

FILED
STATE OF WASHINGTON
2009 AUG 12 PM 2:43

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

In re Personal Restraint)	
Petition of)	
)	
)	No. 62290-1-I
)	
)	KING COUNTY'S
)	SUPPLEMENTAL
)	RESPONSE TO
JACQUELINE FLETCHER,)	PERSONAL RESTRAINT
Petitioner.)	PETITION
_____)	

A. ISSUE ADDRESSED.

Whether this petition should be dismissed as untimely where there is no invalidity in the sentence that is apparent on the face of the judgment and sentence.

B. STATEMENT OF THE CASE.

Fletcher pled guilty to two counts of robbery in the second degree and was sentenced on January 14, 1994. Appendix A. The judgment and sentence states that the maximum term for the crime of robbery is "10 yrs and or \$10,000." Fletcher did not appeal.

STATE'S RESPONSE TO
PERSONAL RESTRAINT PETITION

D. SUPPLEMENTAL ARGUMENT.¹

1. THIS PETITION IS UNTIMELY BECAUSE THERE IS NO INVALIDITY IN THE SENTENCE THAT WAS IMPOSED.

Fletcher contends that her claim is not time-barred because the judgment and sentence is invalid on its face. Her claim should be rejected. There was no error in the sentence imposed. As such, the judgment and sentence is not invalid on its face.

No petition collaterally attacking a judgment and sentence 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). A judgment becomes final on the date that it is filed with the clerk of the trial court if no appeal is filed. RCW 10.73.090(3). In the present case, the judgment and sentence became final on January 18, 1994. This petition was not filed until August of 2008, more than 14 years later.

Pursuant to RCW 10.73.090(1), the one-year time limit only applies if "the judgment and sentence is valid on its face." RCW 10.73.090(1). A judgment is valid on its face unless the judgment

¹ The State continues to assert all of the arguments made in the State's Response to Personal Restraint Petition filed on November 13, 2008. This supplemental response is being provided at the direction of this Court to address the two issues raised in the Court's order.

evidences an error without further elaboration. In re Pers. Restraint of Thompson, 141 Wn.2d 712, 10 P.3d 380 (2000).

Fletcher argues that the 1994 judgment and sentence is invalid on its face because the form states the incorrect maximum fine. The maximum fine for robbery in the second degree, a class B felony, is \$20,000. RCW 9A.56.210(2); 9A.20.021(1)(b). The judgment and sentence states that the maximum fine is \$10,000. The State did not recommend a fine and the court did not impose one.

The actual "judgment" is contained in part III on the form. It states: "It is adjudged that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A." Appendix A. Fletcher does not challenge the validity of this judgment.

Fletcher also does not challenge the sentence imposed: a standard range sentence of 25 months of total confinement, plus restitution and victim's penalty assessment. Rather, Fletcher attempts to rely on a typographical error contained in the document that affects neither the judgment or the sentence. By Fletcher's reasoning, the judgment and sentence would also presumably be

invalid because her criminal history includes a 1993 robbery conviction from "Kign Co.", not "King Co." Appendix A.

Washington courts have never adopted a rule that any mistake on the judgment form renders a judgment and sentence invalid on its face. The error must affect the validity of the sentence itself. For example, in In re Pers. Restraint of Stoudmire, 141 Wn.2d 342, 354, 5 P.3d 1240 (2000), the judgment and sentence was invalid on its face because the crime was charged outside the statute of limitations thus rendering the sentence imposed invalid. In In re Thompson, supra, the judgment and sentence was invalid on its face because the defendant was convicted of a crime that did not exist at the time it was committed thus rendering the sentence imposed invalid. 141 Wn.2d at 719. In In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 865-66, 50 P.3d 618 (2002), the judgment and sentence was invalid on its face where the offender score was incorrectly calculated thus rendering the sentence imposed invalid. In In re Pers. Restraint of West, 154 Wn.2d 204, 110 P.3d 1122 (2005), the judgment and sentence was invalid on its face due to a provision of the sentence that prohibited earned early release credit, which was outside the court's statutory authority, thus rendering the sentence imposed invalid. In no case

has a Washington court held a judgment and sentence invalid on its face based on a mistake on the judgment form that does not affect the validity of the sentence imposed.

