

NO. 82204-2

86001-7

THE SUPREME COURT
STATE OF WASHINGTON

STATE OF WASHINGTON, PETITIONER,

v.

DAN STOCKWELL, RESPONDENT

Court of Appeals Cause No. 37230-4
Appeal from the Superior Court of Pierce County
The Honorable Robert H. Peterson, Presiding

No. 86-1-00878-2

RESPONSE TO MOTION FOR DISCRETIONARY REVIEW

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Table of Contents

A. IDENTITY OF PETITIONER, 1

B. COURT OF APPEALS DECISION..... 1

C. REASONS WHY THE COURT SHOULD DENY REVIEW, 1

 1. Should the court refuse to take review of whether the court below properly found the time bar applicable to petitioner’s collateral attack when petitioner’s argument for not applying the time bar is incompatible with the holding of this Court in *In re Personal Restraint of Runyan*?..... 1

 2. Has petitioner failed to show that review is warranted when he has failed to show that the ruling below erroneously applied any of this Court’s decisions as to what constitutes a facially invalid judgment?..... 1

D. STATEMENT OF THE CASE, 2

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED 3

 1. UNDER THIS COURT’S DECISION IN *IN RE PRP OF RUNYAN* THE DEPARTMENT OF CORRECTIONS SATISFIED ITS DUTY UNDER RCW 10.73.120; THEREFORE PETITIONER’S ARGUMENT THAT THE TIME BAR IN RCW 10.73.090 CANNOT BE APPLIED TO HIS PETITION DUE TO LACK OF NOTICE IS WITHOUT MERIT 3

 2. THE COURT BELOW PROPERLY FOUND THAT THE JUDGMENT WAS NOT INVALID ON ITS FACE..... 7

F. CONCLUSION, 12

Table of Authorities

State Cases

<i>In re Bass v. Smith</i> , 26 Wn.2d 872, 176 P.2d 355 (1947)	8, 9, 11, 12
<i>In re Pers. Restraint Hemenway</i> , 147 Wn.2d 529, 532, 55 P.3d 615 (2002)	7, 11
<i>In re Pers. Restraint of Goodwin</i> , 146 Wn.2d 861, 873, 50 P.3d 618 (2002)	7, 10
<i>In re Pers. Restraint of Richey</i> , 162 Wn.2d 865; 175 P.3d 585 (2008) ...	10
<i>In re Pers. Restraint of Runyan</i> , 121 Wn.2d 432, 452, 853 P.2d 424 (1993)	1, 5, 6
<i>In re Pers. Restraint of Stoudmire</i> , 141 Wn.2d 342, 353, 5 P.3d 1240 (2000)	7, 9
<i>In re Pers. Restraint of Thompson</i> , 141 Wn.2d 712, 719, 10 P.3d 380 (2000)	9
<i>In re Pers. Restraint of West</i> , 154 Wn.2d 204, 211, 110 P.3d 1122 (2005)	10
<i>Kingery v. Dep't of Labor & Indus.</i> , 132 Wn.2d 162, 167-68, 937 P.2d 565 (1997)	5
<i>Leschner v. Department of Labor & Indus.</i> , 27 Wn.2d 911, 926, 185 P.2d 113 (1947)	5
<i>State v. Glover</i> , 25 Wn. App. 58, 61, 604 P.2d 1015 (1979).....	9

Federal and Other Jurisdictions

<i>State v. Fogel</i> , 16 Ariz. App. 246, 248, 492 P.2d 742, 744 (1972).....	9
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Statutes

RCW 10.73.0903, 4, 7
RCW 10.73.090(1)3, 7
RCW 10.73.1004
RCW 10.73.1203, 4, 5, 6
RCW 10.73.1303
RCW 9A.20.021(4).....7

Rules and Regulations

RAP 13.56, 12

A. IDENTITY OF PARTY.

The State of Washington, respondent below, asks this court to deny the motion for discretionary review.

B. COURT OF APPEALS DECISION.

Petitioner moves for discretionary review of an Order Dismissing Petition issued by the acting Chief Judge of Division II on September 23, 2008, in *In re Personal Restraint of Dan Stockwell*, COA Case No. 37230-4-II.

