

NO. 83544-6

---

---

**SUPREME COURT OF THE  
STATE OF WASHINGTON**

IN RE THE PERSONAL RESTRAINT PETITION OF:

JEFFREY COATS

---

Discretionary Review from Court of Appeals, Division II

No. 38894-4

---

**SUPPLEMENTAL BRIEF OF RESPONDENT**

---

MARK LINDQUIST  
Prosecuting Attorney

By  
KATHLEEN PROCTOR  
Deputy Prosecuting Attorney  
WSB # 14811

930 Tacoma Avenue South  
Room 946  
Tacoma, WA 98402  
PH: (253) 798-7400

FILED AS  
ATTACHMENT TO EMAIL

ORIGINAL

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
10 OCT 25 AM 10:53  
BY RAYMOND R. CENTER  
CLERK

**Table of Contents**

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR..... 1

    1. Should this court affirm the ruling below as the Court of Appeals correctly found that petitioner failed to show that his judgment was “facially invalid” under the standard set forth in this court’s decision in *In re McKiernan* so as to provide an exception to the time bar for his untimely petition?..... 1

    2. Should this court reaffirm its holding in *In re Stoudmire* which limits the relief available in a collateral attack asserting facial invalidity to correction of that invalidity in the judgment?..... 1

    3. Should this court reject petitioner’s arguments as being harmful as they undermine the legislative goal of imposing a time limit on collateral attacks challenging the voluntariness of guilty pleas and undermine the finality of judgments based upon guilty pleas?..... 1

B. STATEMENT OF THE CASE. .... 1

C. ARGUMENT.....3

    1. UNDER *McKIEARNAN*, PETITIONER HAS FAILED TO SHOW THAT HIS JUDGMENT IS FACIALLY INVALID; THIS COURT SHOULD AFFIRM THE RULING BELOW DISMISSING THE PETITION AS TIME-BARRED.....3

    2. PETITIONER SEEKS RELIEF TO WHICH HE IS NOT ENTITLED AS THIS COURT HAS REGULARLY LIMITED RELIEF ON CLAIMS OF FACIAL INVALIDITY TO CORRECTION OF THE INVALID PORTION OF THE JUDGMENT. ....9

D. CONCLUSION. ....21

## Table of Authorities

### State Cases

<i>In re Bass v. Smith</i> , 26 Wn.2d 872, 176 P.2d 355 (1947) .....	8, 9
<i>In re Hagler</i> , 97 Wn.2d 818, 823, 650 P.2d 1102 (1982).....	8, 16, 19
<i>In re Mercer</i> , 108 Wn.2d 714, 718-721, 741 P.2d 559 (1987) .....	16
<i>In re Pers. Restraint of Hemenway</i> , 147 Wn.2d 529, 531, 55 P.3d 615 (2002) .....	4, 5, 14, 15, 19, 20
<i>In Re Personal Restraint of Stoudmire</i> , 141 Wn.2d 342, 5 P.3d 1240 (2000) .....	9, 10, 11, 12, 14, 15, 19, 20
<i>In re PRP of Bradley</i> , 165 Wn.2d 934, 205 P.3d 123 .....	15, 16, 17, 20
<i>In re PRP of Goodwin</i> , 146 Wn.2d 861, 866-67, 877, 50 P.3d 618 (2002) .....	12, 13
<i>In re PRP of Isadore</i> , 151 Wn.2d 294, 88 P.3d 390 (2004) .....	16, 19, 20
<i>In re PRP of Thompson</i> , 141 Wn.2d 712, 719, 725, 10 P.3d 380 (2000) .....	12
<i>In re PRP of West</i> , 154 Wn.2d 204, 110 P.3d 1122 (2005).....	13
<i>In re Tobin</i> , 165 Wn.2d 172, 176, 196 P.3d 670, 672 (2008).....	14
<i>In the Matter of the Personal Restraint of McKiernan</i> , 165 Wn.2d 777, 203 P.3d 365 (2009) .....	1, 3, 6, 7, 8, 9
<i>State v. Calhoun</i> , 134 Wn. App. 84, 90 n.5, 138 P.3d 659 (2006) .....	12
<i>State v. Eilts</i> , 94 Wn.2d 489, 496, 617 P.2d 993 (1980).....	13

