

## What is the Meaning of “Invalid”?

By: Wayne C. Fricke; 2011

The Washington Supreme Court has struggled for years in determining when a Personal Restraint Petition is timely filed based on the finality of the judgment and sentence. Recently, in In re Pers. Restraint of Coats, N. 83544-6 (Nov. 17, 2011), the court clarified when a judgment and sentence is invalid for purposes of the one year statute of limitations.

Initially, the one year time limit is set forth in RCW 10.73.090 and provides as follows: “(1) 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. (2) For the purposes of this section, "collateral attack" means any form of post-conviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment. (3) For the purposes of this section, a judgment becomes final on the last of the following dates: (a) The date it is filed with the clerk of the trial court; (b) The date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction; or (c) The date that the United States Supreme Court denies a timely petition for certiorari to review a decision affirming the conviction on direct appeal. The filing of a motion to reconsider denial of certiorari does not prevent a judgment from becoming final.” After 14 years the petitioner in Coats challenged his convictions as being invalid because, although the trial judge sentenced him to a standard range sentence, he had erroneously set the maximum prison sentence for conspiracy to commit robbery as life in prison when it was actually 10 years.

The court, in affirming the conviction and denying the petition, set forth the court's history discussing facially invalid sentences. For instance, in State v. Ammons, 105 Wn.2d 175, 713 P.2d 719, 718 P.2d 796 (1986), the defendant had challenged his offender score and, the court held that "the State need not prove the constitutional validity of prior guilty pleas, though a facially invalid plea cannot be used." State v. Binder, 106 Wn.2d 417, 419, 721 P.2d 967 (1986). Subsequently, the court again used the term in the context of a challenge to a defendant's offender score. In Re Pers. Restraint of Williams, 111 Wn.2d 353, 368, 759 P.2d 436 (1988).

First, to avoid RCW 10.73.090's one-year time bar on challenging judgments that are valid on their face, the court held that the error must render the judgment and sentence "invalid." Not every error meets this test. For instance, typographical errors easily corrected would not render a judgment invalid. Nor would errors misstating a date and place within the judgment.

So what makes a judgment and sentence invalid? As the court stated a careful review of the cases demonstrates that only errors where a court has exceeded its statutory authority in entering the judgment or sentence makes it invalid and not subject to the one year statute of limitations. For example, when the trial judge has imposed an unlawful sentence or when the offender has been given a longer sentence than the statutory maximum authorized by law. In re Pers. Restraint of Tobin, 165 Wn.2d 172, 176, 196 P.3d 670 (2008) (sentence exceeded statutory maximum; remanded for resentencing within the standard range). Or when found an offender has been convicted of a non-existent crime in Hinton, 152 Wn.2d at 857. (this typically happens when the parties did not notice that a statute lapsed or came into existence after the date of the conduct.)

Other situations include situations when an offender agreed to serve a 10 year exceptional sentence on a lesser crime, with no reduction for earned early release time, in exchange for the prosecution reducing the charge from a third strike offense, and the trial judge memorialized the agreement on the

judgment and sentence. In re Pers. Restraint of West, 154 Wn.2d 204, 206-07, 110 P.3d 1122 (2005), or when the trial judge had miscalculated the petitioner's offender score. In re Pers. Restraint of La-Chapelle, 153 Wn.2d 1, 6, 100 P.3d 805 (2004),

Thus for the petitioner to avoid the one-year time bar, he or she must show that the judgment and sentence is "facially invalid." (citing In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 865-67, 50 P.3d 618 (2002)). However, review is not limited to the four corners of the judgment and sentence. Courts have utilized the charging documents, verdicts and statements of guilt. Those documents would reference the validity of the judgment and whether the trial court exceeded its authority.

Conversely, the decisions have not utilized jury instructions, motions or other documents related to whether a defendant received a fair trial. The one year time limit remains applicable to those issues and will not be used to circumvent the one year limitation.

In sum, the court has clarified what is invalid and what is not. If the court acted outside its authority, the court would more than likely consider the petition. If the claim does not go to the court's authority, but rather its discretion and fairness of the trial or plea, the one year limitation will still apply.

Still to be determined is whether the petitioner must demonstrate prejudice, although the court strongly hinted that this may well be the case.

End

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