C. REASONS WHY THE COURT SHOULD DENY REVIEW.

1. Should the court refuse to take review of whether the court below properly found the time bar applicable to petitioner's collateral attack when petitioner's argument for not applying the time bar is incompatible with the holding of this Court in *In re Personal Restraint of Runyan*?

2. Has petitioner failed to show that review is warranted when he has failed to show that the ruling below erroneously applied any of this Court's decisions as to what constitutes a facially invalid judgment?

D. STATEMENT OF THE CASE.

On December 24, 2007, Dan Stockwell (“petitioner”), filed his first personal restraint petition challenging his conviction for statutory rape in the first degree under Pierce County Superior Court Cause No. 86-1-00878-2, alleging that he did not enter a voluntary plea. Petitioner’s judgment was filed in the superior court in 1986. Appendix C.¹ Pursuant to a joint recommendation from the State and defense, the court imposed an exceptional sentence downward of 24 months (petitioner’s standard range was 36-48 months), so that petitioner was eligible for a sentence under the special sexual offender sentencing option (SSOSA). Appendices C and E. Petitioner did not appeal from entry of his judgment. On October 27, 1989, the court signed a certificate and order of discharge after petitioner successfully completed his sentence. Appendix F. The order discharged petitioner from the confinement and supervision of the Department of Corrections and restored his civil rights. *Id.*

Thus, petitioner’s collateral attack was filed more than twenty-one years after his conviction became final, and more than fifteen years after petitioner’s discharge from the Department of Corrections on this

¹ All references to appendices refer to the appendices attached to the State’s response filed in the Court of Appeals.

conviction. It would appear that petitioner's motivation to challenge this conviction stems from the fact that he has subsequently been found to be a persistent offender, and this conviction has been used as a predicate strike offense. Appendix G.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

1. UNDER THIS COURT'S DECISION IN *IN RE PRP OF RUNYAN*, THE DEPARTMENT OF CORRECTIONS SATISFIED ITS DUTY UNDER RCW 10.73.120; THEREFORE PETITIONER'S ARGUMENT THAT THE TIME BAR IN RCW 10.73.090 CANNOT BE APPLIED TO HIS PETITION DUE TO LACK OF NOTICE IS WITHOUT MERIT

Because collateral relief undermines the principles of finality of litigation and degrades the prominence of the trial, the Legislature enacted a one year time limit in which to file a personal restraint petition in 1989. RCW 10.73.090. The statute provides:

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 if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

RCW 10.73.090(1). The time bar is applicable to any petition filed more than one year after July 23, 1989. RCW 10.73.130. The statute of limitations set forth in RCW 10.73.090(1) is a mandatory rule that bars

appellate consideration of personal restraint petitions filed after the limitation period has passed, unless the petitioner demonstrates that the petition falls within an exemption to the time limit under RCW 10.73.090 (facial invalidity or lack of jurisdiction) or one of the exceptions listed in RCW 10.73.100.

At the same time the Legislature enacted the time bar found in RCW 10.73.090, and the exceptions in RCW 10.73.100, it directed the Department of Corrections to engage in efforts to advise certain persons who might be affected by it. RCW 10.73.120. This legislative directive provides:

As soon as practicable after July 23, 1989, the department of corrections shall attempt to advise the following persons of the time limit specified in RCW 10.73.090 and 10.73.100: Every person who, on July 23, 1989, is serving a term of incarceration, probation, parole, or community supervision pursuant to conviction of a felony.

RCW 10.73.120. Under the express terms of this provision, the duty established in RCW 10.73.120 does not require the department to give immediate notice on or after July 23, 1989, but only “[a]s soon as practicable.” The statute did not specify any particular method of advisement.

This Court has construed RCW 10.73.120 previously, and determined that it does *not* require that actual notice be given to a person that might be affected by enactment of the time bar in RCW 10.73.090,

only that the department engage in “[a] good faith effort to advise.” *In re Pers. Restraint of Runyan*, 121 Wn.2d 432, 452, 853 P.2d 424 (1993).

