

NO. 84861-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

WILLIAM JOSEPH SMITH, Petitioner

v.

STATE OF WASHINGTON, Respondent

REPLY TO STATE'S RESPONSE

WILLIAM JOSEPH SMITH, Pro se

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ISSUES PRESENTED FOR REVIEW

DOES PETITIONER'S RIGHT UNDER HIS VALID PLEA
AGREEMENT TAKE PRECEDENCE OVER STATUTE?

MAY THE PETITIONER CHALLENGE HIS CONVICTION EVEN
THOUGH THE ONE-YEAR TIME LIMITATION HAS ELAPSED?

THE SUPREME COURT ASKED IF "BAHL" IS RETROACTIVE?

STATEMENT OF FACTS

On May 9, 2002 Mr. Smith entered a plea of guilty in exchange for an agreement that was offered by the State. In this agreement, if found amenable to treatment, the prosecution would recommend SSOSA. If Mr. Smith was not found amenable to treatment the maximum he could possibly receive was an SRA sentence of 102 to 136 months confinement with 36 to 48 months of community custody. See Pretrial Offer attached to State's REsponse; also See Statement of Defendant on Plea of Guilty, Id. at 2(a), 3, and 4(a) also attached to State's Response. At sentencing Mr. Smith was sentenced to an in-determinate sentence of 136 months to life, with life community custody if released from total confinement.

As a part of Mr. Smith's sentence there are several conditions/prohibitions placed upon him. Mr. Smith argues against three of the conditions/prohibitions. First, the prohibition/condition prohibiting him from possessing pornography. This condition/prohibition, it appears, has been conceded by the State. Second, is the condition/prohibition requiring him to undergo an evaluation for substance abuse. This condition/prohibition is

not crime-related and is therefore not allowed as a part of Smith's condition/prohibitions. Third, is the condition/prohibition against him possessing alcohol. This condition/prohibition is also not crime-related and is therefore not allowed by statute to be a part of Smith's sentence. These conditions/prohibitions are a part of Smith's Judgment and Sentence in violation of the well established law that requires conditions/prohibitions to be directly related to the circumstances of the crime.

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"PETITIONER'S RIGHT UNDER HIS VALID PLEA AGREEMENT TAKES PRECEDENCE OVER STATUTES TO THE CONTRARY, AND UNDER THE CONTRACT, THE SENTENCE WOULD BE WITHIN THE STANDARD RANGE NOT TO EXCEED 136-MONTHS, AND 36 TO 48 MONTHS COMMUNITY CUSTODY."

Mr. Smith has a right to specifically enforce his plea bargain, notwithstanding the fact that parties and the court were in error about imposing a sentence that would run 136-months to life; not only, but Mr. Smith was approved for SSOSA, and was led to believe that SSOSA was part of the plea agreement. Incidentally, contrary to the State's argument ([Resp. Brief p.2]), under well-established Washington Law, Mr. Smith's right under his plea agreement took priority over any statute to the contrary.

In State v. Miller, 110 Wn.2d 528, 756 P.2d 122 (1988), a similar situation, the Supreme Court said that, "absent compelling circumstances, he could choose his remedy. In so holding, the Court reaffirmed that "[d]efendants' constitutional rights under plea agreements take priority over statutory provisions," Miller, 110 Wn.2d Supra, at 533.

"Under this authority, a defendant must understand the sentencing consequences of his guilty plea for

the plea to be valid. Id. at 531. Where the defendant enters a guilty plea based on misinformation, the court can grant Specific Enforcement or allow the defendant to withdraw the plea."

