

66116-7

66116-7

NO. 66116-7-I

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

STATE OF WASHINGTON,

Respondent,

v.

J.H.,

Appellant.

REC'D  
APR 20 2011  
King County Prosecutor  
Appellate Unit

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

The Honorable Christopher Washington, Judge

2011 APR 20 PM 4:03

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BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The court lacked authority to revoke appellant's Option B suspended sentence under the Juvenile Justice Act.

Issue Pertaining to Assignment of Error

Where the alleged violation of community supervision predated the commencement date for the term of supervision, did the court act outside its authority in revoking appellant's suspended sentence for the alleged violation?

B. STATEMENT OF THE CASE

Juvenile appellant J.H. is appealing the court's revocation of his Option B suspended disposition, entered following his guilty plea to second degree robbery. CP 1 (Information); CP 9-14 (Statement of Defendant on Plea of Guilty); CP 15-21 (Order of Disposition); CP 50-52 (Notice of Appeal). In the Statement of Defendant on Plea of Guilty, J.H. admitted: "On April 15, 2009, in King County, I walked up to a kid and asked for his MP3 player[.]" and furthermore, "I took the MP3 player and kneed him in the stomach."<sup>1</sup> CP 13.

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<sup>1</sup> J.H. was 14 years old at the time of the offense. CP 1, 9; RP 4.

J.H. told police he was “just trying to get [his] anger out.” CP 3; Supp. CP \_\_ (sub. no. 45, Defense Finding for a Manifest Injustice, 8/31/09). Earlier on the day of the offense, J.H. had learned a close friend had died suddenly from a heart condition. Id. The loss was particularly devastating, as the friend reportedly looked out for J.H. at school. Supp. CP \_\_ (sub. no. 45), attached psychological assessment. In light of J.H.’s emotional distress, the defense argued in favor of a manifest injustice disposition below the standard range. Supp. CP \_\_ (sub. no. 45).

At disposition on September 4, 2009, the court declined to impose a manifest injustice disposition. However, it did not impose the standard range, either. Instead, it imposed the standard range of 15-36 weeks, *suspended* on condition that J.H. serve 20 days (with credit for time served) and six months of community supervision, to be served *consecutively* to a previously imposed deferred disposition for residential burglary. CP 15-21; RP 24-25 RCW 13.40.0357 (Option B Suspended Disposition Alternative)<sup>2</sup>.

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<sup>2</sup> Under the suspended disposition alternative or “Option B:”

- (1) If the offender is subject to a standard range disposition involving confinement by the department, the court may impose the standard range and suspend the disposition on condition that the offender comply with one or more local sanctions and any educational or treatment requirement. . . .

The disposition ordered that “while on community supervision the juvenile offender shall be under the charge of a juvenile probation counselor and comply with the following conditions . . . (6) shall commit no new probable cause offenses.” CP 17; RCW 13.40.020(4) (“As a mandatory condition of any term of community supervision, the court shall order the juvenile to refrain from committing new offenses.”).

The previously imposed deferred disposition consisted of 12 months of community supervision, commencing September 2, 2009.<sup>3</sup> CP 30-32. However, it was later modified in July 2010, and extended until October 22, 2010. CP 34-35. Accordingly, because the Option B was imposed to run consecutively to the deferred, it could not begin until after completion (or revocation) of the deferred. RP 53 (prosecutor concurs).

On July 31, 2010, J.H. was involved in an incident for which he pled guilty to second degree robbery on October 4, 2010. RP 31. As part of the plea agreement, J.H. agreed with the state’s

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(2) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition’s execution.

RCW 13.40.0357.

recommendation to revoke his previously imposed deferred disposition. CP 45-46; RP 36. But the state also moved for revocation of J.H.'s Option B suspended sentence. CP 29. Disposition on the new offense and the revocation hearing was set over for a later hearing. RP 40.

While the defense agreed revocation of the deferred was an appropriate sanction (RP 49), it opposed revocation of J.H.'s Option B suspended sentence, on grounds the court lacked jurisdiction to enforce the community supervision conditions of the Option B, as it had not yet begun. CP 26-28. In support, the defense cited State v. Groom:

In the case of State v. Groom, 80 Wn. App. 711, 911 P.2d 403 (1996), the issue presented was whether the obligations of community supervision extended beyond the termination date reflected in the dispositional order. The Court stated as follows:

We therefore reject the State's interpretation of RCW 13.40.200 in favor of a bright-line rule that clearly defines the juvenile court's jurisdiction. We hold the court's jurisdiction to enforce terminates when the community supervision expires, unless a violation proceeding is then pending before the court. State v. Groom, 80 Wn. App. at 716.

In this case, the conditions of the Option B disposition were not in effect on the date of offense, nor for that matter are they enforceable at present. The disposition order makes those conditions consecutive to those imposed in the burglary matter.

