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WASHINGTON STATE  
SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In re the Personal Restraint Petition of

WILLIAM CRAIG SCHORR,

Petitioner,

94591-8

COA No. 49853-7-II

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MOTION FOR  
DISCRETIONARY REVIEW

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Respectfully submitted by

Inmate legal Advisor  
Sir Reginald Bell, Sr.,

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WILLIAM CRAIG SCHORR  
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TABLE OF CONTENTS

	Page
A. <u>IDENTITY OF PETITIONER</u> . . . . .	1
B. <u>COURT OF APPEALS DECISION</u> . . . . .	1
C. <u>ISSUES PRESENTED FOR REVIEW</u> . . . . .	1
D. <u>STATEMENT OF THE CASE</u> . . . . .	1
E. <u>ARGUMENT WHY REVIEW SHOULD BE GRANTED</u> . . . . .	3
F. <u>CONCLUSION</u> . . . . .	9

TABLE OF CASES

State

<u>State v. Brooks,</u> 92 Wn.2d 878, 602 P.2d 351 . . . . .	7
<u>In re Pers. Restr. of Carle,</u> 90 Wn.2d 443, 584 P.2d 382 . . . . .	7
<u>State v. Eggleston,</u> 164 Wn.2d 61, 187 P.3d 233 . . . . .	4
<u>In re Pers. Restr. of Goodwin,</u> 146 Wn.2d 861, 90 P.3d 618 . . . . .	7
<u>In re Pers. Restr. of Hinton,</u> 152, Wn.2d 861, 100 P.3d 805 . . . . .	7
<u>State v. Hughes,</u> 2017 WASH . APP LEXIS 153 . . . . .	8
<u>State v. Hinton,</u> 156 Wn.2d 777, 132 P.3d 1238 . . . . .	7
<u>State v. Kelly,</u> 168 Wn.2d 72, 226 P.3d 773 . . . . .	4
<u>State v. McNitt,</u> 47 Wn.2d 565, 288 P.2d 850 . . . . .	7
<u>In re Pers. Restr. of Thompson,</u> 141 Wn.2d 723 . . . . .	7
<u>State v. Williams,</u> 128 P.3d 98 . . . . .	7

Federal

<u>Ball v. U.S.,</u> 470 U.S. 864 . . . . .	5,6
<u>Andis,</u> 333 F.3d 891 . . . . .	7
<u>Deree,</u> 223 F.3d 923-24 . . . . .	7
<u>Rutledge v. United States,</u> 517 U.S. 292 . . . . .	4,6

CONSTITUTIONAL PROVISION

U.S. CONST. AMEND V  
 WASH CONST. ART I SEC 9

STATUTES

RCW 10.73.100(3)  
 RCW 9A.32.030(1)(c)  
 RAP 16.4(c)(2)  
 RAP 13.4(b)(3)

A. IDENTITY OF PETITIONER

William Craig Schorr, ask this court to review the decision of the Court of Appeals designated in part B.

B. COURT OF APPEALS DECISION

On May 16, 2017, the Acting Chief judge dismissed Mr. Schorr's personal restraint petition as time barred because, although the petition fell within one of the exceptions in RCW 10.73.100, he waived his right to postconviction challenge the erroneous sentence imposed by the trial court. A copy of the order dismissing the petition is in the Appendix at 1 through 2.

C. ISSUES PRESENTED FOR REVIEW

1. Is multiple sentences for the greater and lesser included offense authorized under RCW 9A.32.030(1)(c)? and if not, does an otherwise valid appeal waiver and the invited error doctrine preclude an attack on an erroneous sentence?

2. And if not, is Mr. Schorr petition time barred where he has shown that RCW 10.73.100(3) applies to his case?

D. STATEMENT OF THE CASE

1. Procedural facts

Defendant Schorr was charged with first degree felony murder, first degree aggravated murder, first kidnapping, first degree robbery, first degree theft, first degree arson, and extortion arising from a single robbery event

that resulted in the death of a person.