In In re Personal Restraint of McKiearnan, 165 Wn.2d 777, 203 P.3d 375 (2009), the supreme court held that a misstatement on petitioner's judgment and sentence as to the statutory maximum term of confinement was not a substantial defect that rendered the judgment and sentence invalid on its face. The court stated, "[t]o 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 783. As in McKiearnan, Fletcher was convicted of a valid crime by a court of competent jurisdiction and was sentenced within the appropriate range. Like McKiearnan, she was aware of the appropriate standard sentence range and that she could be sentenced up to a maximum term of imprisonment of ten years. The misstatement on the judgment and sentence as to the maximum fine was a technical misstatement that did not affect the validity of the judgment that Fletcher was guilty of two counts of robbery in the second degree, or the standard range sentence imposed.

This Court should reject Fletcher's contention that any mistake on the judgment and sentence renders the document invalid on its face, even where the mistake does not affect the validity of the sentence imposed. Fletcher's judgment and sentence does not evidence any substantial defect on its face. It is not invalid on its face.

2. FLETCHER RECEIVED ACTUAL NOTICE OF THE TIME BAR IN 1993, AND THUS THE TIME BAR APPLIES.

Fletcher argues that the time-bar cannot be applied to her because there is no proof that she received written notice of the time-bar when she was sentenced as provided by RCW 10.73.110. That statute states, "[a]t the time judgment and sentence is pronounced in a criminal case, the court shall advise the defendant of the time limit specified in RCW 10.73.090 and 10.73.100." RCW 10.73.110. The statute was enacted in 1989. There appears to be no written documentation in the court file of such an advisement. No transcript of the sentencing hearing has been provided.

In In re Pers. Restraint of Runyan, 121 Wn.2d 432, 453, n. 16, 853 P.2d 424 (1993), the supreme court held that a petitioner filing a PRP claiming exemption from the time bar must file a sworn affidavit that there was no attempt to advise her of the time bar.

Then the burden shifts to the State to prove an attempt was made with affidavits or sentencing documents. Id. Fletcher has submitted an affidavit that she was not advised of the time bar at the plea hearing or at sentencing. Fletcher has not contended that she was unaware of the time bar.

Indeed, Fletcher received actual notice of the time bar in 1993. Fletcher received written notice of the time bar just five months earlier when she was sentenced in a previous case, No. 93-1-03985-5. Appendix E, attached to State's Response to Personal Restraint Petition. Also, according to information provided by the Department of Corrections, Fletcher also received written notice of the time bar in the handbook given to her when she entered prison.

Fletcher's reliance on In re Pers. Restraint of Vega, 118 Wn.2d 449, 823 P.2d 1111 (1992), is thus misplaced. In that case it was undisputed that petitioner had not been advised of the one-year time bar as required by RCW 10.73.120 while in federal prison, and thus the court did not apply the time bar. Id. at 450. The court clarified that "had there been actual notification or even attempted notification, the petition would have been properly denied." Id. at 451. Fletcher had already been advised of the one-

year time bar when she was sentenced, and was advised of the one-year time bar when she entered prison. She received actual notice of the time bar and thus the time bar applies.

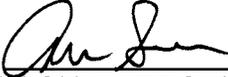
Fletcher's petition should be dismissed as untimely.

E. CONCLUSION.

This petition should be dismissed.

DATED this 11th day of August, 2009.

Respectfully Submitted,
DAN SATTERBERG
King County Prosecuting
Attorney

by 
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Senior Deputy Prosecuting
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CERTIFICATION OF SERVICE

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Jeffrey Ellis, at the following address: Ellis, Holmes & Witchley, 705 Second Avenue, Suite 401, Seattle, WA 98104, attorneys for the petitioner, containing a copy of the King County's Supplemental Response to Personal Restraint Petition in In re Personal Restraint of Jacqueline Fletcher, No. 62290-1-I, in the Court of Appeals of the State of Washington.

I certify under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

U Brame 8/12/09
Name Date
Done in Seattle, Washington

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Beth Colgan and Melissa Lee, at the following address: Columbia Legal Services, 101 Yesler Way Suite 300, Seattle, WA 98104-2528, attorneys for the petitioner, containing a copy of the King County's Supplemental Response to Personal Restraint Petition in In re Personal Restraint of Jacqueline Fletcher, No. 62290-1-I, in the Court of Appeals of the State of Washington.

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STATE OF WASHINGTON
COURT OF APPEALS

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Ronda Larson, at the following address: Office of the Attorney General, P.O. Box 40116, Olympia, WA 98504, attorney for the Department of Corrections, containing a copy of the King County's Supplemental Response to Personal Restraint Petition in In re Personal Restraint of Jacqueline Fletcher, No. 62290-1-I, in the Court of Appeals of the State of Washington.

I certify under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

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