

FILED
SUPREME COURT
STATE OF WASHINGTON
12/2/2020
BY SUSAN L. CARLSON
CLERK

THE SUPREME COURT OF WASHINGTON

In re the Personal Restraint of

MARTIN STANLEY IVIE,

Petitioner.

No. 98692-4

ORDER

Court of Appeals

No. 54627-2-II

Department II of the Court, composed of Chief Justice Stephens and Justices Madsen, González, Yu and Whitener, considered this matter at its December 1, 2020, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

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

DATED at Olympia, Washington, this 2nd day of December, 2020.

For the Court


CHIEF JUSTICE

Appendix B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

June 10, 2020

DIVISION II

In the Matter of the Personal Restraint of
MARTIN STANLEY IVIE,
Petitioner.

No. 54627-2-II

ORDER DISMISSING PETITION

Martin Stanley Ivie seeks relief from personal restraint imposed as a result of his 2015 conviction for two counts of first degree assault, one count of third degree assault, and one count of attempting to elude a pursuing police vehicle. In this, his second petition,¹ he argues that (1) the jury was improperly instructed, (2) the trial court improperly refused to allow him to participate in the discussion of jury questions, (3) the presiding juror engaged in misconduct in refusing to transmit juror questions and in intimidating jurors, (4) the trial court ignored a declaration from a juror stating that she thought Ivie was not guilty but was intimidated into finding him guilty, (5) the trial judge committed misconduct and was biased against Ivie, (6) the prosecutor engaged in misconduct, (7) defense expert witnesses were not allowed to testify, and (8) the State's witnesses committed perjury.

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. Ivie's judgment and sentence became final on November 3, 2015, when the trial court entered an amended judgment and

¹ See *In re Pers. Restraint of Ivie*, noted at 7 Wn. App. 2d 1025, 2019 WL 319491, cert. denied *State v. Ivie*, 140 S. Ct. 966, 206 L. Ed. 2d 125 (2020).

Appendix A

sentence following his direct appeal.² RCW 10.73.090(3)(a). He did not file his petition until March 27, 2020, more than one year later.³ 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 Pers. Restraint of Hemenway*, 147 Wn.2d 529, 532-33, 55 P.3d 615 (2002).

Ivie fails to show that his petition falls within any of RCW 10.73.100's exceptions to the time bar and fails to identify any invalidity on the face of his judgment and sentence. Thus, his petition must be dismissed as time-barred.⁴ Accordingly, it is hereby

ORDERED that Ivie's petition is dismissed under RAP 16.11(b). His request for appointment of counsel is denied.


Acting Chief Judge Pro Tempore

cc: Martin S. Ivie
Mason County Prosecuting Attorney
Mason County Clerk
County Cause No. 12-1-00064-6

² Ivie claims that because the United States Supreme Court did not deny his petition for a writ of certiorari until January 27, 2020, under RCW 10.73.090(3)(c), his judgment and sentence did not become final until then. But Ivie filed his petition for a writ of certiorari from the denial of his prior personal restraint petition. RCW 10.73.090(3)(c) only applies to petitions for writs of certiorari from direct appeals, and so does not apply here.

³ Because his petition was already filed and time-barred when Governor Jay Inslee's executive order of April 14, 2020 was issued, it does not toll the time bar statute as to him.

⁴ Although Ivie's petition is successive, we dismiss it rather than transfer it to our Supreme Court because it is also time-barred. *In re Pers. Restraint of Turay*, 150 Wn.2d 71, 86-87, 74 P.3d 1194 (2003).