**Federal and Other Jurisdictions**

*Bousley v. United States*, 523 U.S. 614, 621, 118 S. Ct. 1604, 1610,  
140 L. Ed. 2d 828 (1998)..... 18

*Castro v. United States*, 540 U.S. 375, 386, 124 S. Ct. 786,  
157 L. Ed. 2d 778 ..... 19

*Engle v. Issac*, 456 U.S. 107, 102 S. Ct. 1558,  
71 L. Ed. 2d 783 (1982)..... 19

*Mabry v. Johnson*, 467 U.S. 504, 508, 104 S. Ct. 2543, 2546-2547,  
81 L. Ed. 2d 437 (1984)..... 17

*Sanchez-Llamas v. Oregon*, 548 U.S. 331, 356-357, 126 S. Ct. 2669,  
2685 - 2686, 165 L. Ed. 2d 557 (2006) ..... 19

**Statutes**

RCW 10.73.090 .....3, 4, 5, 10, 11, 12, 15, 19

RCW 10.73.090(1) ..... 11

RCW 10.73.100 .....4, 5, 10, 12

A. ISSUES PERTAINING TO SUPREME COURT REVIEW.

1. Should this court affirm the ruling below as the Court of Appeals correctly found that petitioner failed to show that his judgment was “facially invalid” under the standard set forth in this court’s decision in *In re McKiernan* so as to provide an exception to the time bar for his untimely petition?

2. Should this court reaffirm its holding in *In re Stoudmire* which limits the relief available in a collateral attack asserting facial invalidity to correction of that invalidity in the judgment?

3. Should this court reject petitioner’s arguments as being harmful as they undermine the legislative goal of imposing a time limit on collateral attacks challenging the voluntariness of guilty pleas and undermine the finality of judgments based upon guilty pleas?

B. STATEMENT OF THE CASE.

The facts are set forth in the State’s response below with citations to supporting documents, but the critical points are as follows:

On April 19, 1995, petitioner JEFFREY COATS, was sentenced on one count of conspiracy to commit murder in the first degree, one count of conspiracy to commit robbery in the first degree, and one count of robbery in the first degree based upon his entry of a guilty plea.

Petitioner entered a plea agreement where the State dismissed three charges<sup>1</sup> -conspiracy to commit kidnapping in the first degree, kidnapping in the first degree and attempted murder in the first degree – in return for petitioner’s entry of a guilty plea to conspiracy to commit murder (Count I), conspiracy to commit robbery (Count II), and robbery in the first degree (Count III). The Statement of Defendant on Plea of Guilty correctly stated that the maximum term on Counts I and III was “life” but incorrectly stated the maximum term on Count II was “twenty years” instead of the correct term of “ten years.” When petitioner was sentenced, his judgment incorrectly listed the maximum term as being “life” on Count II. The plea form correctly indicated the applicable standard ranges for all three offenses.

Petitioner was given standard range, concurrent sentences on all three convictions; he received 240 months on the conspiracy to commit murder (Count I), 51 months on the conspiracy to commit robbery (Count II) and 69 months on the robbery in the first degree. Petitioner did not appeal.

---

<sup>1</sup> The facts underlying the original charges showed that petitioner and two co-defendants agreed to kidnap, rob, and murder the owner of a particular BMW that they had seen parked regularly at a certain parking garage; while laying-in-wait for this owner, a security guard approached them and told them to leave the garage. The three left the garage and agreed to find a new target for their scheme; they found a new victim in a parking lot a short distance away.

Nearly fourteen years after being sentenced, he filed a personal restraint petition asserting for the first time that his plea was not knowing, intelligent, and voluntarily made because he was misinformed of the maximum penalty on the conspiracy to commit robbery in the first degree. The Court of Appeals dismissed his petition finding that under *In re McKiernan*, petitioner had failed to show that the defect in his judgment was more substantial than a technical misstatement that had no actual effect on the rights of the petitioner; the court ruled that, as such, he had failed to show that his judgment was facially invalid. Petitioner successfully sought discretionary review in the Supreme Court of this decision.

