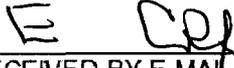


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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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

ANSWER TO PETITION FOR REVIEW

THOMAS M. KUMMEROW
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 ORIGINAL

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STATUTES

RCW 10.73.090 2

A. ISSUE TO BE RESOLVED

In *In re the Personal Restraint of Stoudmire*, this Court established that once the statute of limitations has run, the trial court no longer has the authority to act. Where a trial court imposes a sentence after the statute of limitations has run, the court exceeds the authority given it. Here, the State conceded the statute of limitations had run, thus the trial court lacked authority to sentence Mr. Peltier. Has the State established sufficient reasons for this Court to overrule its decision in *Stoudmire*?

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. Mr. Peltier subsequently formally waived his constitutional rights and agreed to the stipulation at a hearing. CP 134-7. 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 offenses as they 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.

In a split decision, the Court of Appeals affirmed the trial court's dismissal of the second amended information. *State v. Peltier*, ___ Wn.App. ___, 309 P.3d 506 (2013). 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 with the authority to act on the Second Amended Information charging offenses that were barred by the statute of limitations. Slip op. at 17-19.

C. ARGUMENT ON WHY REVIEW SHOULD BE DENIED

THE STATE FAILS TO ESTABLISH A BASIS FOR
THIS COURT TO GRANT REVIEW AND
OVERRULE *STOUDMIRE*

The State urges this Court to grant review because "the entire law [on statute of limitations] [rests] on a single decision of this court." Petition for Review at 11. In so stating, the State concedes *Stoudmire* controls the issue in this appeal. The only complaint the State has is *Stoudmire* does not allow for the waiver of the statute of limitations by

defendants, even if it was advantageous to do so. Petition for Review at 4-9.

Without intending to be facetious or flippant, a defendant always becomes concerned when it is the State who is looking out for his rights. Without saying as much, the State is not so much concerned about what advantages a defendant would gain by waiving the statute of limitations as it is the massive benefits it would gain from such a rule to the detriment of defendants such as Mr. Peltier.

Further, while the State urges this Court for a rule that the defendant may waive the statute of limitations, it is important to note that Mr. Peltier did not waive that right in this case because he was never advised of the applicability of the statute of limitations at the time he plead guilty, thus he could not have “waived” that right. *See* CP 113-14. In addition, *Stoudmire* was very clear on this issue:

“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.”

Stoudmire, 141 Wn.2d at 354-55, quoting *In re the Personal Restraint of Moore*, 116 Wn.2d 30, 38, 803 P.2d 300 (1991). Since, as the State here conceded, the statute of limitations had run, Mr. Peltier could not

have waived the statute of limitations because the trial court no longer had the authority to act.

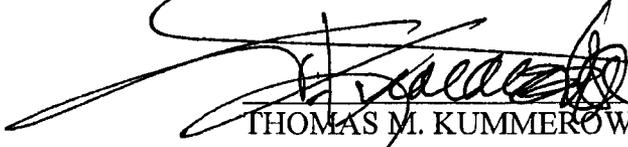
In addition, without explicitly stating so, the State is urging this Court to overrule its decision in *Stoudmire*. The State has not, and cannot, establish why the rule announced in *Stoudmire* in 2000 has resulted in significant problems, or is incorrect or harmful, such that it should be overruled. See *Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 147, 94 P.3d 930 (2004) (“The doctrine of stare decisis ‘requires a clear showing that an established rule is incorrect and harmful before it is abandoned.’”), quoting *In re Rights to Waters of Stranger Creek*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970). This Court should reject the State’s invitation to overrule *Stoudmire* and deny the State’s petition for review.

D. CONCLUSION

For the reasons stated, Mr. Peltier requests this Court deny the petition for review, thus affirming the dismissal of the second amended information.

DATED this 15th day of November 2013.

Respectfully submitted,



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Answer to Petition for Review

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