

No. 94037-1

IN THE SUPREME COURT  
FOR THE  
STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent,

v.

D.D-H., Appellant.

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**ANSWER TO PETITION FOR REVIEW**

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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

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## INTRODUCTION

The key to this case is automatic tolling. When a juvenile court orders one year of community supervision, a juvenile's failure to show up for supervision automatically stops the clock. The supervisory period is tolled.

[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). Like adult probationers, a juvenile "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).

Petitioner D.D-H. seeks this Court's review, alleging that the juvenile court lost jurisdiction when it required him to make up 122 days of missed community supervision. The court entered this order after the one-year term of his Disposition Order expired, but before the additional 122 days elapsed. Because D.D-H. failed to appear for community supervision and was on warrant status for four

months, he does not get credit for his time absent. Washington law automatically tolled the period of community supervision, and the juvenile court maintained jurisdiction during that tolled time.

The State of Washington respectfully requests this Court to deny Respondent D.D-H's petition for review. The Court of Appeals ruled correctly that Respondent may not evade community supervision and then claim that time ran out.

**I. RESTATEMENT OF ISSUES PRESENTED**

Respondent's petition 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. Respondent D.D-H. received notice of, and attended, four probation violation hearings and a final hearing requiring him to make up the missed days. At the violation hearings, the juvenile court did not instruct Respondent that one consequence of warrant status is automatic tolling of community supervision. Does due

process require juvenile courts to notify respondents that skipping supervision does not count towards completing it?

## **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; CP 168-170). 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; CP 171-173).

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 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 appealed to the Court of Appeals, and in a published opinion, that Court affirmed. State v. D.D.-H., 196 Wn. App. 948, 385 P.3d 283 (2016). The Court first concluded that when

a juvenile purposely thwarts community supervision, tolling is automatic.

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

State v. D.D.-H., 196 Wn. App. at 953–54 (emphasis added).

Second, the Court found no due process violation or conflict with State v. Campbell, 95 Wn.2d 954, 632 P.2d 517 (1981).

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.

State v. D.D.-H., 196 Wn. App. at 958. The juvenile court required D.D.-H. to complete what had already been ordered: one entire year of community supervision.

Respondent now seeks this Court's review.



## 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. BECAUSE THE SUPERVISORY PERIOD DID NOT END, THERE IS NO CONFLICT WITH THE BRIGHT-LINE RULE

Respondent's first argument for review is that the Court of Appeal's decision conflicts with the bright-line rule in State v. May, 80 Wn. App. 711, 911 P.2d 399 (1996).

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 expires.

(Petition at 13) (emphasis added). Respondent relies on a flawed premise – that the supervisory period expired before the juvenile court entered its order. It did not. Because of automatic tolling, the court had 122 days after the one-year mark to hold respondent accountable for the missed time.

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

In State v. May, the Court of Appeals held that a juvenile court may not extend community supervision *after* the supervisory period ended. “The court’s jurisdiction to enforce its disposition order terminates when the community supervision period expires.” May, 80 Wn. App. at 716-17. Unlike this case, the juvenile in May was never on warrant status. His probation counselor alleged “Mr. May had violated his community supervision and disposition order by failing to perform 48 hours of community service, attend school regularly, keep scheduled weekly appointments, and by associating with Robert Smith.” May, 80 Wn. App. at 713. Even though the supervisory period had expired, the juvenile court attempted to order an additional 20 days of detention.

The “bright-line rule” in May prohibits a juvenile court from entering orders *after* the supervisory period expires. “We hold 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.” May, 80 Wn. App. at 716–17. Because the supervisory period in D.D-H’s case did not

expire, the Court of Appeal's decision is consistent with May for three reasons.

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. The Court of Appeals 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 missing supervision time long before the 122 tolled days expired. The juvenile court retained jurisdiction to modify Respondent's disposition order to make up the missing 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. 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. Due Process Does Not Require Notice Of Tolling

Next, 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 he too deserved some sort of notice.

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 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.

(Petition at 14). This is incorrect on both points. Respondent had notice of tolling and the opportunity to contest it at the juvenile court's March 11, 2015 hearing. What Respondent actually wants is notice before the original term of the disposition order expires.

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 argued at the March 11, 2015 hearing that the State could not request an additional 122 days of community supervision to make up for days on warrant status. (Memorandum re: Tolling; CP 84).

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 completion of missing 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 deny Respondent's petition for review and dismiss this appeal.

DATED this 15 day of June, 2017.

DAVID S. McEACHRAN  
Whatcom County Prosecuting Attorney

By 

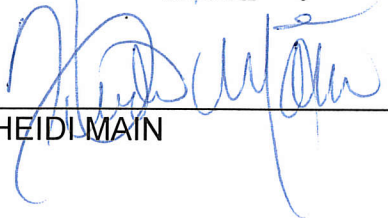
Philip J. Buri, WSBA #17637  
Special Deputy Prosecutor  
BURI FUNSTON MUMFORD, PLLC  
1601 F. Street  
Bellingham, WA 98225  
360/752-1500

**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 **Answer to Petition for Review** to:

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

DATED this 15<sup>th</sup> day of June, 2017.

  
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HEIDI MAIN