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No. 86001-7


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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE RESTRAINT OF:

DANIEL J. STOCKWELL,

Petitioner.

SUPPLEMENTAL BRIEF OF PETITIONER

Judgment in Pierce County Superior Court No. 86-1-00878-2
The Hon. Robert H. Peterson, Presiding

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A. SUPPLEMENTAL ISSUE

1. What is the effect of this Court's decision in *In re Coats*, 173 Wn.2d 123, 267 P.3d 324 (2011), on the instant case?

B. SUPPLEMENTAL ARGUMENT

This Court's recent decision in *Coats* has little impact on the outcome of the instant case, and, if anything, supports the granting of review.

In *Coats*, the petitioner filed a Personal Restraint Petition fourteen years after the judgment was final, and argued that the time-bar of RCW 10.73.090 did not apply because the judgment was facially invalid. The judgment listed the maximum sentence for one of the three counts as "life," when, in fact, the maximum was ten years. 173 Wn.2d at 126-27. The Court only considered one issue -- "whether Petitioner's judgment and sentence is facially invalid, and if so, whether he is entitled to withdraw his guilty plea." 173 Wn.2d at 127-28. After extensively surveying the historic development of post-conviction writs, the Court concluded:

While the judgment and sentence misstated the maximum possible sentence for one count, *Coats* was in fact sentenced within the standard range of possible sentences for that offense. The court did not exceed its authority and

the judgment and sentence is not facially invalid.
Therefore, Coats's petition is time barred.

CONCLUSION

There was an error in Coats's judgment and sentence. But not every defect renders a judgment and sentence invalid. When squarely presented, we have found only errors that result from a judge exceeding the judge's authority to render a judgment and sentence facially invalid. The court did not exceed its authority. Further, the "not valid on its face" limitation of RCW 10.73.090 is not a device to make an end run around the one-year time bar for most errors, including errors at trial that affect a fair trial. We will examine limited documents to determine if an error in a judgment and sentence is "on its face" but those documents must reflect an error on the judgment and sentence. An error in the judgment and sentence does not render a plea involuntary.

173 Wn.2d at 143-44.

In contrast to Mr. Coats' case, the instant case no longer revolves around the facial validity of the judgment. While, at one time, Mr. Stockwell did argue that the incorrect statutory maximum listed on the face of the judgment made it facially invalid, this issue is not before this Court. Below, the Court of Appeals held that the statutory time-bar of RCW 10.73.090 did not apply to Mr. Stockwell because the Department

of Corrections failed to comply with RCW 10.73.120,¹ and never attempted to give notice to Mr. Stockwell of the requirements of RCW 10.73.090 & .100. *In re Stockwell*, 161 Wn. App. 329, 333-34, 254 P.3d 899 (2011). The Court of Appeals then went on to address the merits of Mr. Stockwell's timely non-time-barred petition. *Id.* at 334 ("Where the DOC has made no effort to notify a particular individual, the time bar does not apply. [Footnote and citation omitted] Accordingly, we address the merits of Stockwell's petition.").

The issues that Mr. Stockwell has raised in his *Motion for Discretionary Review*, therefore, have nothing to do with the facial validity (or invalidity) of the judgment and the interplay those concepts have with the application of the statutory time-bar in RCW 10.73.090. Rather, given a timely PRP, Mr. Stockwell raises two issues

1. If prejudice is presumed when a defendant is given misinformation about the maximum sentence when

¹ This statute 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.

pleading guilty, must a defendant seeking relief by means of a Personal Restraint Petition make a special showing of additional prejudice to gain relief?

2. Where it is undisputed that Mr. Stockwell was given the wrong information about the maximum sentence he faced when he pled guilty, was his guilty plea voluntary and knowing, or did it violate the Due Process Clauses of U.S. Const. amend. 14 and Wash. Const. art. 1, § 3?

Motion for Discretionary Review at 1. These issues were not discussed or decided in *Coats*.