In *State v. Shineman*, 94 Wash. App. 57 (1999), the court noted that the negation of a plea agreement is an issue of constitutional magnitude, and reiterated that, absent fraud or deceit on the part of the defendant, the defendant can specifically enforce his bargain even if his right under the agreement are in conflict with a statute, *State v. Schaupp*, 111 Wn.2d 34, 36-37, 757 P.2d 970 (1998) (the court held that defendant could specifically enforce his plea agreement even though the trial court had vacated the plea and allowed the prosecutor to reinstate the charge). The Supreme Court held that a plea, once accepted, was binding on the prosecutor, and reaffirmed the holding in Miller that the "integrity of the plea bargain process require that defendants be entitled to rely on plea bargains as soon as the court has accepted the plea It is at this point that the defendant is entitled to rely on the benefit of the bargain, not at the time of sentencing."

Schaupp, at 40-41. The court also reaffirmed that the defendant can elect his remedy, including specific performance. Id. at 41.

Thus, Mr. Smith is clearly entitled to enforce the plea agreement he entered, which was accepted by the court and the State. This is evidenced by the signatures of Mr. Smith (Defendant), John Harp (Defendant's Attorney), Scott Lacks (Prosecuting Attorney), and John P. Wullie (Judge). Mr. Smith's constitutional right under the plea agreement took priority over the statute setting the maximum terms for his convictions. The agreement is binding on the parties and the court once entered. See Resp. 05/09/2002 Statement of Defendant on Plea of Guilty.

Under the clear authority, Mr. Smith is entitled to relief from his sentence, which, under the terms of his plea bargain, was in excess of the court's jurisdiction to impose.

PETITIONER MAY CHALLENGE HIS 2002
CONVICTION EVEN THOUGH MORE THAN
ONE YEAR HAS ELAPSED SINCE HIS
CONVICTION

The Court of Appeals has already recognized the invalidity of the prohibition on Mr. Smith possessing pornography as being apparent from the face of the Judgment and Sentence under RCW 9.94A.700(5)(c), (d), and (e). Opinion, p.2 ¶1. Now the

Respondent claims, leaving the matter at issue, the concept of a mixed petition would clearly come into play where one or more of the grounds asserted for relief fall within the exceptions in RCW 10.73.100. Resp. Brief p.7.

If the State concedes to unlawful prohibition of pornography by reason unrelated to crime, then it would only stand to reason that the prohibition against possessing of alcohol and to undergo an evaluation for substance abuse, that are also un-crime-related, would be unlawful as well. As petitioner shows within his Reply Brief, "There must be some basis for the "crime-related" determination if the limitation is to have any meaning. For a sentencing judge to base the determination that conduct is "crime-related" upon belief alone, without some factual basis, would be to read the "crime-related" requirement out of the statute," (State v. Parramore, 53 Wash. App. 527, 531 (1989)) as the Respondent has attempted exactly that. Resp. Brief pp. 4-5.

Nevertheless, Mr. Smith should be granted relief even though the petition has been filed more than one-year after his judgment and sentence became final without Respondent theory as being misled because first, RCW 10.73.100 permits the

filing of a personal restraint petition after one year where the sentence is in excess of the court's jurisdiction as it clearly is here. Second, the Respondent fails to realize that Mr. Smith was mis-represented by his trial attorney, of which led to Mr. Smith's prejudice depriving Mr. Smith to a fair hearing, his entitled right to a direct appeal, all due to false promises, and deception, quoting Hoisington, "[Explain ("Why didn't defense tell his client about his constitutional right (due process) to specific")]. That court held that the one-year statute of limitations of RCW 10.73.090 was equitably tolled in his case. In re Hoisington, 99 Wash. App. 423, 431-32 (2000).

Given Mr. Smith's right under the plea agreement, any sentence imposed beyond 136-months, in addition to unlawful prohibitions is in excess of the court's jurisdiction. A court has no inherent authority to impose a sentence beyond that set by law. State v. Ammons, 105 Wn.2d 175, 181, 713 P.2d 796 (1986) (rejecting a claim that a trial court has inherent discretion to impose a sentence). The alleged existence of defects that will deprive the court of subject-matter jurisdiction may be raised at any time. In re Personal Restraint of

Saltis, 94 Wn.2d 889, 621 P.2d 716 (1980).