In *Runyan*, the Supreme Court held that by posting notices in community corrections offices in December of 1989, the department had fulfilled its duty under RCW 10.73.120. *Id.* at 451-453. Under the controlling authority of *Runyan*, the Department of Corrections satisfied its duty to attempt to advise persons on community supervision of the existence of the time bar as soon as practicable after July 23, 1989.

Petitioner is attempting to avoid application of the time bar to his untimely petition by arguing that, despite being on supervision at the time the time bar was enacted, he did not receive actual notice² of the time bar from the Department of Corrections. But under *Runyan*, whether a particular person who was under sentence or on community supervision on July 23, 1989, received *actual notice* of the time bar from the Department

² Of course, notification by the department was not the only means that petitioner had of learning of the existence of the time bar. The statute is a public record and available to everyone. Ignorance of the law is no excuse as every person is presumed to know the law. *See Kingery v. Dep't of Labor & Indus.*, 132 Wn.2d 162, 167-68, 174-175, 937 P.2d 565 (1997), citing *Leschner v. Department of Labor & Indus.*, 27 Wn.2d 911, 926, 185 P.2d 113 (1947) (cases declining to extend availability of equitable relief in meeting time limits or other jurisdictional requirements for bringing an industrial insurance action when to do so would be in disregard of the maxim that ignorance of the law excuses no one.). The time bar was passed in 1989, and all Washingtonians are presumed to be aware of it. It is known that petitioner received actual notice of the existence of the time bar when he was sentenced in June of 2003 in Kitsap County, as his judgment informed him of it. Appendix G.

of Corrections is not the determinative question. The determinative question is whether the Department of Corrections satisfied its duty under RCW 10.73.120; *Runyan* has answered that question in the affirmative. Petitioner's argument that the department has not fulfilled its duty because he did not receive actual notice is contrary to the holding of *Runyan* and is without merit.

The decision below found that the time bar was applicable to the petitioner's collateral attack. This decision was correct. The State would agree with petitioner that the order dismissing petition seems to focus unnecessarily on whether petitioner had adequately disproved his lack of actual notice. Regardless of the reasoning, the court reached the correct result in finding that the time bar applied to the petition, and that petitioner was required to show an applicable exception to the time bar. The order below is not published, and, therefore, any faulty reasoning will not be adopted by other courts. Petitioner fails to show that this issue meets any of the criteria in RAP 13.5.

2. THE COURT BELOW PROPERLY FOUND THAT THE JUDGMENT WAS NOT INVALID ON ITS FACE.

As discussed above, collateral attacks to a judgment must be brought within one year after the “judgment has become final if the judgment and sentence is valid on its face.” RCW 10.73.090(1) (emphasis added). This Court has held that a “‘facial invalidity’ inquiry under RCW 10.73.090 is directed to the judgment and sentence itself.” *In re Pers. Restraint Hemenway*, 147 Wn.2d 529, 532, 55 P.3d 615 (2002). “‘Invalid on its face’ means the judgment and sentence evidences the invalidity without further elaboration.” *Id.* citing *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 866-67, 50 P.3d 618 (2002); *In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 353, 5 P.3d 1240 (2000).

Petitioner attempted to overcome the time bar in this case by arguing that his 1986 judgment is invalid on its face because the maximum penalty listed on the judgment and sentence is erroneous. The State and the court below agreed that there was an error on the judgment. The proper statutory maximum term for the crime of statutory rape in the first degree committed after July 1, 1984, is life. RCW 9A.20.021(4). The judgment incorrectly lists the statutory maximum as 20 years. Appendix

C. But neither the State nor the court below agreed with petitioner's conclusion that this rendered his judgment void on its face. *See* Order Dismissing Petition at p. 4. This decision below is completely consistent with Washington law.

In *In re Bass v. Smith*, 26 Wn.2d 872, 176 P.2d 355 (1947), this Supreme Court addressed a nearly identical situation as 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.

