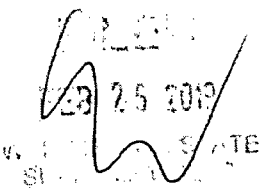

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of: JASON PAUL MATHISON, Petitioner.	No. 96255-3 Court of Appeals No. 77084-5-I RULING DISMISSING PERSONAL RESTRAINT PETITION

Jason Mathison pleaded guilty in 2005 to two counts of first degree rape of a child and one count of possession of depictions of minors engaged in sexually explicit conduct. The trial court sentenced Mr. Mathison to a minimum term of 131 months imprisonment, but suspended all but 12 months pursuant to a special sex offender sentencing alternative (SSOSA). One of the terms of the sentence was that Mr. Mathison have no contact with any minors without preapproved supervision of a responsible adult aware of Mr. Mathison's conviction. Another requirement was Mr. Mathison would "undergo sex offender treatment as follows: for [x] three years .... and enter, make reasonable progress in, and successfully complete a specialized program for sex offender treatment with Northwest Treatment Associates." Pet. at 127 (App. D). Mr. Mathison did not appeal from the judgment and sentence, and thus it became final when it was filed in October 2005. Mr. Mathison's term of confinement ended in 2006, and he began treatment. In 2012 Mr. Mathison's treatment

was terminated when he had a romantic relationship with a woman who had a one-year-old child without disclosing the relationship to his community corrections officer, had unapproved contact with other minor children, and bought a secret laptop computer for viewing pornography. In May 2012 the superior court found that Mr. Mathison violated the terms of his suspended sentence, revoked the SSOSA, and remanded Mr. Mathison to the Department of Corrections to serve the remainder of his sentence. Mr. Mathison appealed to Division One of the Court of Appeals, which affirmed, making the revocation order final in August 2014. *See* RCW 10.73.090(3)(b). On appeal of the SSOSA revocation, Mr. Mathison argued that the trial court violated his due process right to notice by failing to inform him that his suspended sentence could be revoked if he was terminated from treatment after completing three years. The Court of Appeals disagreed.

In January 2015 Mr. Mathison filed a personal restraint petition in Division One of the Court of Appeals raising a number of claims, including that the sentencing court's failure to schedule a treatment termination hearing rendered his judgment and sentence facially invalid, that the SSOSA condition that he undergo treatment was facially invalid, that the condition that he have no contact with minors for life was facially invalid, and that his counsel were ineffective at the original sentencing hearing, at the revocation hearing, and on direct appeal of the revocation order. The acting chief judge dismissed the petition, noting that it was a mixed petition that included untimely claims, specifically the ineffective assistance of counsel claim relating to his trial, and alternatively rejecting Mr. Mathison's claims as meritless. Mr. Mathison sought this court's discretionary review, which was denied. *In re Pers. Restraint of Mathison*, No. 92763-4.

In June 2017 Mr. Mathison filed a CrR 7.8 motion to withdraw his guilty plea in King County Superior Court. He argues that he was misinformed at the plea

negotiation stage about the sentencing requirement that he complete treatment, arguing that he was led to believe that participating in treatment for two or three years would constitute completion of the treatment. The superior court transferred the motion to the Court of Appeals for consideration as a personal restraint petition. CrR 7.8(c)(2). That court then transferred the petition to this court as successive. RCW 10.73.140; *In re Pers. Restraint of Bell*, 187 Wn.2d 558, 563, 387 P.3d 719 (2017). The issue presently before me is whether to dismiss the petition or to refer it to the court for a decision on the merits or for an order remanding the petition to the superior court for a reference hearing. RAP 16.5(d); RAP 16.11(a), (b).

Because Mr. Mathison filed his current collateral challenge more than one year after his judgment and sentence became final, the challenge is untimely unless Mr. Mathison 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). His current claim is that his plea was involuntary because he was misinformed about the consequences at the plea negotiations.[1] This is not a claim that falls within any exemption from the one-year time bar. *See In re Pers. Restraint of Toledo-Sotelo*, 176 Wn.2d 759, 770, 297 P.3d 51 (2013).

Mr. Mathison contends that his petition is not time-barred because he was not informed of the one-year time limit as required by RCW 10.73.110, which provides that "[a]t 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."

[1] Mr. Mathison also moves to amend his personal restraint petition to highlight his argument that the community custody condition was vague. The motion is granted, but this claim is substantially the same as the argument he already raised and had rejected on appeal from the SSOSA revocation, where he argued he lacked sufficient notice of the treatment requirement. Mr. Mathison shows no basis for revisiting that issue.