C. ARGUMENT.

1. UNDER *McKIEARNAN*, PETITIONER HAS FAILED TO SHOW THAT HIS JUDGMENT IS FACIALLY INVALID; THIS COURT SHOULD AFFIRM THE RULING BELOW DISMISSING THE PETITION AS TIME-BARRED.

This court recently addressed whether a technical misstatement of the maximum term of confinement in a judgment renders the judgment “facially invalid” such that the one year time bar of RCW 10.73.090, which limits the filing of untimely collateral attacks, does not apply. *In the Matter of the Personal Restraint of McKiernan*, 165 Wn.2d 777, 203 P.3d 365 (2009). McKiernan pleaded guilty to a single count of

robbery in the first degree in 1987 and his judgment listed the maximum term for the crime as twenty years to life imprisonment when it should have listed the maximum term simply as “life.” *Id.* at 780. McKiernan did not appeal but twenty years after his plea, he filed a personal restraint petition alleging that his plea had been involuntary because he had been misinformed of the correct statutory maximum term. As for the one-year time bar of RCW 10.73.090, McKiernan did not argue that his claim fell under any of the exceptions to the time bar listed in RCW 10.73.100; rather, he argued that the error in his judgment regarding the maximum term rendered his judgment “facially invalid” so the time bar did not apply. *Id.* at 781; *see also* RCW 10.73.090; *In re Pers. Restraint of Hemenway*, 147 Wn.2d 529, 532, 55 P.3d 615 (2002). The Court of Appeals dismissed his petition finding the defect in the judgment to be “clerical error” rather than an error that rendered the judgment facially invalid. On review in this Court, McKiernan again asserted that his judgment was invalid because the sentencing court had no “authority to set the maximum sentence at anything less than life imprisonment” and that he need do nothing more than point out this error in the judgment in order to avoid the one-year time bar. *Id.* at 782. This Court disagreed, noting that “McKiernan was convicted of a valid crime by a court of competent jurisdiction and was sentenced within the appropriate standard range,” and

to “be facially invalid, a judgment and sentence requires a more substantial defect than a technical misstatement that had no actual effect on the rights of the petitioner.” *Id.* at 782-783. This Court held that as McKiernan had failed to establish facial invalidity of his judgment, his personal restraint petition was time barred under RCW 10.73.090 and properly dismissed. *Id.* at 783.

In the case now before the court, petitioner, like McKiernan, asserts that his plea was involuntary because he was misinformed as to the statutory maximum term on one of his three convictions. His petition was untimely, being filed almost fourteen years after his conviction became final under RCW 10.73.090. There is no statutory exception to the time bar for a claim that a plea was involuntary; this reflects a legislative intent to limit the time frame for seeking collateral relief on claims involving the voluntariness of a plea to one year from the time the judgment became final. RCW 10.73.100.<sup>2</sup> This court has held that an assertion that a plea is involuntary does not establish that a judgment is invalid on its face. *See In re Pers. Restraint of Hemenway*, 147 Wn.2d 529, 531, 55 P.3d 615 (2002)(holding that a defendant’s collateral attack was time barred where he filed the petition more than one year past the one year time limit, and the defendant’s only challenge was that his plea was not voluntary,

knowing, and intelligent, because he was not informed of the term of mandatory community placement). And while a showing of “facial invalidity” in a judgment is an exception to application of the time bar, the type of “facial invalidity” required to obtain relief must meet the standard set by *McKiernan*.

In the case now before the court, petitioner Coats makes essentially the same argument as in *McKiernan* with regard to the facial invalidity of his judgment due to an incorrect listing of the statutory maximum. Petitioner argued that he need not demonstrate any prejudice once he has shown an error in the information he was given about a direct consequence of a guilty plea. Petition at pp.6-8. This Court rejected this argument *McKiernan*, and that decision controls here. Under *McKiernan*, “a more substantial defect *than a technical misstatement that had no actual effect on the rights of the petitioner*” is required before the court will find that a judgment is facially invalid. *See* 165 Wn.2d at 783(emphasis added).

