Supreme Court No. 100356-1
(Court of Appeals No. 81447-8-I)

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,
v.

F.H.B.,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

PETITION FOR REVIEW

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Rules

A. IDENTITY OF PETITIONER AND DECISION BELOW

Petitioner F.H.B. asks this Court to review the opinion of the Court of Appeals in *State v. F.H.B.*, No. 81447-8-I (filed October 11, 2021). A copy of the opinion is attached as an Appendix.

B. ISSUE PRESENTED FOR REVIEW

Under *State v. Fisher*, 108 Wn.2d 419, 739 P.2d 683 (1987), a sentencing court abuses its discretion when it imposes a longer sentence based upon the possibility of earned early release. The court in this case sentenced F.H.B. under the Sentencing Reform Act (SRA) to 120 months to ensure F.H.B. would remain incarcerated until his 25th birthday, even if he received credit for good time. Is review warranted because the Court of Appeals' decision conflicts with this Court's decision in *State v. Fisher*? RAP 13.4(b)(1).

C. STATEMENT OF THE CASE

F.H.B.'s mother raised him alongside his older sister, both of whom he is very close to. CP 48. His father was abusive

and left when F.H.B. was young. CP 48. F.H.B. joined a gang at just thirteen years old, after he lost one of his closest friends in a gang-related shooting. CP 48. The gang, which his late friend also belonged to, provided F.H.B. the same companionship and love he was missing after the tragic loss of his friend. CP 48.

In February 2019, then fifteen-year-old F.H.B. shot into a vehicle carrying Salvador Estrada, a witness in an upcoming murder trial involving a member of F.H.B.'s gang. CP 47-48. Two people inside the vehicle were injured, including Mr. Estrada. CP 47-48. No one died.

F.H.B. was charged with multiple offenses, including Attempted Murder and Assault in the First Degree, with firearm enhancements. CP 47. As part of a plea agreement, F.H.B. declined to adult court and pled guilty to Assault in the First Degree with a firearm enhancement. CP 48. The parties agreed he qualified for an exceptional downward sentence and could serve his sentence at a Juvenile Rehabilitation Administration

(JRA) facility, but disagreed as to the length of the sentence. CP 48.

F.H.B. requested a sentence of 115 months, while the prosecution requested 120 months. RP at 18, 48. Both parties' recommendations accounted for six months of earned early release or "good time" off F.H.B.'s sentence based upon his likely behavior during his incarceration. RP 34. With good time, defense counsel's recommendation would allow F.H.B. to be released before his 25th birthday, which would give him access to the full spectrum of JRA services. RP 50. In contrast, the prosecution's recommendation ensured F.H.B. would be ineligible for release until after his 25th birthday, barring his eligibility for community-based programming, including early release to a group home. RP 50.

F.H.B.'s probation officer agreed F.H.B. should benefit from the rehabilitative services of the JRA and recommended a sentence of 111 months. RP 36. This recommendation did not account for good time and resulted in a calculated release date

of five days before F.H.B.'s 25th birthday. RP 36-37. The probation officer based her recommendation on F.H.B.'s youthfulness and personal history, and the benefit of the programs available only to those whose sentences end before age 25. RP 36. Specifically, F.H.B. would have more opportunities for rehabilitation in a group home, including access to community-based college and employment programs. RP 49-50. It would also allow him a more supervised, slower reentry. RP 36, 50. F.H.B.'s probation officer emphasized that F.H.B. could be transferred to an adult prison if he did not maintain good behavior at the JRA facility. RP 49.

The court declined F.H.B.'s case to adult court and sentenced him as an adult under the Sentencing Reform Act (SRA). RP 8-10; CP 14-25. The court agreed with the parties that an exceptional downward sentence allowing F.H.B. to remain at a JRA facility was appropriate. CP 21-22. In determining the exact sentence, the court noted that, as opposed to adult sentencing, courts may take earned early release into

account inasmuch as the length of a sentence impacts a juvenile's ability to participate in rehabilitative programs while incarcerated. RP 32.

The parties were not familiar with the state of the law on this issue, but did not object to the court considering good time in F.H.B.'s case for the purposes of "figure[ing] out the best way to engage F.H.B. in rehabilitative programs at juvenile or JRA." RP 32-33.

