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WASHINGTON STATE
SUPREME COURT

SUPREME NO. 94037.1

NO. 74053-9-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

D. D.-H.,

Appellant.

FILED
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Jan 05, 2017
Court of Appeals
Division I
State of Washington

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY, JUVENILE
DIVISION

The Honorable Raquel Montoya-Lewis, Judge
The Honorable David Thorn, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER/COURT OF APPEALS DECISION

Petitioner D.D.-H., the appellant below, asks this Court to grant review pursuant to RAP 13.4 of the Court of Appeals' published decision in State v. D.D.-H., ___ Wn. App. ___, ___ P.3d ___, 2016 WL 7077140 (No. 74053-9-I, filed December 5, 2016).¹

B. ISSUES PRESENTED FOR REVIEW

Because of the "bright-line rule" that exists with juvenile court jurisdiction, a juvenile court's authority to enforce its disposition order terminates when the community supervision period expires. Due process also requires that notice be given when the court exercises inherent authority to toll community supervision. When D.D.-H.'s 12-month community supervision expired, there were no outstanding warrants and no alleged violations of supervision. Nor had the juvenile court entered or discussed any orders addressing tolled time or extending community supervision beyond the 12 months stated in the disposition order. Nonetheless, at an alleged violation hearing held after D.D.-H.'s 12-month community supervision period ended, the juvenile court determined for the first time that his community supervision would be tolled for an additional 122 days.

¹ A copy of the opinion is attached as an appendix.

1. Where the juvenile court failed to exercise its authority to toll D.D.-H.'s community supervision before the 12-month community supervision period expired, thereby preventing the court from retaining jurisdiction, does the Court of Appeals opinion concluding otherwise conflict with Division Three's decision in State v. May,² thereby warranting review under RAP 13.4(b)(2), (b)(3), and (b)(4)?

2. Should review be granted under RAP 13.4(b)(1), b(3), and (b)(4), where Division One's determination that D.D.-H. was not entitled to notice before extension of his community supervision period, conflicts with RCW 13.40.200(2), and this Court's opinion in State v. Campbell,³?

C. STATEMENT OF THE CASE

The Whatcom county prosecutor charged 14-year-old D.D.-H. with one count each of third degree theft and minor in possession of alcohol for alleging taking a bottle of Jägermeister liquor from a grocery store. CP 1-2. D.D.-H. pled guilty as charged in exchange for the prosecutor's recommendation of 12 months probation as to both counts. CP 5-10.

On February 19, 2014, D.D.-H. received a standard range disposition of 15 days confinement with credit for time already served and 12 months of community supervision to begin "immediately." CP 11-17:

² 80 Wn. App. 711, 911 P.2d 399 (1996).

³ 95 Wn.2d 954, 632 P.2d 517 (1981).

The conditions of community supervision required that D.D.-H. complete a drug and alcohol evaluation and comply with any treatment recommendations; refrain from using drugs and alcohol and submit to random urinalysis testing; report regularly to his probation officer; attend school regularly; not commit further offenses; and have no contact with the grocery store involved in the charged incident. CP 15.

Between February 24, 2014 and December 20, 2014, the juvenile court issued and served four bench warrants on D.D.-H. when his probation officer alleged D.D.-H.'s whereabouts were unknown and that he was not complying with his conditions of community supervision. CP 36 (findings of fact 7-11); 48-74, 77-78, 79-80.

Four probation violation hearings were held between May 1, 2014 and December 30, 2014. CP 36 (findings of fact 7-11). At each of the four hearings, the juvenile court found D.D.-H. had not complied with the terms of his community supervision and imposed additional community supervision conditions, including: attend treatment as directed; enroll in and attend a school program; meet with a behavior health specialist; and participate in individual counseling weekly. CP 18-23, 75-76. The juvenile court also imposed additional detention time following each probation violating hearing: five days after the first violation; seven days after the second violation; 15 days after the third violation; and 20 days

after the fourth violation. CP 18-23, 75-76. The remaining portions of the original February 19, 2014 disposition order “remain[ed] in full force and effect” after each Order Modifying Community Supervision was entered. CP 18-23, 75-76.

At none of the four probation violation hearings was tolling of community supervision discussed, nor were court orders entered applying tolled time or extending community supervision beyond the 12 months stated in the February 19, 2014 disposition order. CP 36 (finding of fact 12); CP 43 (finding of fact 2.7); 1RP⁴ 4. By the express terms of the February 19, 2014 disposition order, the 12-month term of community supervision expired on February 19, 2015. CP 36 (finding of fact 13); CP 44 (finding of fact 2.8). At that time, D.D.-H. had no outstanding warrants and the State had not filed any notice of alleged violations of community supervision. CP 36 (finding of fact 14); CP 44 (finding of fact 2.9); 1RP 5.