In exchange for his plea of guilty to first degree felony murder, first robbery, first degree theft, and first degree arson, the state recommended standard range sentences to be served concurrent. In addition, a 60 month firearm enhanced sentence would be imposed on the murder and robbery charges which would be served consecutively each other and to the base offenses. To obtain this privilege the defendant would have to waive his right to appeal or collaterally attack the sentence in both state and federal court.

The Superior Court for Pierce County entered a judgment of guilty on all counts and sentenced Schorr in accordance with the plea arrangement. A little over 11 year later, Schorr applied for relief by personal restraint petition alleging one ground, pursuant to RAP 16.4(c)(2), the sentence imposed is in violation of the laws of the State of Washington and the Constitution of the United States.

The State responded, contended that the petition should be dismissed because Schorr plead guilty to charges and signed an appeal waiver. it also argued the invited error doctrine precluded any review of this case.

In his reply, Schorr argued the appeal waiver is invalid because the sentence is unauthorized by law therefore the waiver does not prevent an attack on an illegal sentence.

Mr. Schorr also contended that, to the extent that he has demonstrated that the sentencing court exceeded its statutory authority, the invited error doctrine will not preclude appellate review of his claim. Reply

The Court of appeals adopted the States conclusions finding because Mr. Schorr signed the appeal waiver, he cannot demonstrate that his petition falls within RCW 10.73.100(3).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A motion for discretionary review will be accepted by the Supreme Court only (1) if the decision of the Court of Appeals is in conflict with the decision of the Supreme Court, or (2) if the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals, or (3) if a significant question of law under the Constitution of the State of Washington or of the United States is involved, or (4) if the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b).

1. A plea agreement to plead guilty to an unlawful sentence does not foreclose collateral relief and nor does the invited error doctrine or a ~~waiver~~ waiver preclude an attack on the unauthorized conviction and sentence.

The Court of Appeals dismissal of the personal restraint petition as untimely because of an invalid appeal waiver was error and raises question of law.

RAP 13.4(b)(3).

State v. Kelly, 168 Wn.2d 72, 76, 226 P.3d 773 (2010) (citing State v. Hughes, 166 Wn.2d 675, 681, 212 P.3d 558). Both our federal and state constitutions protect persons from being twice put in jeopardy for the same offense. See U.S. CONST. amend. V; Wash. Const. art. I, § 9. This court have held that "Washington's double jeopardy clause is coextensive with the federal double jeopardy clause and "is given the same interpretation the Supreme Court gives to the Fifth Amendment." State v. Eggleston, 164 Wn.2d 61, 187 P.3d 233 (2008) (quoting State v. Goeken, 127 Wn.2d 95, 896 P.2d 1267 (1995)).

Consequently, both clauses have been interpreted so as to protect against the same triumvirate of constitutional evils "being (1) prosecuted a second time for the same offense after acquittal, (2) prosecuted a second time for the same offense after conviction, and (3) multiple punishments for the same offense." State v. Linton, 156 Wn.2d 777, 132 P.3d 127 (2006) (citing State v. Graham, 153 Wn.2d 400, 103 P.3d 1238 (2005), Brown v. Ohio, 432 U.S. 161, 97 S.Ct. 2221, 53 L.Ed.2d 187 (1977)). The last of these three protections, the prohibition against multiple punishments for the same conduct, is implicated here.

The leading federal case on the issue of double jeopardy and multiple convictions is Rutledge v. U.S., 517 US 292 (1996)

In Rutledge, a jury found the defendant guilty of conspiracy to distribute a controlled substance and conducting a continual criminal enterprise (distribution of cocaine). The "in concert" element of the latter was based on the same agreement as the former. Id at 294-95. The defendant received concurrent life sentences on the two counts. Id at 295. On appeal, the Supreme Court held that the conspiracy offense was a lesser included of the criminal enterprise offense. It also held that that double jeopardy barred convictions for both offenses and remanded for vacation of one of them. Id at 300, 307. ( "one of the petitioner's convictions . . . is unauthorized punishment for a separate offense and must be vacated " (quoting Ball 470 U.S. at 864 )).