In response to the court's questions, defense counsel told the court that a child sentenced to be released prior to their 25th birthday is eligible, but not guaranteed, for release to a group home with electronic home monitoring after serving a minimum of 50% of the sentence. RP 52. At a community-based program such as this, group home staff would heavily supervise F.H.B. and he would have to return to juvenile or adult prison if he had any violations. RP 50.

Although the parties' actual recommendations differed by only five months, the court characterized the difference

between the sentences as significant for both F.H.B. and the community, due to the possibility of early release. RP 52-53. The court stated that, although F.H.B. deserves the opportunity to serve his sentence at a JRA facility, "I can't live with the idea of a potential release to a group home within a few years of a sentence." RP 58; CP 77. The court adopted the prosecution's recommendation and sentenced F.H.B. to 120 months. CP 77.

The Court of Appeals affirmed, finding the sentencing court properly considered the possibility of early release in the context of rehabilitative programming pursuant to this Court's opinion in *State v. Sledge*[1], which involved a juvenile sentenced under the Juvenile Justice Act (JJA). Opinion at 8-10. The court also concluded that, even had the sentencing court erred in considering early release time, F.H.B. was not entitled to relief because he invited the error. Opinion at 9 n. 23.

[1] *State v. Sledge*, 133 Wn.2d 828, 947 P.2d 1199 (1997).

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

The Court of Appeals' decision conflicts with this Court's decision in *State v. Fisher*.

a. This Court has repeatedly held that a court abuses its discretion when it imposes a higher sentence based upon the possibility of early release.

It is well established that a court abuses its discretion when it considers the possibility of early release as a basis to impose a longer sentence. *E.g.*, *Fisher*, 108 Wn.2d at 428 n. 6 (sentencing court may not rely on good time as justification for exceptional sentence); *State v. Wakefield*, 130 Wn.2d 464, 477-78, 925 P.2d 183 (1996) (same). This is because, under the framework of the SRA, credit for earned early release may be considered "only after the offender has begun serving his sentence." *Fisher*, 130 Wn.2d at 429 n. 6. Moreover, whether a defendant may be eligible for discretionary release at some point during their sentence is an "entirely speculative prediction of the likely behavior of an offender while in confinement." *Id*.

Yet this is exactly what happened in F.H.B.'s case when the court adopted the prosecutor's recommendation based not only on the speculation that F.H.B. would earn early release credits while in custody, but also on the assumption that he would be transferred to a group home after serving four years.

b. The Court of Appeals rests on an erroneous interpretation of State v. Sledge.

While acknowledging the prohibition under *Fisher*, the Court of Appeals nevertheless relied on *State v. Sledge* as establishing an exception in juvenile cases where detention is required to complete rehabilitative treatment programs. Opinion at 8 (citing *Sledge*, 133 Wn.2d at 845). In that case, Sledge's probation officer recommended the court detain Sledge until age 18, both to protect the community and so he could potentially have the opportunities to participate in programming. 133 Wn.2d at 833-34. Although this would require detaining Sledge for 82 weeks, the court adopted the probation officer's recommended 103 week sentence to account

for 20 percent earned early release. *Id*. at 833-34, 844. This Court reversed, finding that despite the juvenile court's genuine desire to provide Sledge with rehabilitative programs and protect the community, a sentence cannot be based on the necessarily speculative assumption a defendant will receive good time for future behavior. *Id*. at 845. In fact, given Sledge's behavioral history, he likely would not have qualified for early release and would have served the longer sentence. *Id*. at 845-46.[2]

In this case, the Court of Appeals affirmed F.H.B.'s sentence by interpreting *Sledge* as allowing courts to consider early release where there are "facts documenting a need for confinement for a specific treatment program requiring a set

[2] The court relied on *State v. Bourgeois*, 72 Wn. App. 650, 660, 866 P.2d 43 (1994) and *State v. S.H.*, 75 Wn. App. 1, 15-16, 877 P.2d 205 (1994), which concluded the prohibition in *Fisher* applies to juvenile courts who consider good time to impose a manifest injustice sentence or increase the length of a manifest injustice sentence.

duration to successfully complete." *Id*. However, the court's reliance on *Sledge* is misplaced for three reasons:

First, *Sledge* is a juvenile case involving a manifest injustice sentence. 133 Wn.2d at 830. F.H.B. declined to adult court and was sentenced as an adult under the SRA, not the JJA. CP 14-18. Although he will serve his sentence in a JRA facility, F.H.B. will remain under the supervision of the Department of Corrections. CP 24. *Sledge* is therefore inapplicable and there is no analogous exception under the SRA.

