

74053-9

74053-9

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON

E

2016 JUN -3 PM 2:14

No. 74053-9-1

**COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE**

---

STATE OF WASHINGTON, Respondent,

v.

D.D-H., Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR WHATCOM COUNTY  
#13-8-00372-2

**BRIEF OF RESPONDENT**

---

DAVID S. McEACHRAN,  
Whatcom County Prosecuting Attorney

By PHILIP J. BURI  
WSBA #17637  
Special Deputy Prosecutor  
Attorney for Respondent  
Whatcom County Prosecutor's Office  
311 Grand Avenue, Second Floor  
Bellingham, WA 98225  
(360) 676-6784

**ORIGINAL**

**TABLE OF CONTENTS**

**INTRODUCTION** ..... 1

**I. RESTATEMENT OF ISSUES PRESENTED** ..... 2

**II. STATEMENT OF FACTS.** ..... 3

**ARGUMENT** ..... 5

**III. STANDARD OF REVIEW** ..... 5

**IV. WARRANT STATUS AUTOMATICALLY TOLLS THE PERIOD OF COMMUNITY SUPERVISION.** ..... 5

    A. Violating Community Supervision At Any Point Tolls The Supervision Period ..... 6

    B. Tolling is Automatic ..... 9

**CONCLUSION** ..... 11

**TABLE OF AUTHORITIES**

**Washington Supreme Court**

State v. Campbell, 95 Wn.2d 954, 632 P.2d 517 (1981) ..... 10

City of Spokane v. Marquette, 146 Wn.2d 124, 43 P.3d  
502 (2002) ..... 1, 7

**Washington State Court of Appeals**

State v. May, 80 Wn. App. 711, 911 P.2d 399 (1996) ..... 3, 8, 9

State v. V.J., 132 Wn. App. 380, 132 P.3d 763 (2006) ..... 1, 2, 5, 8

## INTRODUCTION

“A probationer does not receive credit for time during which he or she is not actually under the court's supervision by virtue of his or her own wrongful act.” City of Spokane v. Marquette, 146 Wn.2d 124, 134, 43 P.3d 502 (2002).

This appeal from juvenile court involves the difference between the term of a disposition order and the period of community supervision. Normally, the two are the same. But when a juvenile escapes community supervision, the tolling doctrine excludes that time from the supervision period.

[J]uveniles who absent themselves from court supervision frustrate the court's rehabilitative efforts.

To give full effect to the legislative purpose, therefore, the juvenile court must have a full year of supervision. We hold that if the juvenile is on warrant status, and is thus not subject to the court's supervision, tolling applies to the supervision period.

State v. V.J., 132 Wn. App. 380, 385, 132 P.3d 763 (2006). Even though the term of the Disposition Order may expire, the supervision period continues.

Respondent D.D-H. alleges that the juvenile court lost jurisdiction over him because it imposed an additional 122 days of community supervision *after* the one-year term of his Disposition

Order expired. But because D.D-H. failed to appear for community supervision and was on warrant status for 122 days, he does not get credit for his absence. Washington law automatically tolled the period of community supervision. The juvenile court maintained jurisdiction until Respondent successfully completed one year of community supervision.

The State of Washington respectfully requests the Court to affirm the juvenile court's findings of fact and conclusions of law, enforcing its Disposition Order. (3/23/15 Findings and Conclusions; CP 35-37).

**I. RESTATEMENT OF ISSUES PRESENTED**

Respondent's appeal presents two issues:

A. "[I]f the juvenile is on warrant status, and is thus not subject to the court's supervision, tolling applies to the supervision period." State v. V.J., 132 Wn. App. 380, 385, 132 P.3d 763 (2006). During his year of community supervision, Respondent D.D-H. was on warrant status for 122 days, and the juvenile court found that he committed four probation violations. Did these violations automatically toll the supervision period for 122 days?

B. "The court's jurisdiction to enforce its disposition order terminates when the community supervision period expires, unless a

violation proceeding is then pending before the court.” State v. May, 80 Wn. App. 711, 716-17, 911 P.2d 399 (1996). Respondent D.D-H was on warrant status four times during his community supervision, but not when the original term of his disposition order ended. Does tolling extend the supervision period only when a juvenile is on warrant status when the term of the disposition order expires?

## **II. STATEMENT OF FACTS**

On October 11, 2013, Respondent D.D-H. tried to shoplift a bottle of Jägermeister from a Bellingham, Washington grocery store. He was caught, and eventually pled guilty to one count of third degree theft and one count of minor in possession.

On February 19, 2014, the juvenile court entered its Disposition Order, sentencing Respondent to 15 days confinement and 12 months community supervision. (2/19/14 Disposition Order ¶ 4.5; CP 13). Community supervision began immediately.