Mr. Stockwell's motion is based upon the conflict between the Court of Appeals' decision in his case and this Court's presumption of prejudice -- a prejudice of constitutional dimension -- when it is clear that a defendant is given incorrect information about the legal maximum when he or she pleads guilty. *State v. Weyrich*, 163 Wn.2d 554, 182 P.3d 965 (2008); *State v. Mendoza*, 157 Wn.2d 582, 141 P.3d 49 (2006).²

² *Weyrich* and *Mendoza* make it clear that, if a person is not correctly advised of the proper legal maximum before he or she pleads guilty, the plea is not knowing, voluntary and intelligent and such a plea violates federal and state due process of law, in violation of U.S. Const. amend. 14 and Wash. Const. art. 1, § 3. *State v. Weyrich*, 163 Wn.2d at 556-57; *State v. Mendoza*, 157 Wn.2d at 587. This is the case even if the person, as was the case with Mr. Stockwell, was mis-advised that the maximum was lower than what it really was. See *Weyrich*, *supra* (defendant misinformed that maximum was 5 years, when in fact it was really 10 years)..

In fact, the Court of Appeals recognized that Mr. Stockwell “has shown a constitutional error.” *Stockwell*, 161 Wn. App. at 335.³ The Court of Appeals then distinguished *Mendoza* and *Weyrich* and held that a presumption of prejudice in the direct appeal context did not also require a presumption of prejudice in the collateral attack context, essentially applying to PRP cases a requirement of “super prejudice” -- some prejudice above and beyond that which is presumed in the direct appeal context. *Stockwell*, 161 Wn. App. at 335-39.

As discussed in Mr. Stockwell’s *Motion for Discretionary Review*, the Court of Appeals’ conclusion directly conflicts with this Court’s precedent in *In re Bradley*, 165 Wn.2d 934, 205 P.3d 123 (2009); *In re Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004) and other cases. *See State v. Kitchen*, 110 Wn.2d 403, 413, 756 P.2d 105 (1988) citing *In re Boone*, 103 Wn.2d 224, 233, 691 P.2d 964 (1984); *In re Gunter*, 102 Wn.2d 769, 774, 689 P.2d 1074 (1984); *In re Richardson*, 100 Wn.2d 669, 679, 675 P.2d 209 (1983).

³ The fact that Mr. Stockwell’s state and federal due process rights were violated distinguishes his case from *Coats* where the petitioner failed to brief “whether the error he complains of is, in his view, constitutional or not.” *Coats*, 173 Wn.2d at 133.

Again, once the issues of the time-bar are set aside, as they have been in this case, the issue is clear -- if there is a presumption of prejudice where a defendant is given incorrect information about the legal maximum, does this presumption of prejudice apply in the collateral attack context as well as in a direct appeal context? This Court's precedent, as noted above and discussed in the *Motion for Discretionary Review*, is not ambiguous. For the last generation at least, this Court's jurisprudence has always recognized that "[t]hose types of constitutional errors which can never be considered harmless on direct appeal will also be presumed prejudicial for purposes of personal restraint petitions." *State v. Kitchen*, 110 Wn.2d at 413.

Nothing about the holding of *Coats* changes this Court's prior holdings on this subject. Indeed, in *Coats*, the Court's recounting of its prior decision in *In re Hemenway*, 147 Wn.2d 529, 55 P.3d 615 (2002), illustrates Mr. Stockwell's point:

Hemenway contended he pleaded guilty without being told that, as a direct consequence of his plea, he would serve mandatory community placement. *Hemenway*, 147 Wn.2d at 531. As an accused is entitled to know all the direct consequences of a plea, Hemenway contended that his plea was not knowing, voluntary, and intelligent and, critically for our purposes, that the invalidity of the plea infected the judgment and sentence. *Id.* (citing *State v. Ross*, 129 Wn.2d

279, 916 P.2d 405 (1996)); *see also id.* at 533 (Chambers, J., dissenting). *If Hemenway had raised that challenge in a timely personal restraint petition, he likely would have prevailed.* *See, e.g., Isadore*, 151 Wn.2d at 298 (noting, in a timely challenge, that a defendant not informed of the direct consequences of a plea must be allowed to withdraw it). But this court rejected Hemenway's argument that he was entitled to the same relief in an untimely collateral challenge. As we noted, "The question is not, however, whether the plea documents are facially invalid, but rather whether the judgment and sentence is invalid on its face. The plea documents are relevant only where they may disclose invalidity in the judgment and sentence." *Hemenway*, 147 Wn.2d at 533 (footnote omitted).