Second, *Sledge* did not actually hold that a court may consider good time to fashion a sentence that would ensure a juvenile remains incarcerated to complete a particular treatment program. While the dicta suggested that, given the rehabilitative component under the JJA, an exception could exist where additional incarceration is need to complete a particular program, no specific program was at issue in Sledge's case. 133 Wn.2d at 845. Thus, this Court explicitly declined to "express

an opinion" on whether the law allows for such an exception. *Id*. at 845 n. 8.

Third, even if an exception exists for treatment programs, the Court of Appeals' opinion in this case turns *State v. Sledge* on its head. The premise is that a court should have some latitude to consider good time if it is ensures a juvenile will be able to complete treatment. Here, the Court of Appeals approved consideration of good time that would ***prevent*** F.H.B. from participating in rehabilitative programming. Namely, the court asked "[w]hat specific programs will [F.H.B.] ***not get*** if I impose a sentence that's requested by the prosecutor?" RP 49-50 (emphasis added). This is a fundamentally different inquiry. As in *Sledge*, the record did not show F.H.B. had to be incarcerated to finish a treatment program. And, as in *Sledge*, the court imposed 120 months primarily because it wanted to keep F.H.B. confined until age 25.

Moreover, the Court of Appeals' decision wrongly broadened any exception under *Sledge* by not requiring the

sentencing court to identify a rehabilitative program warranting detention. Opinion at 8-9. The Court of Appeals reasoned that assessing specific treatment programs would have undermined judicial efficiency given the multitude of programs implicated (again, programs that would have been precluded – and not obtained – by F.H.B.'s longer sentence). Opinion at 9. Yet, a documented need for a specific program is what curbs the inherently speculative practice of considering early release – a court cannot know how much to account for early release without knowing exactly how long the child has to remain in custody to complete the program.

Regardless, the court in this case did not seek to keep F.H.B. incarcerated until age 25 so that he could complete rehabilitative programs. The court's assessment of the parties' recommendations in this case changed dramatically after learning that, if F.H.B. accumulated good time, defense's recommendation would result in F.H.B. being potentially eligible for release to a group home after serving 50% of his

sentence: “So the difference between these sentences is not five months; the difference between these sentences is a significant amount of time at the JRA facility versus – well, perhaps 50 percent less of that.” RP 52.

The record shows that, but for the impact of F.H.B.’s early release, the court would likely have adopted defense counsel’s recommendation. In imposing the sentence, the court emphasized “I believe it’s really important for you to walk out of here knowing that the judge believes that you can succeed. And so oftentimes, in order to send that message, I’m usually willing to give up a few months of someone being in custody.” RP 58. However, “I can’t live with the idea of a potential release to a group home within a few years of a sentence, and ***that’s why*** I’ll impose the sentence that’s recommended by the State.” RP 58 (emphasis added).

Under these circumstances, the Court of Appeals’ decision affirming F.H.B.’s sentence conflicts with this Court’s

decisions in *State v. Fisher* and, if applicable to F.H.B.'s case, *State v. Sledge*, warranting review under RAP 13.4(b).

c. The invited error doctrine does not apply.

Contrary to the Court of Appeals' conclusion, defense counsel did not invite the error by asking the court to consider good time as a basis for imposing the 115-month sentence. Opinion at 10 n. 23. The invited error doctrine does not apply where a court exceeds its statutory authority by relying on discretionary early release at sentencing. *In re Pers. Restraint of West*, 154 Wn.2d 204, 214, 110 P.3d 1122 (2005). In *West*, the defendant pled guilty to a reduced charge of first-degree theft, stipulated to an exceptional sentence of 10 years, and her explicit waiver of her right to earned early release was included in the judgement and sentence. *Id*. at 207-08. This Court reversed, finding the trial court exceeded its statutory authority when it attempted to limit West's good time, which was solely in the purview of the Department of Corrections, even though

West "clearly invited the challenged sentence by participating in a plea agreement[.]," *Id.* at 212, 214.

Although the court in this case did not prohibit allocation of good time, imposing a longer sentence to negate the impact of any discretionary early release is merely a different, unauthorized means of achieving the same result.

