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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Petitioner,

v.

JOSEPH A. PELTIER,

Respondent.

---

ON APPEAL FROM THE SUPERIOR COURT OF  
THE STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Anita L. Farris

---

SUPPLEMENTAL BRIEF OF RESPONDENT

---

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A. ISSUES ON REVIEW

1. Whether the statutes of limitations in Washington are jurisdictional, which severs the superior court's ability to adjudicate the matter once the statute has expired?

2. Whether the trial court acts without statutory authority when it accepts a defendant's plea of guilty to an offense for which the statute of limitations has run?

3. If a waiver of the statute of limitations is allowed, must the waiver be made knowingly, voluntarily and intelligently?

B. STATEMENT OF THE CASE

In 2003, and as part of a plea agreement, Joseph Peltier and the State stipulated to a bench trial on agreed documentary evidence on an amended information charging a count of third degree rape and a count of indecent liberties for incidents that occurred in 1993 and in 1995 respectively. CP 113-23. In the stipulation, Mr. Peltier waived the following rights:

The defendant has the following rights: (a) trial by jury; (b) at trial confront and listen to the testimony of the witnesses against defendant and to cross-examine witnesses; (c) at trial to call witnesses for the defense at no expense to the defendant; (d) for the defendant to testify in his/her defense at trial; (e) the right to appeal a finding of guilt.

CP 113-14. The agreement did not state that the charges were time-barred, that Mr. Peltier understood the charges were time barred, and that he nevertheless agreed to go forward, thus waiving any defects. Mr. Peltier subsequently formally waived his aforementioned constitutional rights and agreed to the stipulation at a hearing. CP 131-40. Based upon the stipulated evidence, the trial court found Mr. Peltier guilty of the two offenses. CP 111-12. The court sentenced Mr. Peltier to 77 months in custody. CP 94-95; 101.

After completing the sentence imposed, Mr. Peltier filed a personal restraint petition (PRP), challenging his convictions on the basis that the statute of limitations had expired prior to his conviction. CP 92. The State conceded the statute of limitations had expired. CP 93.

The State concedes that the third degree rape and indecent liberties are subject to the three-year statute of limitations. The State also concedes that when a crime is barred by the statute of limitations, the resulting judgment is invalid on its face and the time bar of RCW 10.73.090 does not apply. *In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 353-54, 5 P.3d 1240 (2000). Because the statute of limitations barred prosecution here, the sentencing court exceeded its authority and Peltier's restraint on these charges resulted in a complete miscarriage of justice. *Id.* at 355.

CP 93.

After conceding error, the State filed a Second Amended Information charging Mr. Peltier with one count of second degree rape of a child and one count of second degree child molestation for acts occurring in 2001, and two counts of second degree rape for acts occurring in 1995 and 1993 involving a different victim from the child sex counts. CP 89. Mr. Peltier moved to dismiss this new information submitting that the court lacked jurisdiction over these additional offenses as they too were filed after the statute of limitations had expired. CP 65-71. Following a hearing, the trial court agreed and dismissed the Second Amended Information.

So the question is, is the statute of limitations in this case, in any criminal case, jurisdictional such that it can or cannot be waived when the parties are entering into their plea negotiations? I have to say that in reviewing all of the cases that were cited, I have to disagree with the State in the sense that I don't think that the case law at this point in time is unclear. I think the cases, in reading them, holding that, in fact, the statute of limitations is jurisdictional. I think *Stoudmire* was quite clear and in fact dealt with plea negotiations and indicated that plea bargaining agreements cannot exceed the statutory authority given to the court and specifically held that because the statute of limitations bars prosecution of charges commenced after the period proscribed in the statute, the sentencing court cannot exceed its authority. I think it's a fairly clear statement.

...

And so I don't believe that under these circumstances it can somehow be resurrected as if it hadn't gone through the machinations that it has gone through in this case.

And so I don't believe that argument would withstand legal scrutiny under the current state of the law as well.

So while I think it's a difficult result, I feel that I have to be bound by the law as I understand it. So I am going to grant the defense motion to dismiss.

RP 17-19.

The State moved the trial court to reconsider its ruling which the court denied. CP 4-5. The State appealed. CP 1.

The Court of Appeals affirmed the trial court's dismissal of the second amended information. *State v. Peltier*, 176 Wn.App. 732, 309 P.3d 506 (2013), *review granted*, 170 Wn.2d 1014 (2014). Both the majority opinion and the concurrence by Judge Cox ruled that this Court's decision in *In re the Personal Restraint of Stoudmire*, 141 Wn.2d 342, 347, 5 P.3d 1240 (2000), divested the superior court of the authority to act on the Second Amended Information charging offenses that were barred by the statute of limitations.<sup>1</sup> *Peltier*, 176 Wn.App. at 749-50.