On February 24, 2015 another bench warrant was issued based on the probation officer’s allegations that beginning on February 22, 2015, D.D.-H.’s whereabouts were unknown. CP 77-78. The warrant was served on D.D.-H. the following day. CP 79-80. On March 4, 2015 the

⁴ The index to the citations to the record is found in the Brief of Appellant (BOA) at 5, n.3.

State petitioned to modify the terms of D.D.-H.'s community supervision alleging he had violated several terms of his disposition order. CP 81-83.

At the hearing on March 11, 2015, D.D.-H. argued the juvenile court had lost jurisdiction by virtue of the fact the juvenile court never exercised its authority to toll D.D.-H.'s community supervision prior to the end of the 12-month supervision period which ended February 19, 2015. CP 24-28; IRP 6, 9, 17-20. Defense counsel also argued that D.D.-H. was never provided with the required notice as to what period of time the juvenile court intended to toll his community supervision. IRP 19-20. Accordingly, D.D.-H. requested that his alleged disposition violations be dismissed and his community supervision terminated. CP 28; IRP 19.

The State responded that State v. V.J., 132 Wn. App. 380, 384, 132 P.3d 763 (2006), was controlling because it allowed the juvenile court to toll community supervision time. IRP 10; 3RP 11; CP 84-96. The State maintained that D.D.-H.'s community supervision had not expired on February 19, 2015 because the juvenile court had not yet had a full 12 months in which to supervise him because of his prior time on warrant status. IRP 10-15, 21-22, 84-96.

The juvenile court commissioner denied D.D.-H.'s motion to dismiss, finding that a full 12 months of community supervision was needed and that D.D.-H. had missed about 3 months of supervision when

he was on warrant status. 1RP 24; 2RP 45; CP 36 (finding of fact 17); CP 37 (conclusion of law 4). The commissioner further concluded that it had inherent authority to toll D.D.-H.'s community supervision retroactively, "even though it's later than it should have been." 1RP 25-28; CP 36-37 (conclusions of law 1, 2, 4). Accordingly, the juvenile court added 122 days to D.D.-H.'s community supervision, thereby extending his community supervision until June 21, 2015. 1RP 46-48; CP 37 (conclusions of law 5-6). The juvenile court recognized that D.D.-H. was never given notice that the probation department sought to toll his community supervision prior to February 19, 2015. CP 36 (finding of fact 15). Subsequent orders modifying D.D.-H.'s disposition and community supervision were entered on March 11, 2015, May 15, 2015, and August 6, 2015. CP 29-30, 38-41.

D.D.-H. moved to revise the commissioner's ruling denying his motion to dismiss community supervision. 3RP 3; CP 31-34, 97-151. The State maintained that V.J. controlled, that D.D.-H. was not entitled to notice of tolling, and that the juvenile court was not required to take affirmative action to initiate tolling. 3RP 11-13, 15-16, 152-67.

The Whatcom County Superior Court denied the motion to revise. 3RP 31; CP 42-44. The court concluded that V.J. was factually distinguishable, but that D.D.-H. required community supervision for a

full 12-month period to give effect to the rehabilitative purposes of the juvenile justice act. 3RP 30-33; CP 43 (conclusions of law 3.3-3.4). The court was not troubled by the lack of notice provided to D.D.-H. regarding the tolling of community supervision, finding that he “was not entitled to notice and an opportunity to be heard concerning the application of tolled time.” 3RP 33; CP 43 (conclusion of law 3.6).

On appeal, D.D.-H. raised two arguments. Citing the State v. May “bright-line rule” limiting juvenile court jurisdiction, D.D.-H. first argued the juvenile court lost jurisdiction when it failed to take any action to toll his community supervision before the end of his 12-month supervision period. Relying on RCW 13.40.200(2) and State v. Campbell, D.D.-H. also argued that he was entitled to notice before the community supervision was tolled.

In a published decision, the Court of Appeals rejected D.D.-H.’s first argument, concluding that community supervision tolls by operation of law when a juvenile is on warrant status and therefore May’s “bright line rule” was not offended. Op. at 6-9. Although the Court of Appeals recognized that D.D.-H. was never provided notice of the extended supervision period, the Court concluded that because the tolling occurred by operation of law, there was no new imposition upon D.D.-H.’s liberty that required notice. Op. at 9-11.