Regardless, defense counsel did not invite the specific error that occurred in this case. Here, as in *Fisher* and *Sledge*, the court erred by adopting a ***longer*** sentence than it otherwise would have based on the possibility of early release. By comparison, defense counsel asked the court to consider the benefits of a ***shorter*** sentence, which would only occur if F.H.B. earned early release.[3]

[3] The plea agreement precluded defense from asking for less than 115 months and she could therefore not ask the court to adopt the probation officer's recommendation of 111 months to ensure F.H.B. could participate in programming regardless of good time.

While both types of sentences involve earned early release, the nature of the court's consideration is drastically different: when using earned early release to impose a longer sentence, a court actually builds that time into the underlying sentence which requires the court to prospectively assume a defendant will receive the good time. For shorter sentences, a court does not include speculative good time in the underlying sentence. Thus, while a court may believe it is worthwhile to give a defendant the opportunity to access programs by earning early release, the court is not required to assume the defendant will actually do so. The court simply provides an additional incentive for good behavior and leaves open the possibility of additional programming.

Finally, although defense counsel emphasized F.H.B. would benefit by programs available to him if he actually earned good time, she only explicitly agreed the court could consider good time to determine "the best way to engage [F.H.B.] in rehabilitative programs." RP 33. But the court did

exactly the opposite, accounting for good time to make sure F.H.B. remained incarcerated and therefore ineligible for the rehabilitative services identified by defense counsel. It was the State – and not defense – who asked the court to impose a longer sentence to limit the impact of any earned early release calculated by DOC or DYCF.

This Court should accept review pursuant to RAP 13.4.

E. CONCLUSION

For the reasons set forth above, F.H.B. respectfully requests that this Court grant review.

DATED this 5th day of November, 2021.

This petition is proportionately spaced using 14-point font equivalent to Times New Roman and contains 2,814 words (word count by Microsoft Word).

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APPENDIX

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

STATE OF WASHINGTON, Respondent, v. F.H.B., Appellant.	)	No. 81447-8-I UNPUBLISHED OPINION

VERELLEN, J. — After declining to adult court, F.H.B. pleaded guilty to one count of first degree assault with a firearm enhancement. The trial court imposed an exceptional sentence of 120 months rather than F.H.B.'s requested sentence of 115 months. F.H.B contends the sentencing court failed to meaningfully consider the mitigating factors of youth. Because the court analyzed sentencing materials and made findings of fact confirming it meaningfully considered the Miller[1] youthfulness factors, his challenge fails.

F.H.B also argues the court exceeded its authority by speculating about the effect of good time on his sentence. Because the court discussed good time for the express and limited purpose of determining whether F.H.B. would be eligible for rehabilitation programs, the court did not exceed its authority.

Therefore, we affirm.

[1] Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

FACTS

On the evening of February 23, 2019, three people were sitting in a BMW parked outside an American Legion hall while waiting to attend a quinceañera. A Honda backed into an adjacent parking space. The BMW's passengers recognized 15-year-old Varrio Locos gang member F.H.B. in the Honda's passenger seat. F.H.B. fired four shots at the BMW, which were "clearly intended to hit [the] backseat passenger," S.E.[2] S.E. and another passenger were struck but survived.

In the month before the shooting, F.H.B. had called S.E. a "rat," publicly pressuring him not to testify in an upcoming murder trial of another Varrio Locos member. F.H.B. acted "in an aggressive, violent, premeditated, or willful manner" when he tried to kill S.E and did so without pressure from Varrio Locos members or others.[3] He showed "no regard for the safety of other bystanders."[4]

Also in the month before the shooting, F.H.B. had been struggling personally because his mother and stepfather had just separated. F.H.B. had a close relationship with them and had been working at a restaurant for several years to help with rent. Their separation "caused a lot of anger in" F.H.B.[5] and made him feel "betrayed" by his stepfather.[6]

[2] Clerk's Papers (CP) at 5.

[3] CP at 96.

[4] Ex. 9, at 4.

[5] Ex. 8, at 6.

[6] CP at 97.

F.H.B. joined the gang in eighth grade after a close friend, who had been a Varrio Locos member, was murdered. Being a gang member gave F.H.B. a sense of belonging. In March of 2018, within six months of joining, F.H.B. brought a gun to school and was expelled. He received a deferred disposition for unlawful possession of a firearm, successfully participated in community support programs, performed well in online school, and earned early dismissal of the deferred disposition in November of 2018. He also continued his gang affiliation, successfully hiding it from his juvenile probation counselor, community mentors, and his mother. F.H.B. attempted to kill S.E. two months after completing his juvenile court requirements.

