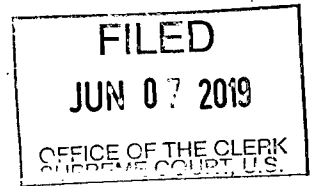


19-5118
No. _____

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

Jason Paul Mathison — PETITIONER
(Your Name)

VS.

State of Washington — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of the State of Washington
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jason Paul Mathison
(Your Name)

MCC-TRU, P.O. Box 888
(Address)

Monroe, WA 98272
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Are constitutional rights of due process violated when a court imposes a condition that requires a defendant to "successfully complete" a treatment program without defining what constitutes completion, or when that completion will be considered attained, and then punishes the defendant for failing to meet the requirement?
2. Are constitutional rights of due process violated when state law requires that a defendant be informed of the time limit for collateral attack at sentencing but, instead, the defendant is not actually informed of that time limit until after it has passed and his subsequent collateral attack is then dismissed as untimely?
3. Are constitutional rights of due process violated when a motion to withdraw a negotiated plea agreement that is involuntary, due to misinformation or ambiguity regarding direct consequences of the plea, is denied as untimely when the misinformation was not discovered until after the time limit for collateral attack has passed?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Washington State Appellate court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES, AMENDMENT 14, SECTION 1

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

CONSTITUTION OF THE STATE OF WASHINGTON, ARTICLE 1, SECTION 3

"No person shall be deprived of life, liberty, or property, without due process of law."

REVISED CODE OF WASHINGTON (RCW) 10.73.090(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."

REVISED CODE OF WASHINGTON (RCW) 10.73.110

"At the time judgment and sentence is pronounced in a criminal case, the court shall advise the defendant of the time limit specified in RCW 10.73.090 and 10.73.100."

FORMER REVISED CODE OF WASHINGTON (RCW) 9.94A.670(4)(b)(2004)

"The court shall order treatment for any period up to three years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer,

and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing."

STATEMENT OF THE CASE

In 2005 Mathison entered into a negotiated plea agreement in order to receive an indeterminate suspended (SSOSA) sentence of 131 months to life under King County Cause No. 05-1-04439-6 SEA and former RCW 9.94A.670 (2004). The plea agreement informed him that the suspension of his sentence would require him to complete a mandatory sex offender treatment program "for up to three years". The record shows no point at which Mathison was informed of the time limit to collaterally attack his sentence, or even his right to do so, during the entry of his plea or at his sentencing. See Appendices J & K.

In 2012, after more than six years of participation in the "three year duration" of treatment, Mathison was arrested for allegedly violating his conditions and treatment rules. The court revoked Mathison's suspended sentence for failing to "complete" the treatment program, along with violating other treatment rules, and ordered his incarceration. Only then was Mathison informed of the expired time limit to have appealed or collaterally attack his sentence. See Appendix G.

On July 9, 2014, Mathison's direct appeal of his revocation was terminated by the court of appeals, which held that he had been informed at sentencing that completion of the treatment program would require participation for "three years plus". Six months later, on January 30, 2015, Mathison filed a personal restraint petition challenging the revocation, and the validity of his sentence, for including a condition that required treatment for longer than the three year duration authorized by the sentencing statute. However, on March 24, 2017, his petition was

ultimately dismissed as "mixed" for including claims relating back to his underlying sentence along with timely claims regarding the revocation order. To find Mathison's petition untimely, the court of appeals held that Mathison's sentence was valid because it had actually required Mathison to complete the treatment program "within" three years - and he had failed to do so. See Appendices E & F.

On June 30, 2017, three months after review of his first personal restraint petition was terminated, Mathison filed a motion to withdraw his plea based upon misinformation regarding community custody and treatment in the plea agreement, not being informed of the right or time limit for appealing his sentence before that time limit expired, and the unconstitutionality of a condition requiring treatment completion without defining a point at which treatment would be deemed completed. The superior court transferred the motion to the appellate court as a second personal restraint petition. On August 29, 2018, the appellate court issued an order transferring Mathison's petition to the Washington State Supreme Court for determination as a successive petition. See Appendices B & C.

On February 26, 2019, the commissioner of the Washington State Supreme Court dismissed Mathison's petition holding that, due to knowledge of the time limit for collateral attack in his first untimely personal restraint petition, the record did not support Mathison's claim that he had not been informed of that time limit as required by statute. The commissioner did not address Mathison's claim that completion of treatment was vague and unattainable and, instead, held that Mathison's claims were

without merit because he had failed to complete the required treatment. Mathison's motion to modify the commissioner's ruling was denied without comment on May 1, 2019. See Appendices A & D.