The facts of petitioner’s case show only a technical misstatement. Petitioner pleaded guilty to three crimes –two carried maximum term of life and the third, conspiracy to commit robbery, carried a maximum term of ten years. Petitioner was informed that he faced the possibility that he could be sentenced to ten years in prison for the conspiracy to commit

---

<sup>2</sup> *See* Appendix A, for text of statute.

robbery; he was also misinformed that he might possibly spend longer in prison than ten years on that offense. Similar to *McKiernan*, petitioner was informed of a statutory maximum that included the proper term but which also included some misinformation. While petitioner was incorrectly informed that the maximum term on his conspiracy to commit robbery offense was twenty years, he was correctly informed of his standard range for this offense and that his sentence on this offense would run concurrently with his other two convictions. Petitioner received a proper standard range sentence of 51 months on this offense, the court did not impose an exceptional sentence beyond what the legislature authorized or contrary to the advisement he was given regarding the maximum term. This sentence was run concurrently with his 240 month sentence for conspiracy to commit murder, which carried a maximum term of life. Thus, petitioner knew that by entering his plea to three crimes, he was subjecting himself to a maximum term of life in prison on two of the offenses, but that he would likely receive a sentence within the appropriate standard range on each count and a total term of confinement on all three offenses and that his total sentence would be far shorter than a life sentence. As expected, the court imposed standard range sentences. Like *McKiernan*, petitioner was convicted of valid crimes by a court of competent jurisdiction and was sentenced within the appropriate standard ranges. In other words, he received the precise sentence that he expected to receive at the time he entered his plea. Under *McKiernan*, petitioner

needs to show “a more substantial defect than a technical misstatement that had no actual effect” on his rights. He failed to meet this burden.

The decision in *McKiernan* is completely consistent with an earlier decision of the Supreme Court, when collateral relief was limited to that guaranteed by the state constitution. *In re Bass v. Smith*, 26 Wn.2d 872, 176 P.2d 355 (1947); see also *In re Hagler*, 97 Wn.2d 818, 823, 650 P.2d 1102 (1982). In *Bass*, the Court addressed a similar situation as the petitioner’s. Mr. Bass sought relief by habeas corpus contending that his judgment was void because it listed the statutory maximum for his conviction on rape as being “not more than fifteen years” when under the relevant law it should have been set at “not less than twenty years.” *Bass* at 874-875. The Supreme Court agreed that the judgment was erroneous but went on to hold that not every “erroneous judgment” is the equivalent of a “void judgment.” It found that the judgment was not void because the trial court had had subject matter jurisdiction as well as personal jurisdiction over Mr. Bass, who had been present at the time of sentencing. *Id.* at 877.

While the judgment was deficient, it was not absolutely unauthorized, or of an entirely different character from that authorized by law. The judgment was erroneous, in that it did not impose a sentence of not less than twenty years, as provided by Rem. Rev. Stat. (Sup.), § 10249-2, but it was not absolutely void.

*Id.* The Court concluded that as only void judgments could be collaterally attacked by way of habeas corpus, Mr. Bass was not entitled to relief. *Id.* at 876-877. From the holding in **Bass** it is clear that this court may deny petitioner relief without violating the state constitution as petitioner cannot show that his judgment is void.

The Court of Appeals correctly applied the decision in **McKiernan** and its decision should be upheld.

2. PETITIONER SEEKS RELIEF TO WHICH HE IS NOT ENTITLED AS THIS COURT HAS REGULARLY LIMITED RELIEF ON CLAIMS OF FACIAL INVALIDITY TO CORRECTION OF THE INVALID PORTION OF THE JUDGMENT.

While a showing of “facial invalidity” in a judgment is an exception to application of the time bar, this court has regularly, with one exception, limited the relief available in such circumstances to the correction of the invalidity in the judgment; this court has not allowed expansion of the permissible relief to claims that are time-barred.