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<sup>3</sup> As a condition of community supervision for the deferred, J.H. was similarly ordered to commit "[n]o new probable cause referrals or law offenses." CP 32.

If, under the principles laid out in the Groom case that a court lacks jurisdiction following the termination of community supervision, then there is no justification to conclude that jurisdiction exists to enforce conditions that are not yet in effect.

CP 27.

At the combined disposition/revocation hearing held on October 15, 2010, the court imposed the standard range disposition of 52-65 weeks on the new offense and revoked the deferred disposition, as the parties agreed. RP 44-45, 49.

Turning to its motion to revoke the Option B, the state agreed with the defense that J.H. had not violated its terms. However, the state argued revocation was appropriate because J.H. would be in violation by the end of the day:

Effectively, your Honor, the State does concede and the State has received defense counsel's briefing, does concede the fact that his supervision would not begin on the Option B until today effectively when the deferred was revoked. Supervision is effectively ended on that. Now, his Option B supervision would begin.

The concern from the State, as the court is aware, the respondent is going to be in JRA for the next 52 to 65 weeks, and so he's obviously not going to be able to comply with the conditions, the six-month conditions of supervision that the court would effectively – that would effectively begin today. So in the interest of efficiency as opposed to having a hearing one week or two weeks when Ms. Johnson would file a report that says the respondent is in JRA and I effectively – and he's effectively not complying

with supervision because he can't while he's in JRA, the State would prefer to handle that motion to revoke the Option B at this point as he will not be able to comply. I understand it may be too early and if the court is more inclined to wait a few weeks and have the report submitted and address the revocation at that time the State completely understands because at this point effectively that supervision is just beginning today.

RP 54; see also RP 58 (reiterating agreement with defense interpretation and offering to set over).

In contrast, the juvenile probation counselor (JPC) posited that J.H. was currently in violation of his Option B for committing and pleading to the new offense on October 4: "The plea occurred before this, and it's my position once he entered that plea of guilt today he became in violation of the Option B that started today." RP 59.

The court sided with the JPC, stating: "I think that consecutive sanctions are intended to increase the length of supervision and not to provide a period during which the courts can't enforce the sanctions that were imposed." RP 61. The court accordingly revoked J.H.'s Option B based on the "commission of a new offense dated July 31, 2010." CP 47-49.

C. ARGUMENT

THE COURT WAS WITHOUT AUTHORITY TO REVOKE J.H.'S OPTION B DISPOSITION BECAUSE THE ALLEGED VIOLATION PREDATED THE COMMENCEMENT OF COMMUNITY SUPERVISION.

The Juvenile Court and Juvenile Justice Act (JJA), chapters 13.04 and 13.40 RCW, govern the operation of the juvenile courts. “The provisions of chapters 13.04 and 13.40 RCW ... shall be the exclusive authority for the adjudication and disposition of juvenile offenders except where otherwise expressly provided.” RCW 13.04.450. In enacting the JJA, the legislature sought to hold juveniles accountable for their crimes and to deal with juvenile offenders in a consistent manner, while preserving the rehabilitative goals of the juvenile justice system. State v. V.J., 132 Wn. App. 380, 383, 132 P.3d 763 (2006). This Court reviews de novo the lower court’s decision as to its authority to revoke. State v. V.J., 132 Wn. App. at 382 (whether a court has jurisdiction is a question of law and reviewed de novo); State v. Todd, 103 Wn. App. 783, 787, 14 P.3d 850 (2000) (same).

As indicated above, J.H. was sentenced to a suspended sentence under Option B, which provides:

(1) If the offender is subject to a standard range disposition involving confinement by the

department, the court may impose the standard range and suspend the disposition on condition that the offender comply with one or more local sanctions and any educational or treatment requirement. . . .

(2) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

RCW 13.40.0357.

Pursuant to this disposition alternative, J.H. was sentenced to six months of community supervision, which is one of the available local sanctions. RCW 13.40.020(16). Under RCW 13.40.020,

“Community supervision” means an order of disposition by the court of an adjudicated youth not committed to the department or an order granting a deferred disposition. A community supervision order for a single offense may be for a period of up to two years for a sex offense as defined by RCW 9.94A.030 and up to one year for other offenses. As a mandatory condition of any term of community supervision, the court shall order the juvenile to refrain from committing new offenses. As a mandatory condition of community supervision, the court shall order the juvenile to comply with the mandatory school attendance provisions of chapter 28A.225 RCW and to inform the school of the existence of this requirement. Community supervision is an individualized program comprised of one or more of the following:

- (a) Community-based sanctions;
- (b) Community-based rehabilitation;
- (c) Monitoring and reporting requirements;

(d) Posting of a probation bond[.]

CP 13.40.020(4) (emphasis added).