REASONS FOR GRANTING THE PETITION

Mathison raises substantial questions of constitutional magnitude in this petition that pertain to far more situations than just his own. For instance, a large number of defendants, in both state and federal courts, are required to complete some form of rehabilitative treatment as part of their imposed sentence. Yet, a court-imposed condition requiring "completion" of a treatment program, without defining a point at which that completion is attained, is like requiring a runner to complete a race that has no finish line. Except, unlike a runner, the court can then arbitrarily punish a defendant for not reaching that undefined point of completion. Additionally, a plea agreement that uses misinformation to coerce a defendant into giving up their constitutional right to be found guilty at trial, appears to contradict the very essence of due process. Yet, in appeals courts around the country, defendants are frequently prevented from withdrawing an involuntary plea, once misinformation is discovered, due to time limits for appeal or collateral attack of their sentences.

The guarantee of due process, contained in the Fourteenth Amendment to the United States Constitution and article I, section 3 of the Washington State Constitution, requires that legal standards such as community custody conditions not be vague. See: *State v. Irwin*, 191 Wn.App. 644, 364 P.3d 830 (2015). To avoid vagueness, the condition must (1) provide ordinary people fair warning of proscribed conduct and (2) have standards that are definite enough to protect against arbitrary enforcement. A sentencing condition is vague if it fails to do either.

The Washington State Constitution also guarantees the right to appeal

a criminal sentence. State law, RCW 10.73.110, requires the court to inform a defendant of the time limit for such an appeal at sentencing. Previous rulings by Washington State courts have held that failure to inform a defendant of that time limit is cause to waive it. See: *State v. Schwab*, 141 Wn.App. 85, 167 P.3d 1225 (2007); *In re Pers. Restraint of Vega*, 118 Wn.2d 449, 451, 823 P.2d 111 (1992). A State's failure to follow its own statutes and rulings should be considered a violation of constitutional due process. Also, when it comes to imprecisions or ambiguities in plea agreements, State and Federal courts have agreed that both Constitutional and supervisory concerns require holding the Government to a greater degree of responsibility than the defendant, and that any discrepancies be decided in favor of the defendant. See: *United States v. Harvey*, 791 F.2d 300 (4th cir.); *State v. Bisson*, 156 Wn.2d 507 (2005).

The treatment condition imposed upon Mathison is a prime example of unconstitutional vagueness. See: Appendices at J5, J9, and J10-11. Even after participating for twice the maximum duration he was informed of in his plea agreement, completing all homework assignments given by the provider, and having no unexcused absences from meetings, there was still no defined point at which Mathison's treatment would be deemed completed. Even the treatment provider, who was profiting from Mathison's continued participation, could not define when they would feel that he was ready to "complete" their program. Only that he wasn't ready to successfully complete due to failed romantic relationships prior to his offense and treatment. See: Appendices at I7. This gave the court the ability to punish Mathison for failing to complete treatment regardless of how long

he participated or what he had accomplished during his participation.

Furthermore, the combined appellate court rulings, that treatment would take three years plus to complete, but was required to be completed within three years, show that the condition itself was a non-completable guaranteed fail. See: Appendices at F3, E6. Mathison has stated that if he had known this before entering his plea, he would not have entered into the plea agreement. Each time that Mathison has argued that successful completion of treatment was vague and undefined, the state courts have ignored his argument and held that his claims are without merit because he failed to complete treatment. See: Appendices at A4, E6-7, and F7. For this reason, this writ of certiorari should be granted, Mathison's treatment condition be determined void for vagueness, and his plea withdrawn as involuntary.

Contrary to Washington State statute, RCW 10.73.110, Mathison was not informed of the one-year time limit for a collateral attack of his 2005 sentence until 2012, long after that time limit had expired. See: Appendices at G1. The court then dismissed Mathison's subsequent personal restraint petition as untimely. See: Appendices at E1. This effectively denied Mathison his State Constitutional right to collaterally attack his sentence due to the court's failure to follow it's own laws and rulings. This should be deemed a violation of due process, and Mathison should be granted the right to have the time limit lifted and his collateral attack heard.

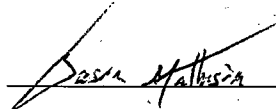
Lastly, one of the first pages of Mathison's plea agreement includes a table that appears to show no term of community custody being imposed.

See: Appendices at K2. While information in later paragraphs, when pieced together, shows that community custody would be for life; this seems to conflict with the table on the preceding page. See: Appendices at K3-4. It should also be noted that the court failed to mention or explain the term of community custody at all when taking Mathison's plea or imposing the sentence. This ambiguity and imprecision should render Mathison's plea involuntary as he was not adequately informed of the direct consequences of his pleading guilty. For this additional reason, Mathison should be allowed to withdraw his plea.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 7 JUNE, 2019