In a concurring opinion, Judge Spearman pointed out the questionable logic of not providing juveniles with explicit notice that absconding during the community supervision period results in tolling of the probation period during their absence:

In this case, the record contains no indication that D.D.-H. was ever given notice, either by the court or by statute, that as a result of his failures to report to his probation officer his probation would be extended beyond the original two year term. We do not know whether, had D.D.-H. been so advised, it would have made a difference in his behavior. But the purposes of providing notice is two-fold: to give fair warning of the sanctions that may follow certain behavior and the provide the offender a fair opportunity to avoid conduct that may result in further punishment. Neither of those goals are satisfied by the result in this case.

Op. at 12. (Spearman, J., concurring) (citations omitted).

D.D.-H. now asks this Court to accept review, reverse the juvenile court orders modifying community supervision, dismiss the alleged violations, and terminate his probation.

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. THIS COURT SHOULD ACCEPT REVIEW UNDER RAP 13.4(b)(2), (b)(3), and (b)(4) BECAUSE DIVISION ONE'S DECISION CONFLICTS WITH DIVISION THREE'S DECISION IN STATE v. MAY.

The juvenile court's jurisdiction is limited to that provided by statute. State v. V.J., 132 Wn. App. 380, 384, 132 P.3d 763 (2006). As part of a dispositional order in a non-sex offense case, a juvenile court may impose a

period of community supervision for up to one year. RCW 13.40.020(5). The juvenile court may modify the original disposition only when the juvenile is found to have failed to comply with the requirements of supervision. RCW 13.40.200. Although not expressly authorized by statute, the juvenile court has authority to toll community supervision when the juvenile is on warrant status. V.J., 132 Wn. App. at 387. However, a juvenile “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, 717, 911 P.2d 399 (1996); State v. Y.I., 94 Wn. App. 919, 923-24, 973 P.2d 503 (1999).

In May, Division Three reversed a juvenile court’s order imposing detention for violation of provisions of disposition order because that modification was entered after the community supervision period had ended. 80 Wn. App. at 717. On January 12, 1993, May pled guilty to residential burglary and second-degree burglary. May was given 12 months of community supervision, and ordered to complete several other conditions, as part of his disposition order. May, 80 Wn. App. at 712. On January 10, 1994 May’s probation counsel submitted a report to the prosecutor’s office alleging that May had failed to comply with the conditions of his community

supervision. Ten days later, the prosecutor's office instituted a show cause proceeding regarding the alleged violations. May, 80 Wn. App. at 713.

At the violation hearing held two weeks later, May argued the juvenile court lacked jurisdiction because the community supervision period ended before the prosecutor instituted the violation proceedings. The juvenile court concluded that as long as the alleged violation information was brought in a "reasonable amount of time," and the juvenile was given proper notice of the alleged violation, then disposition of the violations need not occur within the community supervision period. May, 80 Wn. App. at 713. The superior court affirmed, concluding the court retains jurisdiction over juveniles until age 18 and, absent a showing of prejudice, could impose sanctions after expiration of the community supervision period for violations committed during the period. May, 80 Wn. App. at 713-14.

On appeal, Division Three disagreed. May established a "bright-line rule," and concluded that a juvenile court's jurisdiction to enforce its disposition order terminates when the community supervision period expires, unless a violation proceeding is already pending before the court. May, 80 Wn. App. at 716-17. In distinguishing a juvenile court's authority to modify disposition orders from adult probation revocation proceedings, which permit a sentencing court to retain jurisdiction to

enforce the requirements of a sentence until they are met and/or a certificate of discharge is provided upon completion of the sentence, the Court of Appeals noted that a juvenile offender, “is at the mercy of the State’s administrative bureaucracy.” May, 80 Wn. App. at 716.

Here, Division One distinguished May on the basis that there the community supervision condition violations were not brought to the court’s attention until after the supervisory period ended, while here, D.D.-H. was placed on warrant status several times before the original supervisory period ended. Op. at 8. But the relevant inquiry is not when the court learned of the violations, but rather, what action the juvenile court took with respect to tolling before expiration of the original supervisory period. In D.D.-H.’s case there was none.