Several decisions of this Court have noted that while a petitioner may be entitled to correction of a facial invalidity, such correction does not affect the finality of that portion of the judgment and sentence that was correct and valid when imposed. Notably, under ***In Re Personal Restraint of Stoudmire***, 141 Wn.2d 342, 5 P.3d 1240 (2000), a facial invalidity in the length of the sentence imposed did not provide an

exception for examining a time barred claim regarding the voluntariness of the plea.

In *Stoudmire*, the court was faced with an untimely personal restraint petition raising numerous claims. Stoudmire challenged his convictions under two cause numbers; in one of these cause numbers, he had pleaded guilty to two counts of indecent liberties, one count of statutory rape in the second degree, one count of rape of a child in the second degree, and one count of rape of a child in the third degree.

*Stoudmire*, 141 Wn.2d at 347. His petition raised numerous challenges to these convictions; some of the challenges pertained to all of the counts, e.g., ineffective assistance of counsel, incorrect offender score, and involuntary plea. Other challenges pertained only to certain counts.

Stoudmire claimed that the two counts of indecent liberties were filed after the statute of limitations had expired; he claimed that there was no factual basis for the rape of a child in the third degree (a claim that goes to the knowing and voluntary nature of the guilty plea), and that the sentences on both child rape convictions exceeded the statutory maximum of the crime.

*Id.* The court analyzed whether Stoudmire's untimely claims fell within any exception in RCW 10.73.090 or RCW 10.73.100. The court ultimately dismissed claims which fell under exceptions found under RCW 10.73.100 because Stoudmire had submitted a mixed petition by

including claims, such as those challenging the sufficiency of his guilty plea, for which there was no applicable exception. The court did examine claims that fell under the exceptions in RCW 10.73.090 pertaining to whether the court lacked jurisdiction or whether the judgment was facially invalid. The court noted:

If petitioner can show that *his claims* meet the conditions set forth in RCW 10.73.090(1), they are not time-barred, and this court may consider them.

***Stoudmire***, 141 Wn.2d at 351 (emphasis added).

Ultimately, the court found that two of Stoudmire's claims<sup>3</sup> fell within exceptions to RCW 10.73.090(1), and could be considered. First, the court found that the judgment was invalid on its face because it could be shown that the statute of limitations had expired before the State filed the two indecent liberties counts; it remanded for dismissal of those counts. *Id.* at 355. Secondly, the court found that the 198 month sentence on the rape of a child in the second degree, a Class B felony, and the 102 month sentence on the rape of a child in the third degree, a Class C felony, both were facially invalid because they each exceeded the statutory maximum terms of ten and five years, respectively. The remedy the court provided was remand for correction of the erroneous sentences. *Id.* at 356. Importantly, this Court did not find that the presence of a facial invalidity

regarding the length of the sentences imposed on the sex offenses provided Stoudmire with a mechanism for raising his untimely claim of an involuntary plea. In other words, this Court did not allow Stoudmire to circumvent the time bar by bootstrapping a claim that did not fall within the exceptions of RCW 10.73.090 and .100, to one for which there was an exception.

*Stoudmire* is not the only case where a court, in deciding the merits of an untimely petition, has limited the remedy to correction of the facial invalidity. See e.g., *In re PRP of Thompson*, 141 Wn.2d 712, 719, 725, 10 P.3d 380 (2000)(court finds the judgment was invalid on its face because it showed that Thompson pleaded guilty to an offense that occurred before the effective date of the statute creating the offense; the remedy was dismissal of charge without prejudice). The court in *In re PRP of Goodwin*, 146 Wn.2d 861, 866-67, 877, 50 P.3d 618 (2002), found that defendant's untimely claim that his offender score included "washed out" juvenile offenses was not barred as his judgment was facially invalid for including these offenses as criminal history. The court remanded for resentencing without the washed out convictions; *State v. Calhoun*, 134 Wn. App. 84, 90 n.5, 138 P.3d 659 (2006)(court rejects Calhoun's assertion that errors in the judgment constitute facial

---

<sup>3</sup> These claims affected a total of four of the five counts in the cause number.

invalidities that overcome the one-year time bar so as to allow him to challenge the voluntariness of his plea).