This court has not conclusively resolved the issue of what remedy should apply if a court fails to comply with RCW 10.73.110. *See In re Pers. Restraint of Vega*, 118 Wn.2d 449, 451, 823 P.2d 1111 (1992) (treating petition as timely where Department of Corrections failed to notify petitioner of change in law imposing time bar). But it is Mr. Mathison's burden to prove the lack of notification, which he has not done. He merely asserts that he received no notification, and his signed declaration only refers an alleged lack of notice of his right to appeal, not a lack of notification as to the one-year time bar of RCW 10.73.090. And as the State notes, Mr. Mathison was aware of the time bar when filing his previous personal restraint petition, which was dismissed as a mixed petition. Accordingly, the record does not support Mr. Mathison's claim that he lacked the RCW 10.73.110 notification.

In any event, even assuming the petition was timely, Mr. Mathison's claim lacks merit. Mr. Mathison signed a negotiated plea agreement that included the State's recommendation that he be ordered to complete treatment. Pet. at 127 (App. D). Mr. Mathison fails to demonstrate that the plea was misleading or that he would not have accepted the plea had he understood that the treatment must be completed.

The personal restraint petition is dismissed.[2]

Michael E Johnston
COMMISSIONER

February 26th 2019

[2] In light of this ruling, the request for appointment of counsel is denied.

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FILED
8/29/2018
Court of Appeals
Division I
State of Washington

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

IN THE MATTER OF THE PERSONAL RESTRAINT OF:	)	No. 77084-5-I
JASON PAUL MATHISON,	)	ORDER TRANSFERRING PETITION TO SUPREME COURT
Petitioner.	)	

Jason Mathison filed a motion to withdraw his guilty plea to two counts of first degree rape of a child and one count of possession of depictions of minors engaged in sexually explicit conduct in King County Superior Court Cause No. 05-1-04439-6 SEA. The superior court transferred the motion to this court for consideration as a personal restraint petition. CrR 7.8(c)(2). Because Mathison's petition is successive, it must be transferred to the Washington Supreme Court for consideration.

Mathison pled guilty to the offenses on August 18, 2005. As part of the plea agreement, the State agreed to recommend a special sex offender sentencing alternative (SSOSA). In his statement on plea of guilty, Mathison acknowledged that in conjunction with the suspension of his sentence, he would be "placed on community custody for the length of the statutory maximum sentence of the offense," that he "will be ordered to participate in sex offender treatment," and that "[i]f a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence." State v. Mathison, No. 68849-9, slip op. at 2 (2014).

Mathison was sentenced on September 30, 2005. The sentencing court suspended 131 months of confinement on the rape counts and imposed a SSOSA sentence, requiring Mathison to first serve 12 months in prison on the pornography count, and to then follow an extensive set of requirements of his sentence and community custody conditions. The judgment and sentence provided "[t]he defendant shall undergo sex offender treatment as follows: for [x] three years....and enter, make reasonable progress in, and successfully complete a specialized program for sex offender treatment with Northwest Treatment Associates." The sex offender evaluation attached as an addendum expressly stated that the "[e]stimated duration for group treatment would be three years plus." Mathison, No. 68849-9, slip op. at 2-3 (2014).

The sentencing court explained to Mathison that he would be required to successfully complete treatment, whether it took three years or more:

> Now, most people who are subjected to this sentencing alternative succeed. Some of the most satisfying days that I have spent as a judge is when a defendant appears before me at the conclusion of the treatment period, after three or more years of treatment, and I receive not only passing, but sometimes glowing reports of the progress that such offenders have made as treatment recipients and as human beings. It's a genuine pleasure at that point to sign documents indicating their compliance and their success.
> ...
>
> Upon release from jail, Mr. Mathison shall enter into and make reasonable progress and successfully complete a program for the treatment of sexual deviancy for a period of 3 years or however long it takes to so successfully complete the program with Northwest Treatment and associates.

Mathison, No. 68849-9, slip op. at 3 (2014).

After serving a term of confinement, Mathison began treatment with Northwest Treatment Associates in January 2006. He remained active in treatment until February 8, 2012 when he was terminated based on allegations including:

- engaging in a romantic relationship with a woman who had a 1-year-old child without disclosing the relationship to his community corrections officer or treatment provider;
- bathing, undressing and sleeping with the 1-year-old child;
- having unapproved contact with other minor children;
- purchasing a secret laptop computer for viewing pornography;
- maintaining a Facebook profile with a false last name; and
- driving minor children home from "raves."

The Department of Corrections (DOC) moved to revoke Mathison's SSOSA and return him to custody to serve the remainder of his sentence. At the revocation hearing, Mathison stipulated that he had been terminated from treatment, that such termination was a violation of the conditions of his SSOSA, and that he had unauthorized contact with minors. Two different treatment providers testified that Mathison's behavior was deceptive and an "egregious disregard for...treatment." Mathison, No. 68849-9, slip op. at 4 (2014). The superior court revoked Mathison's SSOSA.