Division One circumvents this necessary analysis by concluding that tolling of D.D.-H.’s community supervision period tolled “as a matter of law.” Op. at 5, 9. But the Court of Appeals cites no authority which supports this conclusion. Instead, the Court of Appeals relies on State v. V.J.⁵, City of Spokane v. Marquette⁶, and Gillespie v. State.⁷ Op. at 4-5, 8. While those cases confer inherent authority on a court to toll

⁵ 132 Wn. App. 380, 384, 132 P.3d 763 (2006).

⁶ 146 Wn.2d 124, 43 P.3d 502 (2002).

⁷ 17 Wn. App. 363, 563 P.2d 12727 (1977).

community supervision while a probationer is on warrant status, none of them stand for the proposition that juvenile court tolling is automatic or self-executing.

The purpose behind May's "bright-line rule" carefully limiting juvenile court jurisdiction is to protect juveniles from the same type of "administrative inertia" that occurred in this case. May, 80 Wn. App. at 716-17; see also Y.I., 94 Wn. App. at 924 (recognizing that a juvenile should not be "under constant threat of incarceration until his or her 18th birthday."). D.D.-H. appeared before the juvenile court on four separate occasions before the 12-month supervisory period ended. CP 43 (findings of fact 2.3-2.6). Consequently, the juvenile court had ample opportunity to exercise its authority to toll D.D.-H.'s during his 12-month supervisory period. Instead, for the entire 12 months, the court inexplicably took no action with respect to tolling. No court orders were entered addressing tolled time or extending community supervision. 1RP 4; CP 43 (finding of fact 2.7). No discussions were held regarding the possibility of tolled time or community custody extensions. 1RP 4; CP 43 (finding of fact 2.7). The State made no requests that the community supervision be tolled or extended. 1RP 4. In fact, no mention whatsoever was made of tolling until defense counsel argued that the juvenile court had lost jurisdiction to modify D.D.-H.'s community supervision pursuant to the State's March 4,

2015 notice of alleged violations. Only after the March 11, 2015 hearing, did the juvenile court decide to toll D.D.-H.'s community supervision, "even though it's later than it should have been." 1RP 25-26, 28.

To hold that a juvenile court can, for the first time, exercise its authority to toll community supervision after the supervisory period has already ended renders meaningless May's "bright-line rule" that a juvenile court's jurisdiction to enforce its disposition order terminates when the community supervision period expires. Because the Court of Appeals ignored the reasoning of May's "bright-line rule" concerning juvenile court jurisdiction, this Court should grant review under RAP 13.4(b)(2), (b)(3), and (b)(4).

2. THIS COURT SHOULD ACCEPT REVIEW UNDER RAP 13.4(b)(1), (b)(3) and (b)(4) BECAUSE DIVISION ONE'S CONCLUSION THAT D.D.-H. WAS NOT ENTITLED TO NOTICE CONFLICTS WITH STATUTORY LAW AND THIS COURT'S DECISION IN STATE V. CAMPBELL.

No person may be deprived of life, liberty, or property without due process of law. U.S. CONST. amends. V, XIV; CONST. art. I, § 3. A liberty interest may arise from an expectation created by state laws or policies. In re Pers. Restraint of McCarthy, 161 Wn.2d 234, 240, 164 P.3d 1283 (2007). "[P]rocedural due process requires that an individual receive notice of the deprivation and an opportunity to be heard to guard against erroneous deprivation." Amunrud v. Bd. of Appeals, 158 Wn.2d 208, 216,

143 P.3d 571 (2006). “Substantive due process protects against arbitrary and capricious government action even when the decision to take action is pursuant to constitutionally adequate procedures.” Id. at 218-19.

When a court exercises its inherent authority to toll community supervision over a probationer, the court is required “to provide notice to probationers not only of proposed revocations, but also extensions, and advise them that they have a right to a hearing.” State v. Campbell, 95 Wn.2d 954, 958-59, 632 P.2d 517 (1981); See also RCW 13.40.200(2) (juvenile entitled to “same due process of law as would be afforded an adult probationer.”). “Such a rule is needed because of the potential for prejudice in ex parte extensions of probation.” Campbell, 95 Wn.2d at 958.

It is undisputed that D.D.-H. was never provided with notice of the juvenile court’s intent to extend his community supervision beyond the original 12-month period. Op. at 11. Nor was D.D.-H. advised that he had a right to a hearing to address the tolling of supervision. Accordingly, D.D.-H.’s due process rights were violated when the juvenile court tolled his community supervision after his supervisory period has already ended.