In *In re PRP of West*, 154 Wn.2d 204, 110 P.3d 1122 (2005), the sentencing judge made a handwritten notation on West's judgment and sentence explaining that West stipulated to ten years flat time with no earned early release. The Supreme Court determined that as the trial court had no authority to control early release, the court's notation on the judgment and sentence thus rendered the judgment facially invalid. *West*, 154 Wn.2d at 206. In determining what remedy was appropriate, this Court explained:

This court has been clear that the imposition of an unauthorized sentence does not require vacation of the entire judgment or granting of a new trial. The error is grounds for reversing only the erroneous portion of the sentence imposed.

*West*, 154 Wn.2d at 215 (citing *State v. Eilts*, 94 Wn.2d 489, 496, 617 P.2d 993 (1980)); see also *Goodwin*, 146 Wn.2d at 877 ("Correcting an erroneous sentence in excess of statutory authority does not affect the finality of that portion of the judgment and sentence that was correct and valid when imposed."). The court in *West* thus remanded to trial court for correction of the invalid judgment and sentence in the form of deletion of the handwritten notation. *West*, 154 Wn.2d at 215.

Recently, the Washington Supreme Court reiterated, “[w]hen a judgment and sentence is facially invalid, the proper remedy is remand for correction of the error.” *In re Tobin*, 165 Wn.2d 172, 176, 196 P.3d 670, 672 (2008).

These decisions illustrate that a defendant may not obtain relief on a time barred claim, such as the involuntariness of his plea, by trying to bootstrap the untimely claim to one that involves facial invalidity. To allow this would be to allow a defendant to accomplish indirectly what the law does not allow him to do directly. A petitioner who demonstrates that a judgment contains a facial invalidity may obtain a correction of that invalidity, but that does not provide him with a means of obtaining relief on a time barred claim. As will be discussed more thoroughly below, petitioner’s requested relief poses a significant threat to the finality of criminal judgments and should be rejected.

In the case now before the court, the State submits that under *Stoudmire* and *Hemenway*, petitioner is – at most- entitled to a correction of his judgment so that it properly indicates the statutory maximum for the crime of conspiracy to commit robbery (Count II) is ten years as that corrects the facial invalidity. He is not entitled to any other relief.

The only exception to this line of cases that have limited the relief to correction of the facial invalidity is the recent case of *In re PRP of*

*Bradley*, 165 Wn.2d 934, 205 P.3d 123. In this case the Supreme Court allowed Bradley to withdraw his plea to two drug offenses after he showed that he had be misinformed as to the standard range on the lesser of the two charges due to the inclusion of “washed out” juvenile offenses in his offender score. Bradley had not appealed his judgment and he sought collateral relief in a petition that was filed almost five years after his judgment became final. The Court in *Bradley* did not address the limitations of RCW 10.73.090 except for this comment: “The State also appears to concede that the miscalculation resulted in a facial invalidity on Bradley’s judgment and sentence, allowing him to avoid the one-year time bar to filing a personal restraint petition.” *Bradley*, 165 Wn.2d at 938-39. By failing to fully analyze the issue of the relevant time bars, the *Bradley* court apparently failed to note that its resolution of Bradley’s petition is wholly inconsistent with how it resolved similar issues in *Stoudmire*, *supra*, and with other cases, such as *Hemenway*, which held there is no exception to the time bar for a claim that a plea is involuntary. The *Bradley* court then goes on to address the issues before it by applying case

law from cases decided on direct appeal and one case<sup>4</sup> that involved a *timely* filed personal restraint petition where a trial court imposed a burdensome sentencing condition of which the petitioner had not been informed at the time of his plea. *See Bradley*, 165 Wn.2d at 939-41. In failing to hold Bradley to any higher burden of showing error or prejudice than would be required of a defendant on direct appeal, the court seemingly abandoned decades of case law noting the distinctions between a direct appeal and a collateral attack and placing a higher burden on a petitioner seeking collateral relief. *See e.g., In re Mercer*, 108 Wn.2d 714, 718-721, 741 P.2d 559 (1987)(rule that constitutional errors must be shown to be harmless beyond a reasonable doubt has no application in the context of personal restraint petitions as petitioner must show actual and substantial prejudice); *In re Hagler*, 97 Wn.2d 818, 823-25, 650 P.2d 1103 (1982)(stating that fundamental to the nature of habeas corpus relief is the principle that the writ will not serve as a substitute for appeal and holding that a personal restraint petition, like a petition for a writ of habeas

