

SUPREME COURT OF WASHINGTON

In the Matter of the Personal Restraint Petition of Harry N. Carrier

173 Wash. 2d 791, 272 P.3d 209 (2012) · No. No. 83377-0 · Decided February 23, 2012

SUMMARY

The Washington Supreme Court considers Harry Carrier’s untimely personal restraint petition challenging a mandatory life sentence imposed under the Persistent Offender Accountability Act. The court holds that a dismissal order may be considered in determining whether the judgment and sentence is facially invalid, and examines whether a pre-SRA conviction dismissed under former RCW 9.95.240 may count as a strike. The opinion addresses the effect and retroactivity of a 2003 amendment requiring an additional vacation procedure for certain pre-SRA convictions.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Stephens, J.; Charles W. Johnson, J.; Tom Chambers, J.; Susan Owens, J.; Mary E. Fairhurst, J.; Gerry L. Alexander, Justice Pro Tem.; Wiggins, J.; Madsen, C.J.; James M. Johnson, J.
JURISDICTION	Washington
DECIDED	February 23, 2012
DOCKET	No. 83377-0
DISPOSITION	remanded
PROCEDURAL POSTURE	Carrier sought relief through an untimely personal restraint petition challenging a mandatory life sentence imposed under the Persistent Offender Accountability Act. A court commissioner dismissed the petition as time-barred, and the Washington Supreme Court granted Carrier's motion to modify the commissioner's ruling and accepted review.
STANDARD OF REVIEW	The court independently reviewed whether the judgment and sentence was facially invalid, whether the petition was exempt from the one-year limitation period, and whether Carrier demonstrated the prejudice required for personal restraint relief.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Harry N. Carrier v. State of Washington

TOPICS

state post-conviction relief

post-conviction relief

sentencing

statutory interpretation

criminal procedure

PRACTICE AREAS

criminal procedure

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statutory interpretation

QUESTIONS PRESENTED

1. Whether the court could consider the authenticated 1985 dismissal order attached to Carrier's petition in determining whether his judgment and sentence was valid on its face.
2. Whether a conviction dismissed under former RCW 9.95.240 could be included in a defendant's criminal history and counted as a POAA strike.
3. Whether the 2003 amendment to former RCW 9.95.240 applied retroactively to Carrier and defeated any vested right in the vacated status of his conviction.
4. Whether Carrier was entitled to relief from his unlawful life sentence despite filing his personal restraint petition more than one year after the judgment became final.

HOLDINGS

1. A court may consider an authenticated court document attached to a personal restraint petition when the document bears directly on the trial court's authority to impose the challenged sentence; therefore, the 1985 dismissal order could be considered in determining whether Carrier's judgment and sentence was valid on its face.
2. A conviction dismissed under former RCW 9.95.240 may remain a conviction for some purposes, but the dismissal has the same legal effect as vacation under the SRA and removes the conviction from criminal history; consequently, the conviction may not be counted as a strike under the POAA.
3. The 2003 amendment to former RCW 9.95.240 applies retroactively to Carrier, but it cannot be applied to impair Carrier's vested right in the vacated status of his conviction.
4. Carrier established a fundamental defect resulting in a complete miscarriage of justice because the trial court imposed an unauthorized life sentence by counting the dismissed conviction as a POAA strike.

KEY QUOTATIONS

“Our precedent should not be read to impose a bright-line rule or an exhaustive list of documents that we may consider in determining whether a judgment and sentence is “valid on its face.” (213-214)

“A vacated conviction cannot be used as criminal history.” (221-222)

“Because the “subsequent prosecution” exception of former RCW 9.95.240 does not allow using dismissed convictions as criminal history, it follows that the exception does not authorize using dismissed convictions as a strike under the POAA.” (222)

FACTUAL BACKGROUND

Carrier pleaded guilty to two charges involving depictions of minors and, during trial on other charges, pleaded guilty to first degree child molestation in exchange for dismissal of two counts. The trial court imposed a mandatory life sentence under the POAA after treating Carrier's 1981 indecent-liberties conviction as a comparable second strike. That 1981 conviction had been dismissed under former RCW 9.95.240 after Carrier completed probation, and Carrier attached the 1985 dismissal order to his personal restraint petition.