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<sup>1</sup> Judge Cox's concurrence diverged from the majority's opinion by opining that the running of the statute of limitations divested the superior court with the statutory authority to enforce such a waiver. *Peltier*, 176 Wn.App. at 750-51 (Cox, J., concurring).

### C. ARGUMENT

#### THE EXPIRATION OF THE STATUTE OF LIMITATIONS BARRED THE SUPERIOR COURT FROM ENFORCING MR. PELTIER'S WAIVER

##### 1. Statutes of limitation are statutory bars to prosecution.

The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the [L]egislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity. For these reasons and others, we have stated before “the principle that criminal limitations statutes are ‘to be liberally interpreted in favor of repose. . . .’”

*Toussie v. United States*, 397 U.S. 112, 114-15, 90 S.Ct. 858, 25

L.Ed.2d 156 (1970), quoting *United States v. Habig*, 390 U.S. 222, 227,

88 S.Ct. 926, 19 L.Ed.2d 1055 (1968).

[A] statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. See *United States v. Marion*, 404 U.S. 307, 322, 92 S.Ct. 455, 30 L.Ed.2d 468 (1971). And that judgment typically rests, in large part, upon evidentiary concerns—for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable. *United States v. Kubrick*, 444 U.S. 111, 117, 100 S.Ct. 352, 62 L.Ed.2d 259 (1979).

*Stogner v. California*, 539 U.S. 607, 615, 123 S.Ct. 2446, 156 L.Ed.2d 544 (2003).

A statute of limitation does not make an act criminal, rather it is a policy determination, by the Legislature, to deal with the practical difficulties of prosecuting stale crimes. *United States v. Gouveia*, 467 U.S. 180, 192, 104 S.Ct. 2292, 81 L.Ed.2d 146 (1984) (“statutes of limitations protect against the prosecution’s bringing stale criminal charges against any defendant”); *United States v. Marion*, 404 U.S. 307, 322-23, 92 S.Ct. 455, 30 L.Ed.2d 468 (1971) (statute of limitations is the primary protection against bringing stale criminal charges).) Once a statute of limitations has expired for a crime, the accused’s acts do not become innocent, rather the State has given up its right to prosecute for that offense.

2. Washington’s statute of limitations is jurisdictional. The Washington Constitution grants the superior courts original jurisdiction “in all criminal cases amounting to felony. . . .” Art. IV, § 6; *State v. Posey*, 174 Wn.2d 131, 141, 272 P.3d 840 (2012).

Mr. Peltier was charged and sentenced on a count of third degree rape and a count of indecent liberties. The statute of limitations for third degree rape and indecent liberties is three years. RCW

9A.04.080(1)(h) (“No other felony may be prosecuted more than three years after its commission[.]”).

The statute of limitations in a criminal case is jurisdictional and creates an absolute bar to prosecution. *State v. Glover*, 25 Wn.App. 58, 61, 604 P.2d 1015 (1979). *Accord State v. Dash*, 163 Wn.App. 63, 259 P.3d 319 (2011); *State v. N.S.*, 98 Wn.App. 910, 914-15, 991 P.2d 133 (2000). Whether the superior court had jurisdiction is a question of law reviewed *de novo*. *Crosby v. County of Spokane*, 137 Wn.2d 296, 301, 971 P.2d 32 (1999).

Because a criminal statute of limitations is jurisdictional, unlike the statute of limitations in a civil action, it cannot be waived. *State v. Walker*, 153 Wn.App. 701, 705, 224 P.3d 814 (2009); *Glover*, 25 Wn.App. at 61-62. *See also State v. Phelps*, 113 Wn.App. 347, 357, 57 P.3d 624 (2002) (defendant could not agree to extend criminal statute of limitations period).

In *Walker*, the defendant argued some of his bail jumping convictions were barred by the applicable statute of limitations. 153 Wn.App. at 705. In ruling the conviction was barred, Division Three of the Court of Appeals ruled that the statute of limitations was

jurisdictional. *Id.* (“The statute of limitations in a criminal case is jurisdictional.”).

While this Court has not weighed in on this issue, this view is consistent with decisions of all of the divisions of the Court of Appeals beginning in 1979 with the decision of Division Two in *Glover*. There, the State appealed the dismissal of an indecent liberties conviction on statute of limitations grounds. 25 Wn.App. at 59. Citing the decision of the appellate court of Arizona, the Court held that the statute of limitations was jurisdictional:

Unlike the situation in civil cases, a criminal statute of limitations is not merely a limitation upon the remedy, but is a “limitation upon the power of the sovereign to act against the accused.” *State v. Fogel*, 16 Az.App. 246, 248, 492 P.2d 742, 744 (1972).