---

<sup>4</sup> In *In re PRP of Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004), the defendant entered a guilty plea, but was not advised regarding a term of mandatory community placement, as the prosecutor and defense counsel were unaware of the required condition. After sentencing, the Department of Corrections notified the prosecutor of the error. After the time for appeal had expired, the court granted a prosecutor's motion to amend the judgment to include the term of community placement. In response, Isadore promptly filed a personal restraint petition seeking specific performance of his plea agreement, which the court granted.

corpus, is not a substitute for an appeal). The *Bradley* decision appears to lead to dangerous ground –conflating the burdens imposed on a criminal defendant on direct appeal and a petitioner on collateral attack so that there is no distinction. It also granted collateral relief beyond that necessary to correct a facial invalidity.

It is not unfair to impose strict procedural default rules with respect to collateral attacks and strict limits have been enacted in the federal courts as well as in Washington. To deny a state petitioner the opportunity to raise an untimely claim of involuntary plea for the first time in a collateral attack in state court proceeding is consistent with how such a petitioner would be treated had he entered his plea in a federal court. A federal prisoner must challenge the voluntariness of his plea on direct appeal in order to raise it as a ground in a collateral attack. *Mabry v. Johnson*, 467 U.S. 504, 508, 104 S. Ct. 2543, 2546-2547, 81 L. Ed. 2d 437 (1984). A federal prisoner seeking relief from his plea under these circumstances<sup>5</sup> could not obtain relief in the federal courts unless he could show that he was actually innocent of his crime. The United States Supreme Court articulated its view as follows:

We have strictly limited the circumstances under which a guilty plea may be attacked on collateral review. “It is well settled that a voluntary and intelligent plea of guilty made

---

<sup>5</sup> Namely, raising a claim of an involuntary plea for the first time in a collateral attack.

by an accused person, who has been advised by competent counsel, may not be collaterally attacked.” *Mabry v. Johnson*, 467 U.S. 504, 508, 104 S.Ct. 2543, 2546-2547, 81 L.Ed.2d 437 (1984) (footnote omitted). And even the voluntariness and intelligence of a guilty plea can be attacked on collateral review only if first challenged on direct review. Habeas review is an extraordinary remedy and “will not be allowed to do service for an appeal.” *Reed v. Farley*, 512 U.S. 339, 354, 114 S.Ct. 2291, 2300, 129 L.Ed.2d 277 (1994) (quoting *Sunal v. Large*, 332 U.S. 174, 178, 67 S.Ct. 1588, 1590-1591, 91 L.Ed. 1982 (1947)). Indeed, “the concern with finality served by the limitation on collateral attack has special force with respect to convictions based on guilty pleas.” *United States v. Timmreck*, 441 U.S. 780, 784, 99 S.Ct. 2085, 2087, 60 L.Ed.2d 634 (1979).

*Bousley v. United States*. 523 U.S. 614, 621, 118 S. Ct. 1604, 1610, 140 L. Ed. 2d 828 (1998)(refusing to review a claim that a plea was involuntary on habeas review when the petitioner had not challenged the voluntariness of his plea on direct appeal and noting the only way to avoid this procedural default was for petitioner to make a showing that he was actually innocent of the crime to which he pleaded guilty.). This policy reflects that the concern for finality of judgments outweighs the concern that a defendant might have been given some misinformation in the context of a plea agreement. This Court has recognized the importance of finality of decisions as well: “Collateral relief undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish admitted offenders.” *Hagler*,

97 Wn.2d at 923 (citing *Engle v. Issac*, 456 U.S. 107, 102 S. Ct. 1558, 71 L. Ed. 2d 783 (1982)). The public interest in the finality of judgments, especially those based on guilty pleas, must be protected.