Similarly, our Supreme Court followed Rutledge's counsel in State v. Williams, 128 P.3d 98 (2006). Williams was convicted of first degree felony murder and first degree robbery. The first degree robbery is a predicate offense of the former. RCW 9A.32.030(1)(c). The defendant received concurrent sentences on the two counts. On appeal, the court held that the robbery was an lesser included offense of the felony murder offense and remanded for vacation of the robbery offense finding separate convictions for the predicate offense of robbery is contrary to legislative intent.

See Rutledge, 517 U.S. at 306, 116 S.Ct. 1241 ("absent a clear indication by Congress (or the legislature) that it intended to allow punishment for both offenses, the trial court should enter a final judgment of conviction on the greater offense and vacate the conviction on the lesser offense").

Like Williams, Schorr was convicted of both the lesser and greater offenses within the same indictment. The trial court entered final judgment of conviction on both offenses. The court also entered special firearm enhanced penalties on both offenses. The Williams court has clearly indicated Schorr's punishment is unauthorized under Williams and Rutledge the lesser offense (robbery) must be vacated. Rutledge, 517 U.S. at 306.

As noted above, like Williams and Rutledge, one of Schorr's convictions is unauthorized punishment and must be vacated. Ball, 472 U.S. at 864, the lower court believed a defendant who pleads guilty to an unauthorized conviction and an erroneous sentence cannot collaterally challenge it if he has waived his right to appeal and the invited error doctrine would preclude any review. When this proposition was presented by the State Mr. Schorr directed the lower court to Supreme Court precedent which hold when a sentence has been imposed for which there is no authority of law, the court has the power and duty to

correct the erroneous sentence, when the error is discovered. In the matter of McNut, 47 Wn.2d at 565, 288 P.2d 850.

State v. Brooks, 92 Wn.2d at 878, 602 P.2d 351 (same). In re Pers. Restr. of Carle, 90 Wn.2d 443, 584 P.2d 382 (same) In re Pers. Restr. of Goodwin, 146 Wn.2d 861, 90 P.3d 618 ("an individual cannot, by way of a negotiated plea agreement, agree to a sentence in excess of that allowed by law thus cannot waive such a challenge) Hinton, 152 Wn.2d 861, 100 P.3d 805 (same) Thompson, 141 Wn.2d at 723 (same)

Schorr also provided an abundant of federal case law which also supported this Washington State rule. an otherwise valid waiver of postconviction right or appeal rights does not prevent a defendant from attacking an illegal sentence. Andis, 333 F.3d at 801, Deroo, 223 F.3d at 923-24 (same stating that a valid waiver of appellate rights not prohibit appeal of an illegal sentence) see also Michaelson, 141 F.3d at 872 n.3 (describing right to appeal an illegal sentence).

Finally, Schorr argued, in regards to the invited error doctrine, to the extent that he has demonstrated that the trial court court acted outside its statutory authority in imposing his sentence, the invited error doctrine will not preclude appellate review citing two

cases from this court. State v. Hughes, 2017 Wash.App LEXIS 153 and State v. Phelps, 113 Wn.App 347, 57 P.3d 364.

Strikingly similar to Scherr's case, the State argued that the invited error doctrine barred Phelps from complaining of the alleged errors committed by the sentencing court because, he participated in creating them by agreeing to the conditions in the plea bargain. This court held, although Phelps clearly invited the challenged sentence, to the extent he can show that the sentencing court exceeded its statutory authority, the invited error doctrine will not preclude review. Phelps, 113 Wn.App at 354 (citing Goodwin, 146 Wn.2d 861, 50 P.3d 618).