As detailed in the affidavit of Juvenile Probation Officer Stephanie Priest, Respondent D.D-H. quickly violated the terms of community supervision. (Priest Affidavit ¶ 2; Exhibit 2 to Tolling Memorandum; CP 95). On February 27, 2014, the court issued a bench warrant for Respondent’s failure to report to probation. (2/27/14 Order for Issuance of Bench Warrant; CP 48-49). When

officers finally served the warrant, Respondent had been absent from 57 days of supervision. (Priest Affidavit ¶ 2; CP 95).

The juvenile court would issue three more warrants during the one-year term of the Disposition Order. On June 9, 2014, the court issued a bench warrant that was served on June 28<sup>th</sup>, resulting in 19 missed days of supervision. (6/9/14 Order for Issuance of Warrant; CP 61). On September 4, 2014, the court issued a bench warrant that was served on September 20<sup>th</sup>, resulting in 16 missed days. (9/4/14 Order for Issuance of Warrant; Sub #68; CP \_\_)\*. Finally, on November 20, 2014, the court issued a bench warrant that was served on December 20<sup>th</sup>, resulting in 30 missed days. (11/20/14 Order for Issuance of Warrant; Sub #81; CP \_\_)\*.

Respondent escaped a total 122 days of community supervision while on warrant status.

On March 5, 2015, the State filed notice of an alleged violation of community supervision, seeking to require Respondent to make up the missing days. Respondent objected and argued that the juvenile court lost jurisdiction on February 19, 2015, the one-year

---

\* Respondent has filed a supplemental designation of clerk's papers and CP cites do not yet exist for these documents. The brief cites to the sub number to identify the document.

anniversary of the Disposition Order. Both the Whatcom County Commissioner and the Superior Court found that the juvenile court maintained jurisdiction over Respondent until he completed 12 months community supervision.

Respondent now appeals.

## **ARGUMENT**

### **III. STANDARD OF REVIEW**

This Court reviews Respondent's challenges to jurisdiction de novo. State v. V.J., 132 Wn. App. 380, 382, 132 P.3d 763 (2006) ("our review is de novo").

### **IV. WARRANT STATUS AUTOMATICALLY TOLLS THE PERIOD OF COMMUNITY SUPERVISION**

Respondent acknowledges that the juvenile court has authority to toll the period for community supervision, but argues that did not happen here. First, he asserts that to toll the supervision period beyond a year, a juvenile must be on warrant status or in violation when the Disposition Order terminates. "At the time community supervision expired, D.D-H. had no outstanding warrants and the State had not filed a notice of alleged violations of supervision." (Opening Brief at 9).



Second, Respondent claims that the juvenile court had to expressly toll the supervision period when it found probation violations. "No court orders were entered addressing tolled time or extending community supervision." (Opening Brief at 13). Neither argument is correct. When Respondent violated his community supervision, those periods of non-compliance are automatically excluded.

A. Violating Community Supervision At Any Point Tolls The Supervision Period

Respondent faults the juvenile court for not tolling the supervision period before the term of the disposition order ended.

Because the juvenile court's jurisdiction expired on February 19, 2015 without a pending violation proceeding, outstanding warrant, or court order tolling D.D-H.'s community supervision beyond that set forth in the disposition order, the juvenile court lost jurisdiction. The subsequent juvenile court orders modifying D.D-H.'s disposition and community supervision entered in March, May and August are void and must be reversed because the juvenile court no longer has jurisdiction.

(Opening Brief at 9). This argument has three flaws.

First, because Respondent's intentional violations undermined his community supervision, tolling is automatic. The time D.D-H. spent on warrant status is automatically excluded once

the court finds a probation violation. The Supreme Court explained this automatic tolling in City of Spokane v. Marquette.

The general principle is that the running of the probationary period is tolled while the probationer is not subject to the jurisdiction of the court. By not counting time during which the probationer is not actually supervised, this rule ensures that the municipal court has two years of actual supervision to rehabilitate the probationer. Courts must give full effect to legislative enactments, and that means in this situation preserving the municipal court's two years.

City of Spokane v. Marquette, 146 Wn.2d 124, 130-31, 43 P.3d 502 (2002) (citation omitted).

The court need not rule expressly that the supervision period is tolled. Once it finds a violation, the court may automatically exclude time spent on warrant status.

The probationary period is tolled while a probationer is sought on a warrant. Washington case law establishes that a probationer's term of probation is tolled for any period in which the probationer is not actually under the court's supervision. Such a probationer does not divest the court of limited jurisdiction to enforce compliance with the terms of probation. Federal authorities likewise state that a probationer does not receive credit for time during which he or she is not actually under the court's supervision by virtue of his or her own wrongful act.

Marquette, 146 Wn.2d at 134.

Second, as long as a probation violation is raised before the supervision period ends, the juvenile court has jurisdiction to address

it. This Court in State v. V.J., emphasized the purpose of tolling – to accomplish the purposes of the Juvenile Justice Act.

