IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of: RAYMOND MAYFIELD WILLIAMS, Petitioner.	No. 100222-0 Court of Appeals No. 53879-2-II RULING DENYING REVIEW

Raymond Williams pleaded guilty in 2008 to second degree assault, a crime he committed when he was 28 years old. He had two prior "strike" offenses within the meaning of the Persistent Offender Accountability Act, one for first degree burglary committed when he was 23 and one for first degree burglary he committed when he was 16, for which he was prosecuted in adult court. As a result of his current third "strike," Mr. Williams was found to be a persistent offender and sentenced to life imprisonment without release. RCW 9.94A.570. The judgment and sentence became final when it was filed. In 2019 Mr. Williams filed a personal restraint petition (his second) directly in this court, challenging his sentence as unconstitutional. The court transferred the petition to Division Two of the Court of Appeals, and later the court denied Mr. Williams's motion to transfer the petition back to this court. The Court of Appeals ultimately issued a published opinion denying Mr. Williams's petition, holding it is

untimely. *In re Pers. Restraint of Williams*, 18 Wn. App. 2d 707, 493 P.3d 779 (2021). Mr. Williams now seeks this court's discretionary review. RAP 16.14(c).[1]

Because Mr. Williams 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 he is challenging is facially invalid or was entered without competent jurisdiction, or unless Mr. Williams 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). Mr. Williams asserts no facial invalidity. Rather, he argues, first, that his petition is exempt from the time limit because the persistent offender statute is unconstitutional to the extent it applies to an offender, like him, who committed a counted strike offense as a juvenile. For the statutory exemption, Mr. Williams relies on RCW 10.73.100(2), which applies if when "[t]he statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct." RCW 10.73.100(2). But the Court of Appeals correctly held that the persistent offender statute is not "the statute that [Mr. Williams] was convicted of violating" within the meaning of the exemption. Although in *In re Personal Restraint of Monschke*, 197 Wn.2d 305, 482 P.3d 276 (2021), four justices in the lead plurality opinion said that this exemption applies to the special circumstance of the aggravated murder statute, which imposes a mandatory prison term of life without release, the plurality declined to say that the exemption applies to constitutional challenges to all sentencing statutes. *Id*. at 310. But more importantly, five justices rejected the notion that RCW 10.73.100(2) applies to sentencing statutes at all. *Id*. at

[1] Three amicus curiae briefs have been filed supporting review: (1) by the Juvenile Law Center, the King County Department of Public Defense, the Center for Civil and Human Rights at Gonzaga Law, the Center for Children and Youth Justice, Choose 180, Collective Justice, Columbia Legal Services, El Centro De La Raza, Freedom Project, Teamchild, The Way to Justice, and Urban Impact; (2) by ACLU of Washington Foundation and the Washington Defender Association; and (3) by the Washington Association of Criminal Defense Lawyers.

329 (concurring opinion of González, C.J.), 334-35 (dissenting opinion of Owens, J.). There is thus no basis in the statute or the case law for exempting Mr. Williams's petition from the time limit under RCW 10.73.100(2).

Mr. Williams next relies on the exemption for significant and retroactive material changes in the law. RCW 10.73.100(6). For the change in the law, he relies on *State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343 (2018). But this court held there only that it is unconstitutionally cruel under the article I, section 14 of the Washington Constitution to sentence juvenile offenders convicted of aggravated first degree murder to life imprisonment without release. *Id*. at 91. So while *Bassett* may well be a significant change in the law that applies retroactively (which I do not decide), it is not material to Mr. Williams, who was sentenced for a crime he committed as an adult. It is for that crime that Mr. Williams was punished, not the crime he committed as a juvenile. *State v. Moretti*, 193 Wn.2d 809, 826, 446 P.3d 609 (2019). In *Moretti*, this court rejected a challenge to persistent offender sentences imposed on adult offenders who had prior strike offenses committed as young adults (19 and 20), and so that decision does not directly control this case.[2] But the fact that the issue in this case is an open one and of undoubted significance does not make this petition exempt from the time limit on collateral review. And although *Bassett* certainly informs the discussion of the criminal culpability of youth, the change in the law it announced—that sentencing juveniles offenders to life without release is categorically unconstitutional—is not material to Mr. Williams's case. Even if it can be said, as Mr. Williams urges, that *Bassett* more generally changed the law by requiring a categorical approach based on the characteristics of youth as a class when evaluating the cruelty of long sentences imposed on juvenile offenders, that change does not apply here because Mr. Williams was