Mathison timely appealed the SSOSA revocation, contending that he was denied his "due process right to notice because he was not informed that his suspended sentence could be revoked if he was terminated from treatment after completing three years." Mathison, No. 68849-9, slip op. at 5 (2014). This court affirmed the superior court, holding that "the conditions of community custody contained in the judgment and sentence unambiguously required Mathison to

satisfactorily participate in treatment until successful completion, even if it took longer than three years," that "[t]he trial court orally advised Mathison he was required to successfully complete treatment even if it took longer than three years," and that "Mathison's conduct is consistent with his understanding of this requirement." Mathison, No. 68849-9, slip op. at 1 (2014). In response to Mathison's pro se claim that his judgment and sentence was ambiguous and vague, this court held that "the judgment and sentence was not ambiguous" and "Mathison had notice that he was required to successfully complete treatment, whether it took up to three years, or longer." Mathison, No. 68849-9, slip op. at 7 (2014).

Mathison then filed a personal restraint petition challenging the revocation in which he argued, amongst other things, that sexual deviancy treatment pursuant to the SSOSA statute cannot exceed three years, citing to former RCW 9.94A.670(4) (2001), which provides "The court shall order treatment for any period up to three years in duration." Mathison also cited to State v. Onefrey, 119 Wn. 2d 572, 576, 835 P.2d 213 (1992), which held "[u]nder SSOSA, the trial court is not permitted to fashion conditions such that the length of time spent in treatment exceeds that provided for in the statutory language." This court dismissed the petition, concluding:

> [T]he SSOSA portion of Mathison's judgment and sentence explicitly required that Mathison "enter, make reasonable progress in, and successfully complete a specialized program for sex offender treatment" within the three-year period. Mathison stipulated that he did not do so. Mathison's termination from the treatment program is evidence of his failure to "successfully

> complete" a treatment program. As such, the superior court had the authority to revoke Mathison's SSOSA.

In re Pers. Restraint of Mathison, No. 73385-1-I (2016). The Washington Supreme Court denied Mathison's motion for discretionary review.

Mathison now brings his second personal restraint petition, in which he contends that his guilty plea was involuntary because he was misinformed about the length of sex offender treatment and the term of community custody. Mathison claims that "[i]f I had known when taking my plea that I would be required to reach some undefined completion of the treatment program within three years, even though the treatment provider expected treatment participation to last for more than three years, I would not have accepted the plea agreement." Mathison also asserted that "I did not understand the meaning of community custody, or that I would be placed on community custody for the rest of my life."

In general, personal restraint petitions must be filed within one year after the judgment and sentence becomes final. RCW 10.73.090. A petitioner bears the burden of showing that his petition was timely filed. In re Pers. Restraint of Quinn, 154 Wn. App. 816, 833, 226 P.3d 208 (2010). Because Mathison did not appeal the original judgment and sentence, it became final on September 30, 2005, the date it was entered. He filed the motion forming the basis for this petition on June 30, 2017, well after the expiration of the one-year time limit. Thus, any collateral attack on Mathison's judgment and sentence is time-barred unless he can show that: (1) his judgment and sentence is facially invalid or was not entered by a

court of competent jurisdiction, or (2) an exception under RCW 10.73.100 applies.

Mathison contends that his petition is not time-barred because he was not informed of the one-year time limit as required by RCW 10.73.110, which provides that "[a]t 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." In the alternative, Mathison asserts (1) the one-year time limit should be equitably tolled because he did not become aware of the misinformation until after the one-year time limit had passed, or (2) that his judgment and sentence was facially invalid because the trial court lacked authority to impose SSOSA conditions for longer than three years.

"RCW 2.06.030 compels the Court of Appeals to transfer a successive petition that raises new grounds, and that is not time-barred, to [the Washington Supreme Court.]" In re Pers. Restraint of Bell, 187 Wn. 2d 558, 563, 387 P.3d 719 (2017). Accordingly, this petition should be transferred to the Washington Supreme Court for review and consideration. Now, therefore, it is hereby

ORDERED that this personal restraint petition is transferred to the Washington Supreme Court for final determination.

Mann, A.C.J.
Acting Chief Judge

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THE SUPREME COURT OF WASHINGTON

In re the Personal Restraint of	)	No. 96255-3
	)	
JASON PAUL MATHISON,	)	**ORDER**
	)	
Petitioner.	)	Court of Appeals
	)	No. 77084-5-1
	)	

Department II of the Court, composed of Chief Justice Fairhurst and Justices Madsen, Stephens, González and Yu, considered this matter at its April 30, 2019, 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 1st day of May, 2019.

For the Court

Fairhurst, C.J.
CHIEF JUSTICE

APPENDIX D

Additional material from this filing is available in the Clerk's Office.