. . .  
An indictment or information which indicates the offense is barred by the statute of limitations fails to state a public offense . . . It is not subject to amendment and must be dismissed.

*Glover*, 25 Wn.App. at 61-62.

Division Two reaffirmed its decision in *Glover* two years later in *State v. Eppens*, 30 Wn.App. 119, 633 P.2d 92 (1981). In *Eppens*, the Court noted that the statute of limitations is viewed differently in the criminal context than the civil context. *Id.* at 124. In civil law, the statute of limitation is a limitation on remedies, while in criminal law

the statute of limitations “create[s] an absolute bar to prosecution.” *Id.* See also *Phelps*, 113 Wn.App. at 357; *State v. Kirk*, 64 Wn.App. 788, 789 n.1, 828 P.2d 1128 (1992); *State v. Bryce*, 41 Wn.App. 802, 807, 707 P.2d 694 (1985) (same).

Division One similarly held that the statute of limitations is jurisdictional creating an absolute bar to prosecution. *State v. Novotny*, 76 Wn.App. 343, 345 n.1, 884 P.2d 1336 (1994); *State v. Fischer*, 40 Wn.App. 506, 510, 699 P.2d 249 (1985). The Court of Appeals reaffirmed its holding more recently in *Dash, supra*, where the Court held that “(a) criminal statute of limitations presents a jurisdictional bar to prosecution. It is not merely a limitation upon the remedy, but a “limitation upon the power of the sovereign to act against the accused.”” *Id.* at 67, quoting *Glover*, 25 Wn.App. at 61.

Based on these clear pronouncements by the three divisions of the Court of Appeals that under the current state of Washington law the statute of limitations is jurisdictional and an absolute bar to prosecution, the trial court did not abuse its discretion in granting Mr. Peltier’s motion to dismiss the Second Amended Information.

3. Assuming the statute of limitations is not jurisdictional, the superior court was correct when it stated it lacked the statutory authority to enforce Mr. Peltier's subsequent waiver. Should this Court determine the statutes of limitations are not jurisdictional, the trial court's conclusion that the running of the statute of limitations terminated its statutory authority to enforce the waiver was correct in light of this Court's decision in *Stoudmire*.

Statute of limitations are not a matter of common law but are "matters of legislative grace; they are a surrendering by the sovereign of its right to prosecute." *State v. Hodgson*, 108 Wn.2d 662, 667, 740 P.2d 848 (1987), *citing among other cases Glover*, 25 Wn.App. at 61. Any act of the court which exceeds that authority it is given to it by the legislature is void and cannot stand. *Stoudmire*, 144 Wn.2d at 355.

The trial court, the majority decision of the Court of Appeals, as well as the concurring opinion by Judge Cox relied on this Court's decision in *Stoudmire* in concluding the running of the statute of limitations terminated the court's statutory authority to act. In *Stoudmire*, the defendant pleaded guilty to, among other offenses, two counts of indecent liberties. 141 Wn.2d at 347. The defendant subsequently filed a personal restraint petition seeking to overturn these

convictions on the basis that the statute of limitations had expired on the two offenses prior to entering his guilty pleas. *Id.* at 354. The State argued, as it does here, that by pleading guilty, the defendant had waived any challenge to the statute of limitations. *Id.* This Court disagreed. *Id.* at 355. The Court noted that, although one waives many things when pleading guilty, a plea agreement “cannot exceed the statutory authority given to the courts of this State. *Id.*

“A plea of guilty, voluntarily made, waives the right to trial and all defenses other than that the complaint, information, or indictment charges no offense.” However, that rule was distinguished in a later case: “[A] plea bargaining agreement cannot exceed the statutory authority given to the courts.’” *In re Personal Restraint of Moore*, 116 Wn.2d 30, 38, 803 P.2d 300 (1991) (quoting *In re Personal Restraint of Gardner*, 94 Wn.2d 504, 507, 617 P.2d 1001 (1980)). *Because the statute of limitations bars prosecution of charges commenced after the period prescribed in the statute, the sentencing court exceeded its authority.*

*Id.* at 354-55 (emphasis added). By accepting the defendant’s guilty plea to offenses that were barred by the statute of limitations, the trial court exceeded its authority, which resulted in a miscarriage of justice. *Id.* See also *Phelps*, 113 Wn.App. at 357 (“Although Phelps agreed to the extension [of the statute of limitations], he cannot grant the court authority to punish him more severely than the sentencing statutes allow.”).

