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Court of Appeals

Division III

State of Washington

No. 33703-1

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,
Respondent,

v.

ROBERT YATES,
Appellant.

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

The State does not argue that Mr. Yates' sentence on Counts I and II are lawful. Instead, the State invokes a procedural argument. The State argues that Yates raised and lost this exact same issue in the Washington Supreme Court in his previously decided PRP. *In re PRP of Yates*, 180 Wash.2d 33, 321 P.3d 1195 (2014). He did not.

The State picks isolated portions of that opinion in order to make out its argument. Reading the opinion as a whole easily upends the State's argument. In the PRP, Yates sought "to withdraw [his] guilty pleas." Here, Yates seeks only the imposition of a lawful sentence.

II. ARGUMENT

In his PRP, Yates sought to withdraw his guilty pleas. The Washington Supreme Court opinion makes this clear:

Can Yates withdraw his guilty plea based on the misinformation in his judgment and sentence despite his failure to make any showing of prejudice?

180 Wash.2d at 35;

Yates seeks to withdraw his plea, contending that it was not knowing, voluntary, and intelligent because he was not informed that the proper sentence for counts one and two was an indeterminate sentence of 20 years to life rather than a determinate sentence of 20 years.

180 Wash.2d at 39;

We see no reason to invalidate his plea.

180 Wash.2d at 42. See also, *id.* at 44 (Gordon-McCloud, J., concurring) (“The majority, however, asserts that the PRP raises a single claim of invalidity of the plea due to misinformation about its consequences; that Yates must prove prejudice to prevail on this claim...”).

The State overlooks these statements, preferring to misconstrue the facial invalidity timeliness requirement (which requires a showing of error on the face of the judgment and sentence) as an attack on Yates’ sentence. Reading the whole opinion with a correct understanding of the law conclusively defeats the State’s argument.

In the PRP, the Washington Supreme Court found “the sentence was outside of the judge's statutory authority. Yates is correct that his judgment and sentence is facially invalid.” But, that was not the end of the story because in that proceeding, Yates sought to withdraw his guilty pleas. The Court concluded because Yates was not prejudiced he was not entitled to withdraw his guilty plea. *Id.* at 39. Justice Gordon-McCloud’s concurring opinion stated plainly: “Yates did not request resentencing, and he is not entitled to withdraw his plea agreement on the basis of the due process clause violation at issue here.” *Id.* at 52.

This proceeding plainly differs from the PRP. Yates attacked his guilty pleas in his PRP. Here, he attacks his sentences. The two claims are not the same. Yates is not procedurally barred because he raises a new claim, here. *In re Haverty*, 101 Wn.2d 498, 502-503, 681 P.2d 835 (1984).

See also *J.N.J. v. State*, 690 S.2d 519 (Ala. Cr. App. 1996) (an illegal sentence may be challenged at any time whether the successive petition is on the same grounds or different grounds).

Yates' sentence was illegal. In other words, the sentencing court did not have the power to impose determinate 20 year sentences on Counts I and II. At the risk of repetition, when a sentencing court exceeds its statutory authority, its action is void. *State v. Phelps*, 113 Wn. App. 347, 354-55, 57 P.3d 624 (2002). Washington courts have "both the power and the duty" to correct an erroneous sentence. *In re Personal Restraint of Carle*, 93 Wn.2d 31, 33-34, 604 P.2d 1293 (1980). Examples abound. See, e.g., *In re Personal Restraint of Goodwin*, 146 Wn.2d 861, 864-65, 869, 877-78, 50 P.3d 618 (2002) (PRP granted because court's later statutory interpretation rendered offender score incorrect because previous juvenile convictions washed out); *In re Personal Restraint of Johnson*, 131 Wn.2d 558, 563, 933 P.2d 1019 (1997) (nine-year-old sentence corrected to apply new rule this Court declared that changed method of calculating offender score); *In re Personal Restraint of Vandervlugt*, 120 Wn.2d 427, 432-33, 842 P.2d 950 (1992) (exceptional sentence based on aggravating factor later invalidated and remanded for sentence correction).

III. CONCLUSION

The State never explains why this Court should enforce Yates' illegal sentence.

An appellate court has the power and the duty to correct an erroneous or illegal sentence whenever it is discovered. *State v. Ford*, 137 Wash.2d 472, 477-478, 973 P.2d 452 (1999) (citing *State v. Loux*, 69 Wash.2d 855, 858, 420 P.2d 693 (1966), *overruled in part on other grounds by State v. Moen*, 129 Wash.2d 535, 919 P.2d 69 (1996)). The exception applies even when the claimed error is not jurisdictional or constitutional. *Ford*, at 477-478.

When an illegal sentence is identified, it must be corrected. Mr. Yates may have lost his ability to withdraw his guilty plea under Washington law, but he has not lost the ability to compel compliance with the sentencing law. Based on the above, this Court should reverse and remand for resentencing.

DATED this 7th day of March, 2016.

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CERTIFICATE OF SERVICE

I, Jeffrey Elis, certify that on today's date I efiled the Reply Brief causing a copy to be sent to opposing counsel at: SCPAappeals@spokanecounty.org

March 7, 2016//Portland, OR

/s/Jeffrey Ellis