PROCEDURAL HISTORY

Carrier was sentenced in the trial court to life imprisonment without the possibility of parole under the POAA's two-strikes provision, based in part on a 1981 indecent-liberties conviction that had been dismissed after successful completion of probation. The Court of Appeals affirmed on direct appeal, and its mandate issued in July 2007. Carrier filed his personal restraint petition in July 2009; the commissioner dismissed it as untimely without reaching the merits. The Supreme Court granted review, held the sentence invalid, and remanded for resentencing.

DISPOSITION

remanded

REMAND INSTRUCTIONS

Remand for resentencing with direction to exclude Carrier's 1981 indecent-liberties conviction from his criminal history and from the POAA strike calculation.

CASES CITED

- State v. Thorne, 129 Wash. 2d 736, 921 P.2d 514 (1996)
- In re Pers. Restraint of Cruze, 169 Wash. 2d 422, 237 P.3d 274 (2010)
- In re Pers. Restraint of Goodwin, 146 Wash. 2d 861, 50 P.3d 618 (2002)
- In re Personal Restraint of Coats, 173 Wash. 2d 123, 267 P.3d 324 (2011)
- State v. Whitaker, 112 Wash. 2d 341, 771 P.2d 332 (1989)
- State v. Partida, 51 Wash. App. 760, 756 P.2d 743 (1988)
- State v. Harper, 50 Wash. App. 578, 749 P.2d 722 (1988)
- State v. Breazeale, 144 Wash. 2d 829, 31 P.3d 1155 (2001)
- Matsen v. Kaiser, 74 Wash. 2d 231, 443 P.2d 843 (1968)
- State v. Wade, 44 Wash. App. 154, 721 P.2d 977 (1986)
- State v. Moore, 75 Wash. App. 166, 876 P.2d 959 (1994)
- State v. Braithwaite, 92 Wash. 2d 624, 600 P.2d 1260 (1979)
- State v. Hennings, 100 Wash. 2d 379, 670 P.2d 256 (1983)
- State v. Varga, 151 Wash. 2d 179, 86 P.3d 139 (2004)
- State v. Delgado, 148 Wash. 2d 723, 63 P.3d 792 (2003)
- State v. Smith, 144 Wash. 2d 665, 30 P.3d 1245 (2001)

- State v. Pillatos, 159 Wash. 2d 459, 150 P.3d 1130 (2007)
- State v. Belgarde, 119 Wash. 2d 711, 837 P.2d 599 (1992)
- City of Seattle v. Ludvigsen, 162 Wash. 2d 660, 174 P.3d 43 (2007)
- State v. T.K., 139 Wash. 2d 320, 987 P.2d 63 (1999)
- In re Estate of Burns, 131 Wash. 2d 104, 928 P.2d 1094 (1997)
- In re F.D. Processing, Inc., 119 Wash. 2d 452, 832 P.2d 1303 (1992)
- Godfrey v. State, 84 Wash. 2d 959, 530 P.2d 630 (1975)
- In re McGrath's Estate, 191 Wash. 496, 71 P.2d 395 (1937)
- Gillis v. King County, 42 Wash. 2d 373, 255 P.2d 546 (1953)
- Adams v. Ernst, 1 Wash. 2d 254, 95 P.2d 799 (1939)
- Landgraf v. USI Film Products, 511 U.S. 244, 114 S. Ct. 1483, 128 L. Ed. 2d 229 (1994)
- State v. Scheffel, 82 Wash. 2d 872, 514 P.2d 1052 (1973)
- In re Pers. Restraint of Elmore, 162 Wash. 2d 236, 172 P.3d 335 (2007)
- In re Pers. Restraint of Call, 144 Wash. 2d 315, 28 P.3d 709 (2001)

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