The view that the court acts in excess of its statutory authority in proceeding where the statute of limitations has expired is one shared by the California Supreme Court. *Cowan v. Superior Court*, 14 Cal.4th 367, 371-72, 926 P.2d 438, 44, 58 Cal.Rptr.2d 458 (1996) (“The court may act in *excess* of jurisdiction in accepting a guilty plea to a time-barred lesser offense, but, contrary to our earlier broad statements, it does not lack fundamental subject matter jurisdiction”) (emphasis in original). Prior decisions of the California Supreme Court had ruled that the statute of limitations was jurisdictional: once an offense was time-barred, the court no longer had jurisdiction to adjudicate it. *See People v. McGee*, 1 Cal.2d 611, 613, 36 P.2d 378 (1934) (“In our view, the more desirable rule is that the statute is jurisdictional, and that an indictment or information which shows on its face that the prosecution is barred by limitations fails to state a public offense.”).

Here, the superior court could only enter those orders for which it had statutory authority. Realizing that fact, the trial court properly rejected the State’s motion to amend the Information and ordered the Second Amended Information dismissed as time-barred under the applicable statute of limitations.

4. Where a defendant can waive the statute of limitations, such a waiver must be knowing, intelligent, and voluntary. Should this Court find that the statute of limitations is a right that can be waived, Mr. Peltier submits that this Court should hold that any waiver of the statute of limitations must be an explicit waiver that is knowing, voluntary, and intelligent.

Statutes of limitation create significant substantive legal rights for the accused. A waiver of the statute of limitations should not be inferred from the defendant's actions, but should be founded only upon an explicit waiver of the right with the advice of counsel. *See, e.g., United States v. Wilson*, 26 F.3d 142, 155-56 (D.C.Cir.1994) (stating that *United States v. Wild* requires an inquiry into whether a written waiver of statute of limitations was made knowingly, voluntarily, and intelligently); *United States v. Cooper*, 956 F.2d 960, 962 (10th Cir.1992) (finding that absent explicit agreement, defendant's waiver of the statute of limitations cannot be inferred); *United States v. Caldwell*, 859 F.2d 805, 807 (9th Cir.1988) (upholding counseled open-ended written agreement to waive statute of limitations because it was entered into knowingly and voluntarily), *cert. denied*, 489 U.S. 1039 (1989);

Adlestein, *Conflict Of The Criminal Statute Of Limitations With Lesser Offenses At Trial*, 37 Wm. & Mary L. Rev. 199, 297 (1995).

If the strong policies behind these [constitutional] rights are not violated by a rule permitting them to be waived by a defendant, we cannot find that the limitation statute's policy is violated here *where the defendant was fully cognizant of the consequences of such a waiver and decided to execute it on the advice of his attorney for his own benefit.*

*United States v. Wild*, 551 F.2d 418, 425, 179 U.S.App.D.C. 232 (C.A.D.C. 1977) (emphasis added).

Other states have adopted this rule as well. California deviated from its rule that statute of limitations were jurisdictional when it adopted a narrow rule that allowed a waiver of the statute of limitations to permit a defendant to plead guilty to a lesser included offense, where the statute of limitations for the greater offense had not expired but the statute of limitations for the lesser included offense had expired.

*Cowan*, 14 Cal.4th at 374. The Court cautioned that such a waiver would be considered valid only where:

“a statute of limitations can be waived if the trial court determines that the following prerequisites have been met: [¶] ‘(1) the waiver is knowing, intelligent, and voluntary; (2) it is made for the defendant’s benefit and after consultation with counsel; and (3) the defendant’s waiver does not handicap his defense or contravene any other public policy reasons motivating the enactment of the statutes.’”

*Id.* at 372, quoting *Padie v. State* 594 P.2d 50, 57 (Alaska 1979). The Court noted that “[w]e think that this rule is fair and a defendant should be able to waive the statute of limitations at least when those prerequisites have been met. Just as a defendant may ‘waive the most crucial of rights,’ so too should a defendant be allowed to waive the statute of limitations.” *Id.* at 372-73 (internal citation omitted).

This rule would allow the defendant to waive the statute of limitations if it is in his or her best interest, but still protects their rights by requiring the waiver follow the rule for waiving important constitutional rights possessed by the defendant. Here, no such valid waiver occurred. Mr. Peltier was never explicitly told that the statute of limitations had expired on the offenses to which he was pleading guilty and he did not waive that defect with that knowledge. Further, there is nothing in the record that established, that with this knowledge, he consulted with counsel prior to waiving this right. Thus, should this Court find that the statute of limitations can be waived, this Court must affirm the dismissal of the Second Amended Information, where the record failed to establish Mr. Peltier validly waived the expiration of the statute of limitations.

D. CONCLUSION

For the reasons, stated, Mr. Peltier asks this Court to affirm the decision of the trial court that it lacked the jurisdictional and/or statutory authority to enforce his waiver of the statute of limitations.

DATED this 27<sup>th</sup> day of March 2014.

Respectfully submitted,



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### **Supplemental Brief of Respondent**

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