

SUPREME COURT OF WASHINGTON

In the Matter of the Personal Restraint Petition of Richard Garrett Turay

150 Wash. 2d 71, 74 P.3d 1194 (2003) · No. No. 73255-8 · Decided August 21, 2003

SUMMARY

The Washington Supreme Court held that a personal restraint petition challenging civil commitment as a sexually violent predator is subject to a one-year time limitation under RCW 7.36.130, incorporating the time allowed by RCW 10.73.090. The court rejected the petitioner’s arguments that a recent decision constituted a significant change in law or that the commitment order was facially invalid. Because the petition was untimely and, at best, mixed, the court dismissed it without reaching the remaining issues.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Madsen, J.; Alexander, C.J.; Johnson, J.; Ireland, J.; Bridge, J.; Chambers, J.; Owens, J.; Fairhurst, J.; Sanders, J.
JURISDICTION	Washington
DECIDED	August 21, 2003
DOCKET	No. 73255-8
DISPOSITION	dismissed
PROCEDURAL POSTURE	Turay filed a third personal restraint petition challenging his civil commitment as a sexually violent predator. The petition was filed in the Court of Appeals more than one year after the commitment order and was transferred to the Washington Supreme Court. The Supreme Court dismissed the petition as time-barred and, at best, a mixed petition.
STANDARD OF REVIEW	The court construed the governing statutes and appellate rules de novo and determined as a matter of law whether the petition was subject to the one-year limitation and whether it qualified for a statutory exception.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Richard Garrett Turay v. State of Washington

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QUESTIONS PRESENTED

1. Whether the one-year limitation incorporated through RCW 7.36.130 applies to a personal restraint petition challenging a civil sexually violent predator commitment.
2. Whether the one-year limitation is avoided because the commitment order was allegedly invalid on its face.
3. Whether the decision in *In re Detention of Albrecht* constituted a significant change in the law creating an exception under RCW 10.73.100(6).
4. Whether the petition had to be dismissed as a mixed petition because at least one claim did not fall within a statutory exception.
5. Whether the Court of Appeals should have dismissed rather than transferred an untimely successive personal restraint petition.

HOLDINGS

1. A personal restraint petition filed in either the Court of Appeals or the Washington Supreme Court challenging commitment as a sexually violent predator is subject to the one-year time limitation incorporated through RCW 7.36.130 from RCW 10.73.090.
2. The one-year limitation includes the requirement that the challenged judgment be valid on its face, but Turay did not establish that his commitment order was facially invalid.
3. *In re Detention of Albrecht* did not constitute a significant change in the law under RCW 10.73.100(6), so Turay could not use that exception to avoid the one-year bar.
4. A personal restraint petition containing at least one claim that does not fall within a statutory exception to the one-year limitation must be dismissed as a mixed petition without consideration of the remaining claims.
5. When a personal restraint petition filed in the Court of Appeals is both untimely under RCW 7.36.130 and successive under RCW 10.73.140, the Court of Appeals must dismiss it as time-barred rather than transfer it to the Supreme Court.

KEY QUOTATIONS

“Thus, whether filed in the Court of Appeals as a petition for a writ of habeas corpus or as a personal restraint petition, the single procedure of RAP 16.3 through 16.15 and RAP 16.24 through 16.27 applies and the petition is treated as a personal restraint petition.” (1198)

“We hold that in these circumstances the Court of Appeals must dismiss the petition as time barred rather than transfer it to this court.” (1202)

FACTUAL BACKGROUND

Turay was committed under chapter 71.09 RCW as a sexually violent predator after convictions for sexually violent offenses and a later parole revocation based on fourth-degree assault and failure to submit to a polygraph. His commitment petition was filed while he was incarcerated, and the State neither alleged nor proved a recent overt act at the commitment proceeding. He filed the present third personal restraint petition in 2002, more than one year after the October 1994 commitment order, arguing principally that the absence of a recent overt act made his detention unlawful.

PROCEDURAL HISTORY

Turay was committed as a sexually violent predator in 1994 after a jury found the statutory commitment requirements satisfied. His commitment was affirmed on consolidated appeal and personal restraint petition. His second personal restraint petition was dismissed in 2001. He filed the present third petition in 2002, asserting that the State had failed to allege and prove a recent overt act. The Court of Appeals transferred the petition to the Supreme Court, which dismissed it without reaching the remaining substantive issues.

DISPOSITION

dismissed

CASES CITED

- In re Detention of Turay, 139 Wash. 2d 379, 415-22, 986 P.2d 790 (1999), cert. denied, 531 U.S. 1125 (2001)
- In re Detention of Young, 122 Wash. 2d 1, 857 P.2d 989 (1993)
- Seling v. Young, 531 U.S. 250, 121 S. Ct. 727, 148 L. Ed. 2d 734 (2001)
- Holt v. Morris, 84 Wash. 2d 841, 845 n. 1, 529 P.2d 1081 (1974)
- Wright v. Morris, 85 Wash. 2d 899, 540 P.2d 893 (1975)
- State v. Pascal, 108 Wash. 2d 125, 736 P.2d 1065 (1987)
- In re Habeas Corpus of Olson, 12 Wash. App. 682, 531 P.2d 508 (1975)
- Toliver v. Olsen, 109 Wash. 2d 607, 746 P.2d 809 (1987)
- In re Rafferty, 1 Wash. 382, 25 P. 465 (1890)
- State v. Blilie, 132 Wash. 2d 484, 939 P.2d 691 (1997)
- State v. Blank, 131 Wash. 2d 230, 930 P.2d 1213 (1997)
- Nearing v. Golden State Foods Corp., 114 Wash. 2d 817, 792 P.2d 500 (1990)
- State v. Murphy, 35 Wash. App. 658, 669 P.2d 891 (1983)
- Emwright v. King County, 96 Wash. 2d 538, 637 P.2d 656 (1981)
- In re Personal Restraint of Hemenway, 147 Wash. 2d 529, 55 P.3d 615 (2002)
- In re Detention of Albrecht, 147 Wash. 2d 1, 51 P.3d 73 (2002)

- In re Detention of Henrickson, 140 Wash. 2d 686, 2 P.3d 473 (2000)
- In re Personal Restraint of Greening, 141 Wash. 2d 687, 9 P.3d 206 (2000)
- State v. Olivera-Avila, 89 Wash. App. 313, 949 P.2d 824 (1997)
- Addington v. Texas, 441 U.S. 418, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979)
- Foucha v. Louisiana, 504 U.S. 71, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992)
- In re Personal Restraint of Hankerson, 149 Wash. 2d 695, 72 P.3d 703 (2003)
- In re Personal Restraint of Stoudmire, 141 Wash. 2d 342, 5 P.3d 1240 (2000)
- In re Personal Restraint of Perkins, 143 Wash. 2d 261, 19 P.3d 1027 (2001)
- In re Personal Restraint of Johnson, 131 Wash. 2d 558, 933 P.2d 1019 (1997)

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