APPENDIX C

SENT

DEC 18 2023

FILED
SUPREME COURT
STATE OF WASHINGTON
12/15/2023
BY ERIN L. LENNON
CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of: JOSEPH LOCHUCH EWALAN, Petitioner.	No. 102591-2 Court of Appeals No. 85269-8-I RULING DENYING REVIEW

Joseph Ewalan's criminal judgment and sentence became final in 2019. In April 2023 Ewalan filed a personal restraint petition in this court, which the court transferred to Division One of the Court of Appeals. Finding the petition untimely, the acting chief judge dismissed it. Ewalan now seeks this court's discretionary review. RAP 16.14(c).

Because Ewalan filed his personal restraint petition more than one year after his judgment and sentence became final, the petition is untimely unless the judgment and sentence is facially invalid or was entered without competent jurisdiction, or unless Ewalan asserts solely grounds for relief exempt from the time limit under RCW 10.73.100. RCW 10.73.090; *In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 348-49, 5 P.3d 1240 (2000). Ewalan does not assert any valid exemption. Citing recent decisions on racial discrimination in jury selection, Ewalan claims they constitute a significant and retroactive change in the law. But a change in the law exempts a petition from the time limit only if it is material to the case at hand. RCW 10.73.100(6). The cases on which Ewalan relies govern the procedure for evaluating whether peremptory

challenges to prospective jurors are racially discriminatory. *See State v. Jefferson*, 192 Wn.2d 225, 429 P.3d 467 (2018); *City of Seattle v. Erickson*, 188 Wn.2d 721, 398 P.3d 1124 (2017). There was apparently one Black prospective juror (number 21), but the State exercised no peremptory challenges, and the final jury panel was accepted and set before there was any opportunity to consider juror 21. Ewalan urges that the prosecutor deliberately waived the State's peremptory challenges to ensure juror 21 did not serve on the panel. But besides not showing this to be the case, Ewalan cites no authority supporting the notion that the trial court must inquire into the State's reasons for *not* exercising peremptory challenges. Thus, even if *Jefferson* and *Erickson* retroactively changed the law (and I do not decide they did), they are immaterial to Ewalan's case. To the extent Ewalan claims the prosecutor committed misconduct, that is not an exempt ground for relief.

The motion for discretionary review is denied.[1]

Walter M. Burton
DEPUTY COMMISSIONER

December 15, 2023

[1] By this ruling, Ewalan's emergency motion for expedited review is also denied.

Appendix B

FILED
11/14/2023
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: JOSEPH LOCHUCH EWALAN, Petitioner.	No. 85269-8-I ORDER OF DISMISSAL

Joseph Ewalan challenges his restraint under the judgment and sentence entered in Snohomish County Superior Court Cause No. 15-1-02626-1 upon his jury conviction of assault in the first degree, domestic violence, while armed with a firearm.

In general, a personal restraint petition challenging a judgment and sentence must be filed within one year after the judgment and sentence becomes final. RCW 10.73.090(1). 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). Ewalan's judgment and sentence became final on February 19, 2019, when the United States Supreme Court denied Ewalan's petition for a writ of certiorari in his direct appeal. See Ewalan v. Washington, noted at 113 S. Ct. 1185, 203 L. Ed. 2d 219 (2019); RCW 10.73.090(3) (explaining when a judgment becomes final). Ewalan filed this petition on April 19, 2023,[1] after the expiration of

[1] Ewalan filed his petition in the Washington Supreme Court, which transferred it to this court. Ewalan subsequently filed a document captioned "ADDITIONAL MEMORANDUM OF AUTHORITY / JUNE 4, 2020, THE WASHINGTON SUPREME COURT ISSUED AN OPEN

the one-year time bar. Accordingly, his petition is time barred unless he can show that an exception under RCW 10.73.100 applies or that his judgment and sentence is facially invalid or was not entered by a court of competent jurisdiction.