And, "The doctrine of equitable tolling permits courts to allow an action to proceed when justice requires it, even though a statute time period has nominally elapsed." In re Pers. Restraint of Duvall, 86 Wash. App. 871, 874, 940 P.2d 671 (1997), review denied, 134 Wn.2d 1012 (1998). And, the United States District Court citing State v. Robinson, 104 Wash. App. 657, 659, 17 P.3d 653 (2001) recognized in Washington, the doctrine of equitable tolling allows a court to extend a statute of limitation that has "nominally elapsed" when justice so requires. Robinson v. Leham, 2005 U.S. Dist. LEXIS 33623. The State of Appeals in Robinson explains that in Washington appropriate circumstances for application of the doctrine generally include bad faith, deception, or false assurances by the plaintiff, 104 Wash. App. Supra, at 667, Mr. Smith fits precisely under those circumstances.

Personal Restraint of Stoudmire, 141 Wn.2d 342 (2000), affirms invalid on its face of judgment and sentence includes all related plea documents if error appears on them, is exception to one-year rule. Where a judgment and sentence is

invalid on its face, there is no limit on the time allowed to file a personal restraint petition under 10.73.090.

RETROACTIVITY:

In Division Three, State v. Julian, the Court of Appeals held that "alcohol prohibition imposed on defendant, which was a condition of community supervision sentence, was outside authority of sentencing court to impose." State v. Julian, 102 Wash. App. 296, 304, 9 P.3d 851 (2000).

In the Julian case, defendant pled guilty to first degree child molestation and received the standard range sentence. Pro se, Mr. Julian challenge[d] conditions of his community supervision: regular polygraphs, abstention from alcohol, and not being in the presence of minors. He argue[d] for the first time on appeal that the court had no authority to impose these conditions."

The Court held, "A crime-related prohibition" is an order of the court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted. It does not include orders directing the offender affirmatively to participate in rehabilitative programs

or to perform any other affirmative conduct. RCW 9.94A.030(11). While the link between the condition imposed and the crime committed need not be causal, the condition must be related to the circumstances of the crime. State v. Llamas-Villa, 67 Wash. App. 448, 456, 836 P.2d 239 (1992), and finally, State v. Parramore, 53 Wash. App. 527, 530, 768 P.2d 530 (1989) (quoting DAVID BOERNER, SENTENCING IN WASHINGTON § 4.5 (1985)). In the absence of a finding that use or possession of alcohol contributed to the offense, the court exceeded its statutory authority by imposing the condition. Parramore, 53 Wash. App. at 531, 768 P.2d 530. Julian, 102 Wash. App. at 304-05.

To impose requirements that are not crime-related under a community supervision sentence for other than a first offender, the sentencing court must invoke the exceptional sentence provision of SRA, RCW 9.94A.120(2). State v. Gaines, 122 Wn.2d 502, 515, 859 P.2d 36 (1993), Julian, 102 Wash. App. at 305 analogues Mr. Smith's case precisely.

Therefore, in this case the answer to the matter in question is "where a statute has been construed by the highest court of the state, the court's construction is deemed to be what the

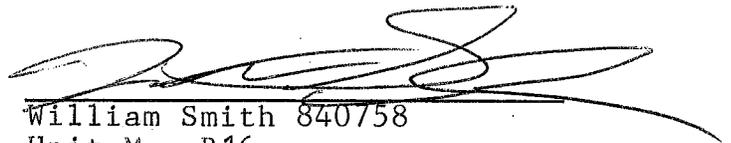
statute has meant since its enactment. In other words, there is no question of retroactivity." State v. Moen, 129 Wn.2d 535, 538, 919 P.2d 69 (1996).

CONCLUSION

As Mr. Smith's plea is clearly invalid, and he was clearly denied the right to enforce his plea bargain; and the conditions imposed upon Mr. Smith are outside the trial court's jurisdiction, Mr. Smith asks this Court to grant his Petition.

Signed under the Penalty of Perjury this 23 Day of December, 2010.

Respectfully,



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