After being identified by the shooting victims and arrested after a high speed chase, F.H.B. was charged in juvenile court with first degree attempted murder with a firearm, first degree assault with a firearm, witness tampering, second degree unlawful possession of a firearm, and attempting to elude a pursuing police vehicle. If tried as an adult, F.H.B. could face a standard-range sentence of 408 to 504 months.

F.H.B. agreed to plead guilty to only first degree assault with a firearm and to waive juvenile jurisdiction and decline to adult court because he could be eligible for rehabilitative programs and services until age 25 rather than age 21. The standard-range sentence for first degree assault with a firearm enhancement would be 153 to 183 months.

The parties agreed an exceptional sentence was appropriate because it "takes into account [F.H.B.'s] youthfulness at the time of the crime."[7] The State promised to

[7] CP at 42.

recommend a 120 month sentence—60 months for the assault and 60 months for the firearm enhancement—and F.H.B. promised to request a sentence of at least 115 months. F.H.B. requested a 115-month sentence for the "primary purpose" of "keep[ing] him out of any adult facilities" and the additional rehabilitative benefit of letting him serve part of his sentence in a group home.[8] To be eligible for a group home, F.H.B. would need to have his sentence reduced by good time.

The court accepted F.H.B.'s waiver of juvenile jurisdiction and entered findings of fact to support its decision. During sentencing presentations, the court asked the parties whether they objected to it "considering good time . . . given that the reason I'm doing that is to figure out the best way to engage [F.H.B.] in rehabilitative programs at juvenile or JRA."[9] F.H.B. did not object. After hearing argument, the court adopted the State's recommended 120-month term of confinement and entered findings of fact to support this exceptional sentence.

F.H.B. appeals.

ANALYSIS

I. Consideration of the Mitigating Circumstances of Youth

F.H.B. contends the trial court failed to "meaningfully consider" the mitigating circumstances of his youth because it sentenced him to 120 rather than 115 months' incarceration. Because he is contradicted by the record, his argument is not persuasive.

[8] CP at 49-50.

[9] Report of Proceedings (RP) (Apr. 30, 2020) at 33.

The Eighth Amendment "place[s] certain adult sentences beyond courts' authority to impose on juveniles who possess such diminished culpability that the adult standard SRA [Sentencing Reform Act of 1984] ranges and enhancements would be disproportionate punishment."[10] When sentencing a juvenile in adult court, a court must consider the Miller youthfulness factors: the defendant's age, immaturity, impetuosity, failure to appreciate risks and consequences, family and social circumstances, conduct when committing the crime, social pressures, and prospects for rehabilitation.[11] The court has "absolute discretion to impose anything less than the standard adult sentence" based upon its consideration of the defendant's youthfulness.[12]

The record here shows the trial court meaningfully considered the mitigating circumstances of youth when it determined an exceptional sentence was justified by F.H.B.'s youthfulness. F.H.B. and the State stipulated "that justice is best served" by imposing an exceptional sentence.[13] The court accepted the stipulation, noting F.H.B. was 15 at the time of his crime, and concluding mitigating circumstances justified an exceptional sentence. The only mitigating circumstance discussed was F.H.B.'s youthful character.

[10] Matter of Ali, 196 Wn.2d 220, 242, 474 P.3d 507 (2020), cert. denied sub nom. Washington v. Ali, 141 S. Ct. 1754, 209 L. Ed. 2d 514 (2021).

[11] State v. Houston-Sconiers, 188 Wn.2d 1, 23, 391 P.3d 409 (2017) (citing Miller, 132 S. Ct. at 2468).

[12] Matter of Domingo-Cornelio, 196 Wn.2d 255, 259, 474 P.3d 524 (2020) (citing id. at 19), cert. denied sub nom. Washington v. Domingo-Cornelio, 141 S. Ct. 1753, 209 L. Ed. 2d 515 (2021).

[13] CP at 21.

The court expressly considered evidence from the decline hearing to conclude an exceptional sentence was justified. The evidence included reports on F.H.B from a forensic psychologist and his juvenile probation counselor and the court's findings of fact from the decline hearing. F.H.B. stipulated to the accuracy of those sources.

