guilty pleas.

DATED this 17th day of July, 2010.

Respectfully Submitted:

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Attached for filing is Mr. Coats' supplemental brief (accompanied by the Tables). I have served opposing counsel by simultaneously sending this email and its attachment to Pierce County DPA Proctor.

--
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