As also indicated above, J.H. committed a new offense on July 31, 2010. However, it was undisputed that J.H. was not serving his Option B suspended disposition at the time, as it was imposed to run consecutively to his previously imposed deferred disposition. Accordingly, the conditions of community supervision imposed pursuant to the Option B were not yet in effect. The question therefore is whether the court had jurisdiction to revoke J.H.'s Option B disposition for a new offense that was committed while J.H. was not yet serving his Option B disposition. The answer is no.

Under RCW 13.40.0357(2), if the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition. Under RCW 13.40.200:

When a respondent fails to comply with an order of restitution, community supervision, penalty assessments, or confinement of less than thirty days, the court upon motion of the prosecutor or its own motion, may modify the order after a hearing on the violation.

RCW 13.40.200(1).

Significantly, however, neither provision contains a timing element. While they each allow the court to enforce dispositional orders, neither specifies when this authority begins or how long it lasts. See e.g. State v. V.J., 132 Wn. App. at 384; State v. Todd, 103 Wn. App. at 789. The courts have established a “bright line rule,” however, that clearly defines the court’s jurisdiction. Todd, 103 Wn. App. at 790 (citing State v. May, 80 Wn. App. 711, 716, 911 P.2d 399 (1996)).

In May, the juvenile court entered a disposition order on January 12, 1993. The order included 12 months of community supervision. May, 80 Wn. App. at 712. On January 10, 1994, the probation office informed the prosecutor's office that May had violated his disposition order by failing to perform required hours of community service and in other ways. May, 80 Wn. App. at 713. On January 20, 1994, the prosecutor's office filed a motion instituting a show cause hearing for February 3 regarding the violations. May, 80 Wn. App. at 713.

At the February 3 hearing, May admitted the violations but argued that the community supervision period had expired one week before the State instituted the violation proceedings. Thus, he argued, the court lacked jurisdiction. May, 80 Wn. App. at 713.

The court rejected May's argument and found that it had jurisdiction to enforce the disposition order until May turned 18. May, 80 Wn. App. at 713-14.

The Court of Appeals reversed, holding:

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. We do not believe the State will be unduly burdened by the requirement that it institute violation proceedings before expiration of the supervisory period.

May, 80 Wn. App. at 716-17.

In its analysis, the May court noted that, unlike the adult probation statute that provides a formal means of terminating supervision, the juvenile offender is "at the mercy of the State's administrative bureaucracy." 80 Wn. App. at 716. Thus, to protect the juvenile from the bureaucracy, the court favored a bright line rule that clearly defines the juvenile court's jurisdiction. May, 80 Wn. App. at 716.

In establishing this bright line rule, the court also noted that an interpretation favoring continued jurisdiction (as argued by the state), would be contrary to the rule of lenity, which requires ambiguities in punitive statutes to be construed in favor of the offender. May, 80 Wn. App. at 716.

Just as the court has no jurisdiction to enforce its disposition order *after* the community supervision period has expired, the court has no jurisdiction to enforce its disposition order *before* the community supervision period has commenced. To hold otherwise would be logically inconsistent with the holding in May and contrary to the rule of lenity, as discussed in May. By revoking J.H.'s Option B disposition based on an offense that predated its operation, the court was enforcing its disposition before the community supervision period had commenced. As defense counsel argued below, the court acted without jurisdiction in doing so.

In response, the state may argue – contrary to its argument below – that once the deferred was revoked and J.H.'s Option B had commenced, the court had authority to revoke the suspended sentence due to the new robbery offense he pled guilty to on October 4. Under RCW 13.40.0357(2), however, the court may revoke the suspended disposition only “if the offender fails to comply with the suspended disposition.” Here, J.H. did not fail to comply with the suspended disposition; its conditions were not in effect at the time of the alleged violation. In short, the court did not have authority to revoke J.H.'s suspended disposition for an alleged violation that predated the period of community supervision.

D. CONCLUSION

Because the court was without authority to revoke J.H.'s Option B suspended disposition, the revocation should be reversed and the suspended sentence reinstated.

Dated this 20<sup>th</sup> day of April, 2011

Respectfully submitted

NIELSEN, BROMAN & KOCH

A handwritten signature in cursive script, reading "Dana M. Lind". The signature is written in black ink and is positioned above a horizontal line.

DANA M. LIND, WSBA 28239

Office ID No. 91051

Attorneys for Appellant

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

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 66116-7-I
	)	
J.H.,	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 20<sup>TH</sup> DAY OF APRIL, 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] J.H.  
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33010 SE 99<sup>TH</sup> STREET  
SNOQUALMIE, WA 98065

**SIGNED** IN SEATTLE WASHINGTON, THIS 20<sup>TH</sup> DAY OF APRIL, 2011.

x *Patrick Mayovsky*