Procedural default rules, such as the time bar in RCW 10.73.090, are important in an adversary justice system such as ours which relies upon the parties to raise and litigate any significant issues, doing so in the appropriate manner and at the appropriate time. See *Castro v. United States*, 540 U.S. 375, 386, 124 S. Ct. 786, 157 L. Ed. 2d 778 (2003) (Scalia, J, concurring in art and concurring in judgment).

Procedural default rules are designed to encourage parties to raise their claims promptly and to vindicate “the law’s important interest in the finality of judgments.” *Massaro [v. United States]*, 538 U.S.[500], at 504, 123 S.Ct. 1690[, 155 L.Ed.2d 714 (2003)]. The consequence of failing to raise a claim for adjudication at the proper time is generally forfeiture of that claim.

*Sanchez-Llamas v. Oregon*, 548 U.S. 331, 356-357, 126 S. Ct. 2669, 2685 - 2686, 165 L. Ed. 2d 557 (2006).

The decisions in *Stoudmire*, *Hemenway*, and *Isadore*, protect the finality of judgments by effectively limiting the ability of a defendant to collaterally attack the voluntariness of his guilty plea to a timely filed collateral attack under RCW 10.73.090. If this challenge is not raised in a timely filed collateral attack, the defendant will be precluded from raising this claim, but may still seek correction of any facial invalidity in his

judgment. This is more extensive relief than what a similarly situated petitioner could do in federal court, yet it still offers some protection to the finality of judgment. In contrast, the decision in *Bradley* offers no protection to the finality of judgment and seemingly disregards, without discussion, years of treating collateral attacks differently than a direct appeal.

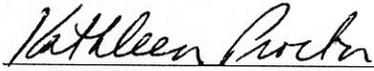
Petitioner in this case raised an untimely claim as to the voluntariness of his plea and seeks relief to which he is not entitled. He has not shown any actual prejudice as he received the sentence he expected to receive at the time he entered his plea. This court should take the opportunity to restate the continued vitality of its decisions in *Stoudmire*, *Hemenway*, and *Isadore* and reject petitioner's contention that he is entitled to relief on his untimely claim as to the voluntariness of his plea.

D. CONCLUSION.

For the foregoing reasons, this court should affirm the ruling below.

DATED: JULY 16, 2010

MARK LINDQUIST  
Pierce County  
Prosecuting Attorney

  
KATHLEEN PROCTOR  
Deputy Prosecuting Attorney  
WSB # 14811

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or to O.C. ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

7/16/10 Johnson  
Date Signature

# **APPENDIX “A”**

*RCW 10.73.100*

Westlaw

West's RCWA 10.73.100

Page 1

**C**

West's Revised Code of Washington Annotated Currentness

Title 10. Criminal Procedure (Refs &amp; Annos)

▣ Chapter 10.73. Criminal Appeals (Refs &amp; Annos)

→ **10.73.100. Collateral attack--When one year limit not applicable**

The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:

- (1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;
- (2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;
- (3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution;
- (4) The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;
- (5) The sentence imposed was in excess of the court's jurisdiction; or
- (6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

CREDIT(S)

[1989 c 395 § 2.]

Current with 2010 Legislation effective through October 1, 2010

(C) 2010 Thomson Reuters.

END OF DOCUMENT

© 2010 Thomson Reuters. No Claim to Orig. US Gov. Works.

## OFFICE RECEPTIONIST, CLERK

---

**From:** Heather Johnson [hjohns2@co.pierce.wa.us]  
**Sent:** Monday, October 25, 2010 10:29 AM  
**To:** OFFICE RECEPTIONIST, CLERK; Faulk, Camilla  
**Subject:** In Re the PRP of: Jeffrey Coats--83544-6  
**Attachments:** Untitled.PDF

Kathleen Proctor, WSB No. 14811  
(253)798-6590  
[kprocto@co.pierce.wa.us](mailto:kprocto@co.pierce.wa.us)

Attached is the State's Supplemental Brief (for real this time)! So sorry for the confusion, I believe that we have figured out where the mistake was on this end. Thank you for your understanding!

Heather