Again, Division One attempts to circumvent D.D.-H.’s right to notice under RCW 13.40.200(2) and State v. Campbell, by concluding that the tolling of D.D.-H.’s community supervision period occurred as a

matter of law. Op. at 11. The fallacy in the majority's reasoning lies in the fact that even assuming tolling is automatic, D.D.-H. is still entitled to notice of revocations and extensions of community supervisions under RCW 13.40.200(2) and State v. Campbell, 95 Wn.2d at 958-59. As the concurrence recognizes, this requirement is satisfied with respect to adult probationers through explicit statutory notice that if they abscond from supervision the probationary period is tolled during their absence. Op. at 12. (Spearman, J., concurring) (citing RCW 9.94A.171(2) and RCW 3.66.068(3)). No such statutory notice exists in the Juvenile Justice Act. Id.

As the concurrence aptly observes, the twin goals of providing fair warning of the potential sanctions for offending behavior and a fair opportunity to avoid such behavior cannot be accomplished if juveniles, such as D.D.-H., are not provided proper notice. Id. It is unfair to burden juveniles, but not adults, with the tolling effect of warrant status without proper notice. Op. at 12-13. (Spearman, J., concurring). Because D.D.-H. was never provided with the required notice orally, in writing, or through statutory provisions, his due process rights were violated.

Unfortunately, in lieu of Division One's decision here, it remains unclear how Campbell's notice requirement applies to juvenile cases such as this one. Because Division One's opinion conflicts with this Court's

opinion in Campbell and because the consequences of such a misguided decision are potentially far-reaching, this Court should grant review under RAP 13.4(b)(1), (b)(3) and (b)(4).

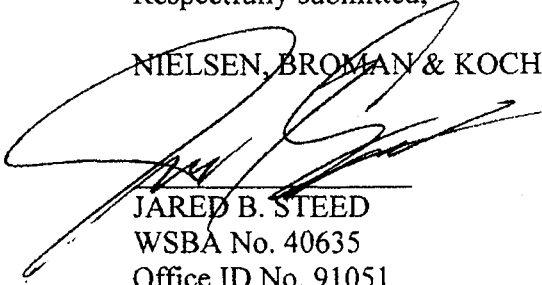
E. CONCLUSION

Because D.D.-H. satisfies the criteria under RAP 13.4(b)(1), (b)(2), (b)(3), and (b)(4), he respectfully asks that this Court grant review, reverse the juvenile court orders modifying community supervision, dismiss the alleged violations, and terminate D.D.-H.'s probation.

DATED this 5th day of January, 2017.

Respectfully submitted,

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Appendix

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On four occasions, D.D.-H. violated this condition and was unavailable for supervision. The court issued the first bench warrant for such a failure on February 27, 2014, which police served on April 25, 2014. It issued the second on June 9, 2014, served on April 25, 2014. It issued the third on September 4, 2014, served on September 20, 2014. It issued the fourth on November 20, 2014, served on December 20, 2014.

A detention hearing followed the service of each of the four warrants, followed by the scheduling of a probation violation hearing. At each hearing, the court modified its original disposition order.

At no time during the original period of supervision did the court enter any orders on tolling or extension of community supervision. Moreover, there was no discussion of either subject at any court hearings during that period.

D.D.-H. was not on warrant status when his supervision was originally set to expire on February 19, 2015. No notice of violation was outstanding.

On February 24, 2015, five days after the originally scheduled expiration of community supervision, the court issued a fifth bench warrant for D.D.-H.'s alleged failure to inform his probation officer of his whereabouts. Police arrested and served the warrant on him the next day.

On March 4, 2015, the State filed a notice of violation and the court held a probation violation hearing the next day. D.D.-H. challenged the jurisdiction of the juvenile court at this March 5, 2015 hearing.

D.D.-H. moved to dismiss, arguing that the juvenile court's jurisdiction ended on February 19, 2015. Thus, he argued, the court could not modify

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supervision after that date. The juvenile court commissioner disagreed and "tolled" community supervision for the periods of time D.D.-H. was on warrant status and unavailable for supervision: 122 days. The commissioner set the time for community service to expire as June 21, 2015.

D.D.-H. moved to revise the commissioner's order. A superior court judge denied the motion, ruling that the juvenile court maintained jurisdiction after the February 19, 2015 originally scheduled expiration of community supervision.

D.D.-H. appeals.

JUVENILE COURT JURISDICTION

We must decide whether a juvenile's community supervision is tolled when he is on warrant status and not subject to supervision.

