

FILED
DEC - 4 2017
WASHINGTON STATE
SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of:

EDWIN DAVID CORBETT,

Petitioner.

No. 95010-5

Court of Appeals No. 50365-4-II

RULING DENYING REVIEW

Edwin Corbett was convicted of four counts of first degree child rape. Division One of the Court of Appeals affirmed the judgment and sentence, issuing its mandate in January 2011. In 2017, Mr. Corbett filed a personal restraint petition—his second—in the Court of Appeals. The acting chief judge dismissed the petition as untimely, and Mr. Corbett now seeks this court’s discretionary review. RAP 16.14(c).

To obtain review in this court, Mr. Corbett must demonstrate that the Court of Appeals decision conflicts with a decision of this court or with a published Court of Appeals decision, or that he is raising a significant constitutional question or an issue of substantial public interest. RAP 13.4(b); RAP 13.5A(a)(1), (b). And because Mr. Corbett filed his current collateral challenge more than one year after his judgment and sentence became final, the challenge is untimely unless Mr. Corbett demonstrates that the judgment and sentence is facially invalid or was entered without competent jurisdiction under RCW 10.73.090(1), or unless he asserts solely grounds for relief

exempt from the one-year limit under RCW 10.73.100. *In re Pers. Restraint of Adams*, 178 Wn.2d 417, 422, 309 P.3d 451 (2013).

Mr. Corbett argues that the evidence did not support his convictions, a claim potentially exempt from the one-year time bar. RCW 10.73.100(4). But, as the acting chief judge explained, the Court of Appeals already fully adjudicated this argument on direct appeal. A personal restraint petitioner may not renew a ground for relief that was raised and rejected on direct appeal unless the interests of justice require reconsideration. *In re Pers. Restraint of Yates*, 177 Wn.2d 1, 17, 296 P.3d 872 (2013).

Mr. Corbett asserts that the interests of justice require revisiting this issue because his appellate attorney failed to properly make a cumulative error argument. Mr. Corbett is careful to explain that he is *not* asserting a claim of ineffective assistance of appellate counsel, which he acknowledges would not fall within any exemption from the time bar. But Mr. Corbett fails to explain how his preferred arguments would fare any better, and thus he fails to demonstrate either good cause for revisiting the adjudication of his direct appeal or for reviewing the decision of the acting chief judge under RAP 13.4(b).

The motion for discretionary review is denied.



COMMISSIONER

December 4th, 2017

FILED
SUPREME COURT
STATE OF WASHINGTON
2/7/2018
BY SUSAN L. CARLSON
CLERK

THE SUPREME COURT OF WASHINGTON

In re the Personal Restraint of

EDWIN DAVID CORBETT,

Petitioner.

No. 95010-5

ORDER

Court of Appeals
No. 50365-4-III

Department II of the Court, composed of Chief Justice Fairhurst and Justices Madsen, Stephens, González and Yu, considered this matter at its February 6, 2018, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's motion to modify the Commissioner's ruling is denied.

DATED at Olympia, Washington, this 7th day of February, 2018.

For the Court

Fairhurst, C.J.
CHIEF JUSTICE

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

In re the Personal Restraint Petition of
EDWIN DAVID CORBETT,
Petitioner.

No. 50365-4-II

ORDER DISMISSING PETITION

Edwin Corbett seeks relief from personal restraint imposed following his 2009 convictions for four counts of first degree rape of a child. In this, his second petition,¹ he argues that the evidence against him was insufficient.

RCW 10.73.090(1) requires that a petition be filed within one year of the date that the petitioner's judgment and sentence becomes final. Corbett's judgment and sentence became final on January 19, 2011, when this court issued the mandate of his direct appeal. RCW 10.73.090(3)(b). He did not file his petition until May 15 2017, more than one year later. Unless he shows that one of the exceptions contained in RCW 10.73.100 applies or 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).

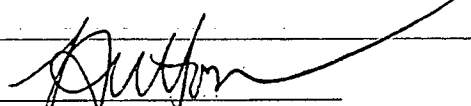
RCW 10.73.100(4) usually exempts petitions claiming that the evidence was insufficient to support the conviction. But we rejected this argument in his direct appeal,

¹ See Order Dismissing Petition, *In re Personal Restraint of Corbett*, No. 47946-0-II (October 29, 2015).

No. 39147-3-II. Unless he shows that the interests of justice require it, he cannot raise this argument again in this petition. *In re Pers. Restraint of Lord*, 123 Wn.2d 296, 303, 868 P.2d 835 (1994). He makes no such showing. Therefore, RCW 10.73.100(4) does not exempt Corbett's petition from the time bar.

Corbett does not demonstrate that any of the exceptions contained in RCW 10.73.100 apply or that his judgment and sentence is facially invalid. Thus, his petition must be dismissed as untimely.² Accordingly, it is hereby

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



Acting Chief Judge Pro Tempore

Cc: Edwin D. Corbett
Pierce County Prosecuting Attorney
Pierce County Clerk
County Cause No. 07-1-05938-7

² Although Corbett's petition is successive, we dismiss it rather than transfer it to our Supreme Court because it is also untimely. *In re Personal Restraint of Turay*, 150 Wn.2d 71, 86-87, 74 P.3d 1194 (2003).

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the
Personal Restraint Petition of

EDWIN DAVID CORBETT,

Petitioner.

No. 50365-4-II

CERTIFICATE OF FINALITY

Pierce County
Superior Court No. 07-1-05938-7

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and
for Pierce County.

This is to certify that the decision of the Court of Appeals of the State of Washington,
Division II, filed on August 10, 2017, became final on September 12, 2017.



IN TESTIMONY WHEREOF, I have hereunto set my
hand and affixed the seal of said Court at Tacoma, this
20th day of September, 2017.

Derek M. Byrne
Clerk of the Court of Appeals,
State of Washington, Division II

cc: Pierce County Prosecutor's Office

Edwin David Corbett
DOC #327972
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520