Coats, 173 Wn.2d at 141 (emphasis added).⁴

Here, unlike Mr. Hemenway's PRP, Mr. Stockwell's PRP is timely. Accordingly, where it is undisputed that Mr. Stockwell was given incorrect information about the maximum sentence at the time of his plea,⁵

⁴ The Court in *Coats* also discussed its prior holding in *In re Bradley, supra*. Noting that the State had conceded in *Bradley* that the judgment was facially invalid, the Court clarified that:

We accepted that apparent concession and we turned to the issues actually presented by the parties: whether Bradley's plea was involuntary when he was misinformed of the maximum sentence on one of the lesser charges (but not of the total he faced) and what the appropriate remedy would be.

Coats, 173 Wn.2d at 137-38. This clarification is important because the Court has not attempted to retreat from the holding in *Bradley* regarding the issues actually litigated, and did not limit the case's holding, as the Court of Appeals suggested in Mr. Stockwell's case. *In re Stockwell*, 161 Wn. App. at 336-39.

⁵ The guilty plea form stated that the maximum sentence was 20 years, PRP Ex. 2, when in fact it was life. RCW 9A.20.021.

the plea was not knowing, voluntary and intelligent, and therefore violated due process under U.S. Const. amend. 14 and Wash. Const. art. 1, § 3. Prejudice is presumed, under this Court's prior cases,⁶ and, unlike Mr. Hemenway, Mr. Stockwell, having raised the issue in a timely PRP, should prevail.

Accordingly, this Court should grant review under RAP 13.4(b) because the Court of Appeals' decision not only conflicts with a series of prior decisions of this Court (including *Weyrich*, *Mendoza*, *Bradley*, *Isadore*, *Kitchen*, *Richardson*), but the case presents significant questions of constitutional interest and an issue of substantial public interest. See *Coats*, 173 Wn.2d 132-33. Once review is granted, this Court should follow past precedent and vacate Mr. Stockwell's conviction.

C. CONCLUSION

Coats does not impact a case that is not time-barred. Here, Mr. Stockwell's petition, as the Court of Appeals held, is timely. Therefore, the issues are whether the Court of Appeals' decision conflicts with this Court's past cases finding a presumption of prejudice where a person is

⁶ It is not accurate to say, as the Court of Appeals did, that Mr. Stockwell "does not claim he suffered actual prejudice from the misstated lower maximum sentence in his plea form." *Stockwell*, 161 Wn. App. at 339. Mr. Stockwell was prejudiced, albeit, under this Court's prior cases, the prejudice is presumed.

given incorrect information as to the legal maximum, and whether the decision conflicts with the clear line of cases in this Court which have held that a presumption of prejudice in the direct appeal context requires a finding of prejudice in the PRP context.

The Court should grant review, grant the PRP, vacate the conviction and allow Mr. Stockwell to withdraw the guilty plea. *State v. Barber*, 170 Wn.2d 854, 248 P.3d 494 (2011).

DATED this 14 day of March, 2012.

Respectfully submitted,

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Attorney for Petitioner

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IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT OF
DAN STOCKWELL,
Petitioner.

} Supreme Court No. 86001-7
CERTIFICATION OF SERVICE

I, Alexandra Fast, certify and declare, that on the 14th day of March 2012, I deposited a copy of the SUPPLEMENTAL BRIEF OF PETITIONER into the United States Mail with proper first-class postage attached, addressed to:

Kathleen Proctor
Pierce County Prosecutor's Office
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I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

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Please find attached and accept for filing the Supplemental Brief of Petitioner in In re Stockwell, No. 86001-7. A certificate of service by mailing is attached to the brief.

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