Ewalan invokes the time bar exception in RCW 10.73.100(6) for petitions based on a significant, material, and retroactive change in the law. He relies on In re Personal Restraint of Rhone, in which this court held that two Washington Supreme Court decisions were significant, retroactive changes in the law material to the petitioner's conviction. 23 Wn. App. 2d 307, 313, 516 P.3d 401 (2022). Those two decisions were City of Seattle v. Erickson, 188 Wn.2d 721, 398 P.3d 1124 (2017), and State v. Jefferson, 192 Wn.2d 225, 429 P.3d 467 (2018), which each altered the three-part Batson[2] framework for determining whether a peremptory strike was racially motivated. In Erickson, the Washington Supreme Court held that "the trial court must recognize a prima facie case of discriminatory purpose when the sole member of a racially cognizable group has been struck from the jury." 188 Wn.2d at 734. And in Jefferson, a plurality of the court "chang[ed] [Washington's] Batson inquiry to 'ask whether an objective observer could view race or ethnicity as a factor in the use of the peremptory strike,' instead of whether the State purposefully discriminated on the basis of race." Rhone, 23 Wn. App. 2d at 313 (quoting Jefferson, 192 Wn.2d at 230). Ewalan argues that Erickson and Jefferson exempt his petition from the time bar because, as in Rhone,

---

LETTER TO THE STATE JUDICIARY AND LEGAL COMMUNITY," which has also been considered.

[2] Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986).

the State used a peremptory challenge to strike an African American juror, Juror21, from the jury.

But as the State points out in its response, the record reflects that the State did not use any of its peremptory challenges. Instead, Juror 21 was excused with the rest of the prospective jurors after both parties accepted the jury panel, in which the highest-numbered juror was Juror 19. Accordingly, Erickson and Jefferson are not material to Ewalan's conviction as required for the time bar exception in RCW 10.73.100(6).

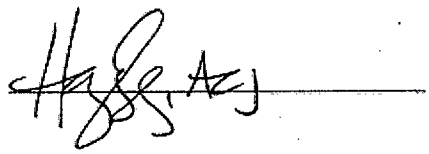
Ewalan also argues that relief is warranted because the prosecutor committed misconduct by pointing out during voir dire that both Ewalan and the victim are from Kenya. Additionally, he suggests for the first time in his reply[3] that the prosecutor committed misconduct *by not exercising* any peremptory challenges such that Juror 21 could be empaneled. And in what appears to be a claim of ineffective assistance of counsel, Ewalan suggests that his defense counsel—who used only four out of her seven peremptory challenges—was complicit in ensuring that Juror 21 was not empaneled. But claims of prosecutorial misconduct and ineffective assistance do not qualify for any exception to the time bar. Ewalan also appears to challenge the "use of nuemerical [*sic*] numbers and alphabetical letters in jury selection." But to the extent he challenges the trial court's jury selection procedure, that challenge also does not qualify for any exception to the time bar.

[3] Ewalan filed a reply brief on July 19, 2023, and then a document captioned "PETITIONER'S MOTION RE-ADDRESSING THE STATE REPLY, RACIAL DISCRIMINATION IN JURY SELECTION ON CLAIM RELATED TO JURORS EXCUSED FOR CAUSE" on October 2, 2023, and October 6, 2023. All have been considered.

In sum, Ewalan's petition is untimely. And because it is untimely, it does not present an arguable basis for collateral relief given the constraints of a personal restraint petition proceeding—and, in particular, the requirement that a petition be timely filed. Consequently, Ewalan's petition must be dismissed. See RAP 16.11(b) (petition will be dismissed if it is frivolous); see also In re Pers. Restraint of Khan, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015) ("[A] personal restraint petition is frivolous where it fails to present an arguable basis for collateral relief either in law or in fact, given the constraints of the personal restraint petition vehicle.").

Now, therefore, it is hereby

ORDERED that this personal restraint petition is dismissed under RAP 16.11(b).[4]



[4] Ewalan's motion to expedite the ruling in this matter to "on or not later than September 14, 2023" is hereby denied.

Appendix D

SENT

MAR 06 2024

FILED
SUPREME COURT
STATE OF WASHINGTON
3/6/2024
BY ERIN L. LENNON
CLERK

THE SUPREME COURT OF WASHINGTON

In the Matter of the Personal Restraint of:	)	No. 102591-2
JOSEPH LOCHUCH EWALAN,	)	**ORDER**
Petitioner.	)	Court of Appeals No. 85269-8-I

Department I of the Court, composed of Chief Justice González and Justices Johnson, Owens, Gordon McCloud and Montoya-Lewis, considered this matter at its March 5, 2024, 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. The Petitioner's three motions to supplement are also denied.

DATED at Olympia, Washington, this 6th day of March, 2024.

For the Court

González C.J.

CHIEF JUSTICE