The psychologist discussed F.H.B.'s immaturity, impetuosity, and inability to appreciate risks and consequences. He stated that F.H.B. "is likely to be impulsive and have problems with anger."[14] He explained F.H.B. "has carried very little sense of a future" and "tends to think about the immediate situation, driven of course, by emotion," which "deprives him (and many adolescents) of the ability to realistically anticipate and weigh the long-term consequences of prospective actions, to consider the scale and proportionality of likely outcomes."[15] The psychologist also noted F.H.B.'s family history and "relative immaturity . . . left him vulnerable to the lure and promise of gang cultures prevalent in" his community.[16] The court found F.H.B. committed his crime without any influence from his gang or any other people.

The court's oral ruling noted F.H.B.'s strong potential for rehabilitation and touched upon many of the Miller factors required when sentencing a juvenile in adult court:

> When you fired a gun into that car because there was someone who was a witness who was part of this [judicial] system, who was doing not what he wanted to do but what he was required to do and would have had to do one way or another, you were blowing a hole in the very system

[14] Ex. 8, at 10.

[15] Ex. 8, at 12.

[16] Ex. 8, at 12.

> that was designed to protect you and [the Varrio Locos gang member on trial for murder]. And I hope that makes some sort of sense to you.
>
> I also want you to know that as I sit here today, I see you as somebody who has the potential to do the things the women in your life who got up here and talked believe that you can do. Mostly because you've done it. You've gone to school. You had a job. You love your family. They love you. You have all the building blocks in place to succeed. You don't need the gang that you got involved in in order to be safe, be protected, and have success in your life. And that's because you are smart enough, you've got it together enough, and you're enough of a leader to do this on your own. And I don't say that to every kid who sits here in front of me, but I say it based on what I read about you, what I understand about you . . . [a]nd what I understand about the people who are speaking on your behalf.[17]

On this record, the court meaningfully considered the "hallmark features" of F.H.B.'s youth and related circumstances.

Because F.H.B.'s youth diminished his culpability, the Eighth Amendment gave the court absolute discretion to fashion a proportionate sentence. The State expressed serious concerns about the risks to public safety from imposing a shorter sentence that could let F.H.B. enter a less secure facility and have unsupervised time in the community. F.H.B. had previously been in a rehabilitative setting and secretly continued his role in Varrio Locos. The court had the discretion to prioritize public safety over rehabilitation. F.H.B. cites no authority that the Eighth Amendment requires prioritizing opportunities for rehabilitation or agreeing to a 115-month rather than 120-month exceptional sentence below the standard range. Because the court meaningfully considered the mitigating effects of F.H.B.'s youth and F.H.B. fails to show the court's chosen sentence was illegal, his argument is unavailing.

[17] RP (Apr. 30, 2020) at 56-58.

II. Improper Consideration of Good Time

F.H.B. argues resentencing is required because the trial court improperly considered the effect of good time when determining the length of his sentence.

The parties agree a trial court errs when it "'impose[s] a sentence outside the presumptive range based on an entirely speculative prediction of the likely behavior of an offender while in confinement.'"[18] "If sentence length is fixed based on improper consideration of potential early release, then it rests on an untenable basis."[19] But, in State v. Sledge, the Supreme Court explained a court sentencing a juvenile could consider the possibility of good time when determining the length of a sentence if there are "facts documenting a need for confinement for a specific treatment program requiring a set duration to successfully complete."[20]

The State's and F.H.B.'s recommended sentences had similar lengths, but they disputed whether F.H.B. should be eligible to spend part of his sentence in a group home. Being in a group home would be rehabilitative and, as defense counsel explained, "he would have access to some community-based programs."[21] F.H.B. argues Sledge requires the sentencing court to identify a specific treatment program

[18] State v. Sledge, 133 Wn.2d 828, 845, 947 P.2d 1199 (1997) (quoting State v. Wakefield, 130 Wn.2d 464, 478, 925 P.2d 183 (1996)); Appellant's Br. at 20; Resp't's Br. at 19.

[19] State v. Bourgeois, 72 Wn. App. 650, 661 n.7, 866 P.2d 43 (1994) (citing State v. Ross, 71 Wn. App. 556, 573 n.9, 861 P.2d 473 (1993)).

[20] 133 Wn.2d 828, 845, 947 P.2d 1199 (1997).