The Juvenile Court and Juvenile Justice Acts of 1977 (JJA), chapters 13.04 and 13.40 RCW, govern the operation of the juvenile courts. In enacting the JJA, the legislature sought to hold juveniles accountable for their crimes and deal with juvenile offenders in a consistent manner, while preserving the rehabilitative goals of the juvenile justice system.¹

The JJA grants the juvenile court authority to impose a period of community supervision for up to one year for non-sex offenses.² When a juvenile violates his supervision requirements, the court may modify its disposition order and impose sanctions.³

¹ State v. V.J., 132 Wn. App. 380, 383, 132 P.3d 763 (2006).

² RCW 13.40.0357.

³ RCW 13.40.070.

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But the JJA does not specify for how long this authority exists. Likewise, the JJA lacks any express provision for tolling.

We review de novo whether the juvenile court had jurisdiction.⁴

The question in this case is whether a juvenile's community supervision tolls when he is on warrant status and unavailable for supervision, where there is no order expressly tolling supervision. This court dealt with a similar issue in State v. V.J.⁵

In that case, we decided that City of Spokane v. Marquette was instructive as to whether tolling of community supervision was proper.⁶ We, again, turn to that supreme court case.

There, Marquette pleaded guilty in municipal court to reckless driving. On February 22, 1996, the court fined him and sentenced him to 365 days in jail, with 364 days suspended for 24 months of probation.⁷ His probation was dependent on certain conditions. He violated those conditions.

Based on his failures to comply with probation conditions, the court issued three bench warrants.⁸ Following service of each warrant, the court held hearings on the alleged violations.

In total, Marquette was on warrant status three times.⁹ The first period lasted 107 days, from March to June 1996, because he failed to report for his one day in jail. The second period lasted 65 days, from August to October 1997,

⁴ City of Spokane v. Marquette, 146 Wn.2d 124, 129, 43 P.3d 502 (2002).

⁵ 132 Wn. App. 380, 132 P.3d 763 (2006).

⁶ 146 Wn.2d 124, 130, 43 P.3d 502 (2002).

⁷ Id. at 126.

⁸ Id. at 127-27.

⁹ Id. at 128-29.

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because he failed to appear at a show cause hearing. And the third period lasted eight days, during July 1998, because he failed to appear at another show cause hearing.

The supreme court explained that the relevant statute limited the municipal court's probation authority to two years, but tolling of this period occurred when "the probationer is not subject to the jurisdiction of the court" because of his warrant status.¹⁰

In doing so, the supreme court followed the court of appeals decision in Gillespie v. State.¹¹ There, the trial court sentenced Gillespie to probation in 1972.¹² Gillespie disappeared and the court issued a bench warrant on September 11, 1972.¹³ Police arrested him on September 15, 1974.¹⁴ The court of appeals held that the probation period tolled for the entire time Gillespie was on warrant status.¹⁵ The court of appeals explained that the purpose of probation was rehabilitation which defendant frustrated by eluding the court's supervision.¹⁶

RCW 13.40.020(5) confers on juvenile courts authority to impose a set period of community supervision. D.D.-H. was not subject to court supervision for the total period he was on warrant status: 122 days. We conclude that tolling for this period was appropriate and occurred as a matter of law. Thus, his term of community service did not expire on the originally scheduled date: February

¹⁰ Id. at 130.

¹¹ 17 Wn. App. 363, 563 P.2d 1272 (1977).

¹² Id. at 364.

¹³ Id.

¹⁴ Id.

¹⁵ Id. at 368.

¹⁶ Id. at 365-67.

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19, 2015. The court maintained jurisdiction for the 122-day period following that date.

D.D.-H. concedes that the juvenile court has authority to toll community supervision when a juvenile is on warrant status. But he argues the juvenile court's jurisdiction ends at the originally scheduled expiration of supervision unless a violation proceeding is pending at that time. He relies on State v. May¹⁷ and State v. Y.I.¹⁸

In May, the juvenile court sentenced May to 12 months of community supervision.¹⁹ Two days before the expiration of that period, May's probation counsellor submitted a report to the State showing that May had violated his supervision conditions.²⁰ Eight days after the supervisory period ended, the State moved for a show cause proceeding regarding the violations.²¹ Almost three weeks later, the juvenile court ordered sanctions against May.²²

May appealed, challenging the juvenile court's jurisdiction.²³ The State countered that, similar to the adult sentencing framework, the juvenile court should retain jurisdiction until a defendant satisfies all community supervision conditions or ages out of the juvenile system.²⁴ Division Three of this court determined that such a holding impaired the legislative intent underlying the

¹⁷ 80 Wn. App. 711, 911 P.2d 399 (1996).

