

FILED
AUGUST 10, 2021
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

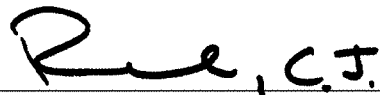
In the Matter of the Personal Restraint of:)	No. 36996-0-III
)	
MIZAEAL MAGANA,)	UNPUBLISHED OPINION
)	
Petitioner.)	

PENNELL, C.J. — Mizaël Magana has filed a petition for relief from personal restraint imposed following his 2009 conviction for two counts of first degree assault with firearm enhancements and one count of drive-by shooting. At the age of 16, Mr. Magana was tried in adult court for these crimes. Recognizing Mr. Magana’s youth, the trial court imposed an exceptional downward sentence of 24 months for each his two first degree assault convictions, which were to be run consecutively. It also imposed a standard range sentence of 48 months on his conviction for drive-by shooting, to be run concurrently with his assault sentences. Finally, the court imposed 120 months with no credit for good behavior for the two mandatory firearm enhancements, resulting in a total term of confinement of 168 months. When imposing the firearm enhancements, the court lamented its lack of discretion to impose a lighter sentence. In 2019, Mr. Magana filed a personal restraint petition, seeking resentencing under *State v. Houston-Sconiers*, 188 Wn.2d 1, 21, 391 P.3d 409 (2017).

Mr. Magana’s petition is timely, falling under an exception to the one-year time bar because *Houston-Sconiers* is retroactively applicable. See RCW 10.73.100(6); *In re Pers. Restraint of Ali*, 196 Wn.2d 220, 233, 474 P.3d 507 (2020), *cert. denied sub nom. Washington v. Ali*, 141 S. Ct. 1754 (2021). The State concedes that based on the trial court’s comments expressing its desire to impose a lower sentence had it the discretion to do so, Mr. Magana can establish both error and prejudice. See *Ali*, 196 Wn.2d at 243-44. Accordingly, the State agrees that Mr. Magana is entitled to resentencing consistent with *Houston-Sconiers*.

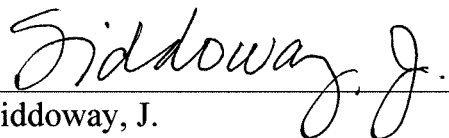
Based on our own review of Mr. Magana’s petition, and the State’s concessions, we grant the personal restrain petition and remand to the superior court for resentencing.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

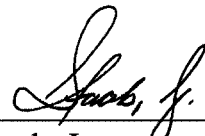


Pennell, C.J.

WE CONCUR:



Siddoway, J.



Staab, J.