Based upon the authority cited above, the Court of Appeals was clearly not precluded by either the plea of guilty, appeal waiver, or the invited error doctrine to review the postconviction challenge and grant him relief the court therefore has erred.

2. The petition is not time barred because RCW 10.73.100(3) applies to this case.

The Court of Appeals erred in finding Mr. Scherr's petition as time barred. RCW 10.73.100(3) clearly mandates that a conviction entered in violation of the double jeopardy clauses is an exception to RCW 10.73.090 one year time limitation. As noted

above, Williams holds convictions for the predicate offense and the felony murder violate double jeopardy principles.

F. CONCLUSION

For the reasons stated above, the acting chief judge erred and pursuant to RAP 16.4(c) Mr. Schorr is entitled to relief.

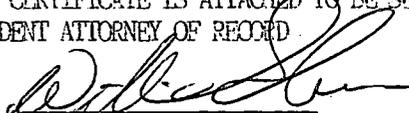
Dated this 28<sup>th</sup> day of May, 2017.

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WILLIAM CRAIG SCHORR  
COYOTE RIDGE CORRECTION CENTER  
P.O. BOX 769  
CONNELL, WA. 99326

CERTIFICATE OF SERVICE

THE UNDERSIGNED CERTIFIES THAT ON THE DATE BELOW I CAUSED A TRUE AND CORRECT COPY OF THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED TO BE SERVED ON THE RESPONDENT ATTORNEY OF RECORD.

5-28-2017  
DATE

  
SIGNATURE

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FILED  
COURT OF APPEALS  
DIVISION II  
2017 MAY 16 AM 9:24  
STATE OF WASHINGTON  
BY [Signature] DEPUTY

In the Matter of the Personal Restraint of:

WILLIAM CRAIG SCHORR,

Petitioner.

No. 49853-7-II

ORDER DISMISSING PETITION

William Schorr seeks relief from personal restraint imposed following his 2006 pleas of guilty to first degree murder, first degree robbery, second degree arson and first degree theft. He argues that his murder, robbery and theft convictions merge and so the separate convictions violate double jeopardy.

RCW 10.73.090(1) provides:

No petition or motion for collateral attack on a judgment and sentence in a criminal case 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.

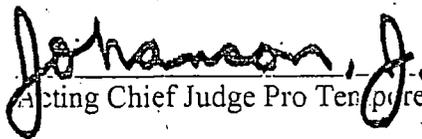
Schorr's judgment and sentence became final on August 21, 2006, when the trial court entered it. RCW 10.73.090(3)(a). He did not file his petition until December 29, 2016, more than one year later. Unless he shows that one of the exceptions in RCW 10.73.100 applies or shows that his judgment and sentence is facially invalid, his petition is time-barred. *In re Personal Restraint of Hemenway*, 147 Wn.2d 529, 532-33, 55 P.3d 615 (2002).

Schorr does not demonstrate that his judgment and sentence is facially invalid. He argues that his petition is exempt from the time-bar under RCW 10.73.100(3), which exempt petitions in which a conviction violates double jeopardy. But Schorr's plea of guilty was part of a plea agreement in which the State agreed to reduce his charges from seven counts, including aggravated first degree murder and three firearm sentencing enhancements, to the four counts described above. In exchange, Schorr agreed to "waive[] his right to collaterally attack or make any post-conviction challenge to his convictions and/or sentences in either state or federal court." Having waived his right to collaterally attack his judgment and sentence, he cannot demonstrate that his petition falls within the time-bar under RCW 10.73.100(3). Therefore, his petition must be dismissed as untimely.

It is hereby

ORDERED that Schorr's petition is dismissed under RAP 16.11(b).

DATED this 16<sup>th</sup> day of May, 2017.

  
Acting Chief Judge Pro Tempore

cc: William C. Schorr  
Chelsey Miller  
Pierce County Clerk  
County Cause Nos. 04-1-01018-9