[21] RP (Apr. 30, 2020) at 50. Defense counsel and F.H.B.'s probation officer also mentioned several rehabilitative benefits from a group home, including access to good role models, going to community college, being able to get a job, and having more opportunities to reintegrate into the community. Id.

affected by good time. But when, as here, multiple programs are implicated by a single sentencing decision, it would be inefficient and redundant for the court to parse each rehabilitative program.

The court inquired about the effect of good time on the proposed sentences from F.H.B. and the State to understand how good time affected F.H.B.'s eligibility for entry into a group home:

> COURT: [T]here is case law out there that limits when a court can inquire about good time when sentencing someone . . . but there's also case law that says particularly where, in juvenile situations, the question of rehabilitation and treatment is at issue[,] that the court can inquire, can consider how good time will affect rehabilitative programs in the juvenile system. . . . Do either of you [F.H.B. or the State] have an objection to me considering good time in the context of trying to figure out a sentence that works, given the divergent [sentencing] requests from the parties --
>
> DEFENSE: No.
>
> COURT: -- given that the reason I'm doing that is to figure out the best way to engage [F.H.B.] in rehabilitative programs at juvenile or JRA?
>
> STATE: State has no objection.
>
> DEFENSE: Defense has no objection.[22]

F.H.B.'s eligibility for entry into a group home depended on him being set for release prior to his 25th birthday. To become eligible for release to a group home at F.H.B.'s proposed 115-month term of incarceration, he would need to earn enough good time to reduce his term of incarceration by at least four months. Thus, the specific duration of F.H.B.'s sentence, including good time, affected his ability to access

[22] RP (Apr. 30, 2020) at 32-33.

rehabilitative programs. The court did not exceed its authority by considering the possible effects of good time credit on F.H.B.'s term of incarceration when sentencing him.[23]

III. Whether F.H.B.'s Sentence is Contrary to Legislative Intent

F.H.B. appears to argue resentencing is required because the trial court opted for a more punitive rather than rehabilitative sentence. Citing minimal or inapposite authority, F.H.B. asserts his sentence "was contrary to the legislature's intent and to the developing body of case law prioritizing rehabilitation for juveniles."[24] He contends the court "failed to sufficiently consider how imposing a sentence without the opportunity for community-based programming would negatively impact [F.H.B.]'s development and chances of rehabilitation."[25] But he cites no authority for this argument. Although he relies upon the Juvenile Justice Act (JJA)[26] to argue the rehabilitative aspects of incarceration should be prioritized, he fails to explain why the JJA controlled sentencing

[23] Even if considering good time were erroneous, F.H.B. invited this error. The invited error doctrine bars a defendant from appealing on the basis of an error it "set up" at trial. State v. Schierman, 192 Wn.2d 577, 618, 438 P.3d 1063 (2018) (quoting City of Seattle v. Patu, 147 Wn.2d 717, 720, 58 P.3d 273 (2002)). The doctrine applies to alleged constitutional errors. City of Seattle v. Patu, 108 Wn. App. 364, 374, 30 P.3d 522 (2001) (citing State v. Gentry, 125 Wn.2d 570, 645, 888 P.2d 1105 (1995)). F.H.B. requested the 115-month sentence and argued it was appropriate because he would be eligible for entry into a group home. CP at 49-50. But because he would be eligible for a group home only with good time credits, his sentencing request required the trial court's consideration of good time to evaluate his proposed sentence.

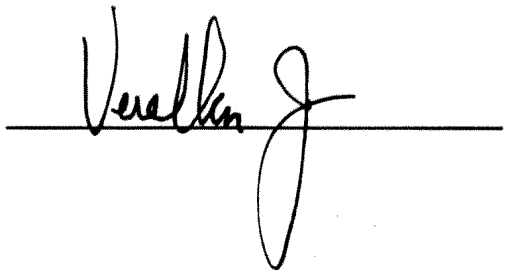
[24] Appellant's Br. at 28.

[25] Appellant's Br. at 33.

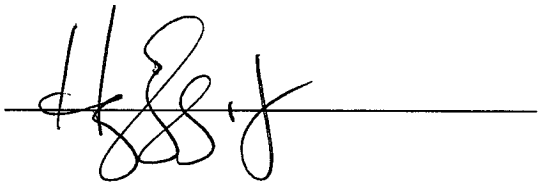
[26] Ch. 13.40 RCW.

after F.H.B. declined to adult court. Because F.H.B. fails to cite any apt authority, his argument is not compelling.

Therefore, we affirm.



WE CONCUR:



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