¹⁸ 94 Wn. App. 919, 973 P.2d 503 (1999).

¹⁹ May, 80 Wn. App. at 712.

²⁰ Id. at 713.

²¹ Id.

²² Id. at 714.

²³ Id.

²⁴ Id. at 715.

JJA.²⁵ That act sought to avoid leaving juveniles “at the mercy of the State’s administrative bureaucracy” because the juvenile cannot, unlike the probationer, obtain an order or discharge releasing him from supervision.²⁶ Accordingly, the court opted for a “bright-line rule that clearly defines the juvenile court’s jurisdiction.”²⁷

Under that rule, a juvenile 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.”²⁸ Division Two of this court later held in State v. Todd that this rule requires the State to “institute violation proceedings before the expiration of the deferral period.”²⁹ Placing the burden to institute an action on the State thus guards against administrative inertia.³⁰ Our supreme court recently cited Todd in confirming the validity of this rule.³¹

In State v. Y.I., we applied May’s logic to the context of a juvenile’s legal financial obligations.³² In that case, Y.I.’s probation officer filed a petition to review conditions of community supervision after the original expiration of supervision, citing Y.I.’s failure to pay his Victim Penalty Assessment.³³ The juvenile court ordered confinement unless he paid his assessment or performed

²⁵ Id. at 715-16.

²⁶ Id. at 716.

²⁷ Id.

²⁸ Id. at 717.

²⁹ State v. Todd, 103 Wn. App. 783, 790, 14 P.3d 850 (2000).

³⁰ Id.

³¹ State v. Tucker, 171 Wn.2d 50, 53, 246 P.3d 1275 (2011).

³² 94 Wn. App. 919, 922, 973 P.2d 503 (1999).

³³ Id. at 921.

community service.³⁴ Applying May, we concluded the court lacked jurisdiction to enter this order after supervision had expired.³⁵

But May and Y.I. are distinct from this case. May considered “whether the juvenile court retains jurisdiction to consider alleged violations that occurred during community supervision, but are not brought to the court’s attention until after the supervisory period expires.”³⁶ Similarly in Y.I., the probation officer only filed his petition after the original expiration of supervision. Thus, on neither occasion did the trial court have the opportunity to issue a bench warrant or place the juvenile on warrant status. In contrast, the State instituted violation proceedings each time D.D.-H. violated the conditions of his supervision. The court placed him on warrant status several times, prior to the original expiration of supervision, which tolled the supervisory period.

Such a conclusion does not deprive May’s bright line rule of its force. If the State does not institute a violation hearing and no bench warrant issues, supervision will not toll. Similarly, as Marquette explained, tolling may not occur when police are not diligent in serving that warrant.³⁷ Neither circumstance exists in this case.

D.D.-H. next attempts to distinguish V.J. because V.J. was on warrant status when his supervision ended but D.D.-H. was not. He is correct on this factual matter but this factual distinction does not change our conclusion.

³⁴ Id.

³⁵ Id. at 923.

³⁶ May, 80 Wn. App. at 714.

³⁷ Marquette, 146 Wn.2d at 132.

In Marquette, upon which V.J. relied, community supervision was originally scheduled to expire 24 months after the February 22, 1996 sentencing.³⁸ Marquette was not on warrant status on February 22, 1998, the originally scheduled expiration of probation. Nevertheless, the court held that the earlier periods of warrant status tolled his probation.³⁹ Accordingly, we conclude that whether a juvenile is on warrant status at the originally scheduled expiration of his supervision is not material. Rather, whether a juvenile is on warrant status at any time during community supervision is the proper inquiry.

D.D.-H. argues, nonetheless, that the court must affirmatively order supervision tolled before supervision is originally set to expire. But as we have explained, tolling occurs by operation of law when the juvenile is on warrant status. No order is necessary.

D.D.-H. next argues that due process requires notice prior to the expiration of the originally scheduled community supervision period that supervision has tolled. We disagree for the reasons already stated.

To summarize, because D.D.-H. was on warrant status for 122 days and not subject to the court's supervision during that period, tolling applied by operation of law. Supervision tolled for those additional days beyond the originally scheduled expiration. The State in this case instituted violation proceedings before that original expiration, the court issued bench warrants each time, and police diligently served those warrants. D.D.-H. thus received the due process to which he is entitled.

³⁸ Id. at 126.

³⁹ Id. at 134.