[2] Indeed, the court expressly offered no opinion on whether a persistent offender sentence would be unconstitutional if one of the strike offenses was an offense committed as a juvenile. *Moretti*, 193 Wn.2d at 821 n.5.

sentenced for a crime he committed well into adulthood. This court in *Moretti* in fact acknowledged *Bassett* as well as decisional law recognizing that the mitigating qualities of youth can extend into young adulthood, but it nonetheless held that those decisions did not render unconstitutional persistent offenders sentences imposed for crimes committed by fully developed adults, emphasizing that the offenders in that case were not being punished for the crimes they committed when they were young. *Moretti*, 193 Wn.2d at 820-30; *see also State v. Teas*, 10 Wn. App. 2d 111, 133-35, 447 P.3d 606 (2019), *review denied*, 195 Wn.2d 1008 (2020) (*Bassett* analysis does not apply to render unconstitutional a persistent offender sentence imposed on an adult who had a prior strike for an offense committed in the age range of 17 to 19). That Mr. Williams disputes this reasoning (as he does) and wants to *extend* the *Bassett* analysis to the different circumstances of this case does not make *Bassett* a material change in the law.[3]

For the first time in his reply brief, Mr. Williams suggests that a persistent offender sentence predicated on a strike offense committed as a juvenile is facially invalid. But issues first raised in a reply generally will not be considered. *In re Pers. Restraint of Rhem*, 188 Wn.2d 321, 327, 394 P.3d 367 (2017). And in any event, a facial invalidity is one that is evident without further elaboration. *In re Pers. Restraint of Thompson*, 141 Wn.2d 712, 718, 10 P.3d 380 (2000). Under the current state of the law, it cannot be said "without elaboration" that Mr. Williams's sentence is invalid. If in a direct appeal or a timely personal restraint petition it is ever held that it is

[3] Amicus Washington Association of Criminal Defense Lawyers suggests that this court can overcome the time limit by announcing a new rule *in this case* and applying it retroactively, relying for its retroactivity analysis on *Teague v. Lane*, 489 U.S. 288, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989). That is not how RCW 10.73.100(6) works. It applies only when there "has been" a change in the law, not when the petition at hand offers the opportunity to change the law. The retroactivity analysis under *Teague* is distinct from the question of whether there has been a change in the law for purposes of the statute. *See In re Pers. Restraint of Yung-Cheng Tsai*, 183 Wn.2d 91, 103-07, 351 P.3d 138 (2015). Amicus's interpretation of RCW 10.73.100(6) would essentially gut that exemption.

unconstitutional to impose a persistent offender sentence on an offender whose strikes include offenses committed as a juvenile, Mr. Williams may make a facial challenge.

Also for the first time in his reply brief, Mr. Williams urges that the Persistent Offender Accountability Act should be reviewed for its disparate impact on Black offenders. One set of amici also advocate review of this issue, observing that juvenile offenders of color are disproportionately declined to adult criminal court, and thus they disproportionately face possible persistent offender sentencing.[4] But besides generally not considering issues first raised in a reply, this court generally will not consider an issue first raised in a motion for discretionary review of a Court of Appeals decision on a personal restraint petition. *In re Pers. Restraint of Tobin*, 165 Wn.2d 172, 175 n.1, 196 P.3d 670 (2008). And as unquestionably important as this issue is, it is also not exempt from the time limit.

In sum, the substantive issue Mr. Williams raises merits consideration in an appropriate case, but the immediate question is whether his personal restraint petition is exempt from the time limit on collateral review. He does not show that it is, and thus the Court of Appeals properly dismissed the petition as time-barred.

The motion for discretionary review is denied.

Walter M. Burke
DEPUTY COMMISSIONER

January 25, 2022

[4] This issue is presented in the amicus brief filed jointly by the Juvenile Law Center, the King County Department of Public Defense, the Center for Civil and Human Rights at Gonzaga Law, the Center for Children and Youth Justice, Choose 180, Collective Justice, Columbia Legal Services, El Centro De La Raza, Freedom Project, Teamchild, The Way to Justice, and Urban Impact.