More recent cases discussing the nature of facial invalidity are in accord with *Bass*. In *In re Pers. Restraint of Stoudmire*, the court found that the judgment was void with respect to Mr. Stoudmire's convictions for indecent liberties because the judgment showed that the charges were filed after the statute of limitations had expired. 141 Wn.2d at 354. A criminal statute of limitation is not merely a limitation upon the remedy, but is a "limitation upon the power of the sovereign to act against the accused[;]" it is jurisdictional. *State v. Glover*, 25 Wn. App. 58, 61, 604 P.2d 1015 (1979), citing *State v. Fogel*, 16 Ariz. App. 246, 248, 492 P.2d 742, 744 (1972). Similarly, in *In re Pers. Restraint of Thompson*, 141 Wn.2d 712, 719, 10 P.3d 380 (2000), the plea documents showed that Thompson had been charged with an offense that did not become a crime until nearly two years after his offense was committed. The court noted that "[e]xceptions to the foreclosure of collateral attack on a guilty plea exist where on the face of the record the court had no power to enter the conviction or impose the sentence. *Id.* at 720. The judgments in *Stoudmire* and *Thompson* revealed that those trial courts were without authority to enter a judgment against those defendants for the crimes to

which they entered guilty pleas. These cases are significantly different from petitioner's, where the court had jurisdiction over his crimes.

Additionally, recent cases that have found facial invalidity based upon an incorrect sentence length have been limited to when the sentence is in excess of the length authorized by the legislature. *See In re Pers. Restraint of West*, 154 Wn.2d 204, 211, 110 P.3d 1122 (2005) (“A judgment and sentence is invalid on its face if it exceeds the duration allowed by statute...”); *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 873, 50 P.3d 618 (2002) (“In keeping with long standing precedent, we adhere to the principles that a sentence in excess of statutory authority is subject to collateral attack, that a sentence is excessive if based upon a miscalculated offender score (miscalculated upward)...”). In contrast, however, this Court rejected an untimely challenge to a trial court's imposition of an exceptional sentence upward where the defendant claimed that it was imposed based on an invalid reason. *In re Pers. Restraint of Richey*, 162 Wn.2d 865; 175 P.3d 585 (2008). The court noted that “while the one-year time limit on collateral attack does not apply to sentences in excess of the court's jurisdiction, a sentence is not jurisdictionally defective merely because it is in violation of a statute or is based on a misinterpretation of a statute.” Richey's exceptional sentence did not exceed the maximum statutory sentence, and the legislature had

authorized trial courts to impose exceptional sentences. Thus, his assertion as to error was not one that would establish any facial invalidity of the judgment.

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 at 531 (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). Here, petitioner's assertions that his plea was involuntary does not attack the face of the judgment itself.

All of these modern cases follow the principles of *Bass*; for a judgment to be "facially invalid" a petitioner must show that the judgment reveals that the trial court was without authority to enter judgment on the offense or that the sentence imposed was one which exceeded the sentencing authority given by the Legislature. An error in the judgment, however, does not necessarily render the judgment facially invalid.

Applying the principles of *Bass* to the case now before the court, petitioner has failed to show facial invalidity in his judgment. The trial court had subject matter jurisdiction over petitioner's crimes, as well as

personal jurisdiction over the petitioner; the trial court's sentence did not exceed the sentence authorized by the Legislature. The error in the judgment is that petitioner's maximum sentence was set lower than the maximum sentence authorized by the legislature. Under *Bass*, this error does not entitle petitioner to collateral relief. While the judgment reveals an error and a violation of a statute, the "erroneous" judgment remains facially valid.

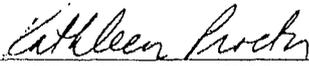
The court below properly applied the decisions of this court in finding that petitioner had failed to demonstrate that his judgment was facially invalid. Petitioner fails to show that this issue meets any of the criteria in RAP 13.5 necessary for the court to take review.

F. CONCLUSION.

For the foregoing reasons, the State asks this court to deny the motion for discretionary review.

DATED: November 6, 2008

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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-1.MI 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.

11-08 Theresa Ke
Date Signature