Yet D.D.-H. contends that notice was required under RCW 13.40.200(2). That statute entitles a juvenile to “the same due process of law as would be afforded an adult probationer.” Thus, we must consider what due process is owed the adult probationer. On this point, D.D.-H. cites State v. Campbell.⁴⁰

In that case, the State sought a review hearing to extend a probation term while Campbell underwent psychiatric treatment.⁴¹ The trial court scheduled a hearing, giving notice to Campbell and his counsel, but then cancelled it upon Campbell’s therapist’s recommendation.⁴² The court then, without notice to Campbell, entered an ex parte order to extend the probation term.⁴³

After the original expiry date of probation, the court again extended the probationary period.⁴⁴

In that case, our supreme court first considered whether a court could extend probation by an ex parte order and second whether the probationer’s commitment to a psychiatric institution tolled probation.⁴⁵

Regarding the first question, the court held that due process required “courts in this state to provide notice to probationers not only of proposed revocations, but also extensions, and advise them that they have a right to a hearing.”⁴⁶

⁴⁰ 95 Wn.2d 954, 632 P.2d 517 (1981).

⁴¹ Id. at 955.

⁴² Id.

⁴³ Id.

⁴⁴ Id. at 956.

⁴⁵ Id. at 957-58.

⁴⁶ Id. at 959.

But the court upheld the extension because Campbell's probation tolled while he was committed to psychiatric treatment.⁴⁷ It likened such circumstance to a probationer who is "generally out of the jurisdiction contrary to the terms of probation."⁴⁸

Here, the juvenile court extended the supervision period without providing prior notice to D.D.-H. that his supervision would toll. But tolling occurred by operation of law. For the pendency of his warrant status, D.D.-H. was outside the trial court's jurisdiction. Rather than supporting his right to notice that this time would be tolled, Campbell demonstrates that it tolled by operation of law. As such, there was no new imposition upon D.D.-H.'s liberty that would require notice.

We affirm the order on revision and the modification of the disposition order and imposition of sanctions.

COX, J.

WE CONCUR:

Leppelwick, J.

⁴⁷ Id. at 957.

⁴⁸ Id.; see also State v. Frazier, 20 Wn. App. 332, 334, 579 P.2d 1357 (1978).

State of Washington v. D.D.-H. (DOB: 03-28-99), No. 74053-9-1

SPEARMAN, J. (CONCURRING)

I concur with the result because, as set out in the majority opinion, case law dictates that the probationary period is tolled by operation of law for those time periods when the probationer is on warrant status and not subject to the jurisdiction of the court. I write only to make the observation that adult offenders, whether on probation in courts of limited jurisdiction or in superior court, are provided with explicit notice by statute that if they abscond from supervision the probationary period is tolled during their absence.¹ No such explicit authorization for or notice of tolling is to be found in the Juvenile Justice Act of 1977, chapters 13.04 and 13.40 RCW.

In this case, the record contains no indication that D.D.-H. was ever given notice, either by the court or by statute, that as a result of his failures to report to his probation officer his probation would be extended beyond the original two year term. We do not know whether, had D.D.-H. been so advised, it would have made a difference in his behavior. But the purpose of providing notice is two-fold: to give fair warning of the sanctions that may follow certain behavior and to provide the offender a fair opportunity to avoid conduct that may result in further punishment. Neither of those goals are satisfied by the result in this case.

¹ For probationers in superior court, RCW 9.94A.171(2) provides: "Any term of community custody shall be tolled by any period of time during which the offender has absented himself or herself from supervision without prior approval of the entity under whose supervision the offender has been placed." For probationers in courts of limited jurisdiction, RCW 3.66.068(3) provides: "A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court, shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record."

While it is true that a review of the case law may very well have warned D.D.-H. of the tolling effect of warrant status, it is anomalous that we burden only juvenile, but not adult probationers, with this responsibility.

Specimen, J.

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

STATE OF WASHINGTON,)	No. 74053-9-I
)	
Respondent,)	ORDER CORRECTING
)	OPINION
v.)	
)	
D.D.-H. (DOB: 3-28-99),)	
)	
Appellant.)	

IT IS HEREBY ORDERED that the published opinion in the above-entitled case, filed on December 5, 2016, shall be corrected as follows:

On page 2 of the slip opinion, fourth line, the text "served on April 25, 2014" should be corrected to read "served on June 28, 2014."

DATED this 12th day of December 2016.

COX, J.

Spencer, J.

Appelwick, J.