

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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DIVISION II
2016 JUN -9 AM 11:34
STATE OF WASHINGTON
DEPUTY

In re the
Personal Restraint Petition of

MARTIN A. GONZALEZ,

Petitioner.

No. 48776-4-II

ORDER DISMISSING PETITION

Martin A. Gonzalez seeks relief from personal restraint imposed following his 2013 guilty pleas to first degree rendering criminal assistance and possession of a stolen vehicle.¹ This is Gonzalez's fourth personal restraint petition before this court. RCW 10.73.090(1) requires that a petition be filed within one year of the date the petitioner's judgment and sentence becomes final. Gonzalez's judgment and sentence became final on January 21, 2015 when his modified judgment and sentence was filed. RCW 10.73.090(3)(a). He did not file his current petition until March 21, 2016, which is over one year from when his judgment and sentence became final. Unless he shows that one of the exceptions contained in RCW 10.73.100 applies or that his judgment and sentence

¹ Gonzalez originally filed a CrR 7.8 motion, which the superior court found was untimely and transferred to this court as a personal restraint petition.

*This came as a PWR
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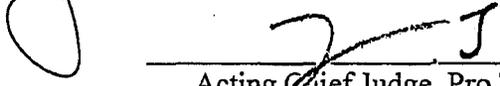
is facially invalid, his petition is time barred. *In re Pers. Restraint of Snively*, 180 Wn.2d 28, 31, 320 P.3d 1107 (2014).

Gonzalez argues his sentence was incorrectly calculated because he was not given credit for jail time spent in Oregon between his arrest on March 8, 2012, and his return to Clark County on October 11, 2012. RCW 9.94A.505(6) provides that credits for presentence jail time can only be made against a judgment and sentence if the offender was in jail "solely in regard to the offense for which the offender is being sentenced." Gonzalez did not serve the March to October period in jail solely for the Washington offenses to which he pleaded guilty in 2013. His confinement in Oregon was for the Oregon charges. Therefore, he is not entitled to credit for the period he spent in Oregon against his Washington judgment and sentence. *In re Pers. Restraint of Costello*, 131 Wn. App. 828, 833, 129 P.3d 827 (2006). The fact that the trial court eventually ordered that Gonzalez's Washington sentence should run concurrently with his Oregon sentence does not create an entitlement to have his Oregon presentence jail time credited against his Washington judgment and sentence. Accordingly, Gonzalez's petition does not meet any of the exceptions to permit this court to review his untimely collateral attack.

Because the petition is untimely, we need not address the fact that it is also successive. RCW 10.73.140; *In re Pers. Restraint of Turay*, 150 Wn.2d 71, 87, 74 P.3d 1195 (2003). Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b) and his request for the appointment of counsel is denied.

DATED this 9th day of June, 2016.



Acting Chief Judge, Pro Tem

cc: Martin A. Gonzalez
Clark County Clerk
County Cause No(s). 12-1-00487-1
Anthony F. Golik, Clark County Prosecuting Attorney
Ronda D. Larson, Assistant Attorney General - Corrections Division