Supervision can accomplish nothing if the juvenile absconds for the duration of the supervision period. We hold that the juvenile court has authority to toll community supervision when the juvenile is on warrant status.

State v. V.J., 132 Wn. App. 380, 387, 132 P.3d 763 (2006). Here, the State gave notice of the additional supervision time long before the 122 tolled days expired. The juvenile court retained jurisdiction to modify Respondent’s Disposition Order to reflect the additional time.

Third, Respondent need not be on warrant status when the Disposition Order ends to toll the supervision period. Citing both V.J. and State v. May, 80 Wn. App. 711, 911 P.2d 399 (1996), Respondent argues that a juvenile must be in warrant status when the disposition order ends because both V.J. and May were. But this confuses a necessary condition with a sufficient one. Both V.J. and May involved probation violations that occurred at the end of the Disposition Order. There was no excluded time before that. Under those circumstances, the juvenile court had jurisdiction to add tolled time to the supervision period. V.J., 132 Wn. App. at 387 (tolling “when the juvenile is on warrant status”); May, 80 Wn. App. at 717

(jurisdiction ends “unless a violation proceeding is then pending before the court”).

In V.J. and May, pending probation violations were sufficient to extend the juvenile court’s jurisdiction. But tolling occurs whenever a juvenile wrongfully avoids supervision – whether at the beginning, middle, or end of the Disposition Order’s term. And as detailed below, the juvenile court need not expressly toll the supervisory period to extend jurisdiction. Once the court finds a probation violation, the juvenile’s time on warrant status is automatically excluded from the completed supervisory time.

B. Tolling is Automatic

Citing May, Respondent asserts that a juvenile court must add tolled supervisory time to the Disposition Order before the one-year mark. Otherwise, the bright-line rule in May extinguishes jurisdiction. (Opening Brief at 12). But in May, the respondent was never on warrant status and had no tolled supervisory time. Without tolled time, the period for community supervision expired when the disposition order terminated. “The court’s jurisdiction to enforce its disposition order terminates when the community supervision period expires.” May, 80 Wn. App. at 716-17.

Where a respondent was on warrant status, that time does not satisfy the community supervision period. In other words, the supervision period is tolled when respondent is intentionally absent. And the juvenile court maintains jurisdiction until the community supervision period expires.

Finally, Respondent argues that he must have notice of the tolled time when the juvenile court finds a probation violation. In State v. Campbell, 95 Wn.2d 954, 959, 632 P.2d 517 (1981), the Supreme Court concluded that adult probationers should have notice “not only of proposed revocations, but also extensions...” Respondent alleges that “due process concerns arise when juveniles are not, as D.D-H. was not, given notice of the possibility of tolling or the specific facts alleging why tolling is warranted.” (Opening Brief at 14).

No court has held that a juvenile respondent must have notice that tolling is a consequence of avoiding community supervision. Here, the court gave Respondent notice before every hearing about the facts of his alleged violations. Furthermore, Respondent had an opportunity at each hearing to provide evidence and contest a violation. And he had notice at his last hearing that the State

requested an additional 122 days of community supervision to make up for days on warrant status.


There is no requirement that the State and the juvenile court notify Respondent at each violation hearing that community supervision was tolled. Instead, Respondent must have the opportunity to contest any alleged violations – and the addition of supervisory time – at a hearing held before the period of community supervision expires. Respondent had that opportunity here.

### CONCLUSION

By failing to report for probation and avoiding community supervision, Respondent D.D-H. chose to undermine the juvenile court's oversight. Washington law automatically excludes time on warrant status from community supervision. Because the juvenile court appropriately required D.D-H. to make up 122 days of missed time, the State of Washington respectfully requests this Court to affirm the extension of community supervision and dismiss this appeal.

DATED this 31<sup>ST</sup> day of May, 2016.

DAVID S. McEACHRAN  
Whatcom County Prosecuting Attorney

By   
Philip J. Buri, WSBA #17637

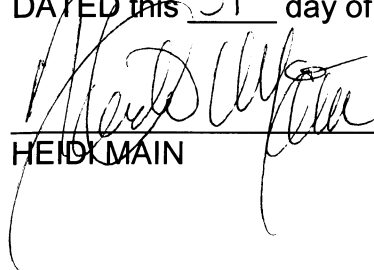
Special Deputy Prosecutor  
BURI FUNSTON MUMFORD, PLLC  
1601 F. Street  
Bellingham, WA 98225  
360/752-1500

**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury under the laws of the State of Washington, that on the date stated below, I mailed or caused delivery of **Brief of Respondent** to:

Nielsen, Broman, & Koch  
1908 E. Madison St.  
Seattle, WA 98122

DATED this 31<sup>ST</sup> day of May, 2016.

  
\_\_\_\_\_  
HEIDI MAIN