

NO. 67150-2-1

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

RONNIE E.S., a minor

Appellant.

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

OPENING BRIEF OF APPELLANT

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COURT OF APPEALS
STATE OF WASHINGTON
JAN TRASEN

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A. ASSIGNMENTS OF ERROR.

1. The trial court erred in denying Ronnie E.S.'s motion to dismiss and vacate the deferred disposition.

2. The trial court erred in denying Ronnie E.S.'s motion for reconsideration.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR.

1. Under RCW 13.40.127, a juvenile who has received a deferred disposition is entitled to adjudication and finality within the time period set forth in the order. Here, the juvenile court repeatedly failed to rule on the JPC's and the respondent's motion to dismiss. In addition, the State's repeated failure to transport the respondent to court resulted in several improper extensions of juvenile court jurisdiction. Did the juvenile court's failure to follow RCW 13.40.127 require dismissal of the deferred disposition and sealing of the juvenile record?

C. STATEMENT OF THE CASE.

Deferred Disposition Hearing

As a result of a juvenile residential burglary arrest, Ronnie E.S. received a deferred disposition on November 18, 2009. CP 10-12. Under the terms of the Order of Deferred Disposition, Ronnie was informed that if he met the terms of the deferred disposition, the case

would be “dismissed at a Deferred Disposition hearing which shall be held on July 1, 2010 at 9am.” CP 10.

On July 1, 2010, the Juvenile Probation Counselor (JPC) appeared at the deferred disposition hearing and recommended dismissal. CP 14. Defense counsel was present, but Ronnie did not appear at the hearing. CP 14, RP 19-20. Although no specifics were known on July 1st, the juvenile court was informed that Ronnie might not have appeared because of a new arrest. RP 19.

The deferred disposition hearing was continued to July 12, 2010. RP 50-51. On that date, Ronnie again did not appear. CP 14; RP 19-20. Although the juvenile court was informed that Ronnie was being detained on a new adult case, the State did not move to revoke the deferred disposition and the hearing was continued to October 11, 2010, with jurisdiction extended to October 25, 2010. CP 14; RP 53.

On October 11, 2010, Ronnie was still in custody on the adult matter, but again was not transported to juvenile court. CP 14; RP 18. The JPC was not prepared with a new report on Ronnie’s compliance with the deferred disposition, and defense counsel asked for a continuance. RP 19-20. The juvenile court extended the deferred disposition to November 15, 2010, but set the next hearing

for November 4, 2010. CP 14; RP 20-21. The Deputy Prosecuting Attorney (DPA) also signed the order of continuance with the following notation: "DAJD to Transport if Respondent still in KCJ."¹ CP 35.

On November 4, 2010, Ronnie again was not transported to juvenile court for the deferred disposition review hearing. CP 15; RP 25. The defense moved to dismiss, based upon the JPC's original report indicating that Ronnie had successfully completed the terms of the deferred disposition as of July 1, 2010; that it was not Ronnie's fault that the State had repeatedly failed to transport him or to produce a JPC report; that the adult charges were mere accusations; and that it does not serve the policy or purpose of the juvenile courts to retain jurisdiction when Ronnie is already 18 and cannot participate in juvenile alternative sentencing programs. RP 26-27. The juvenile court denied the motion to dismiss, instead extending juvenile court jurisdiction to January 3, 2011 and continuing the deferred disposition hearing to December 2, 2010. CP 15; RP 28, 55. The DPA again added a notation to the court's order: "KCJ to transport." CP 38.

¹[DAJD = Department of Adult and Juvenile Detention. KCJ = King County Jail]

On December 2, 2010, Ronnie again was not transported to juvenile court for the deferred disposition review hearing. CP 15; RP 33.² The juvenile court was informed that Ronnie had pled guilty on his adult case and had begun serving a sentence at Washington Corrections Center at Shelton. RP 33. Defense counsel again moved to dismiss the deferred disposition, arguing that the JPC's recommendation on July 1, 2010 was dismissal, and that Ronnie had completed his obligations under the terms of the deferred dismissal order. RP 35-36. The juvenile court initially stated that it could not dismiss without Ronnie being present. RP 38.³ Following oral argument, the court asked for written motions to dismiss and revoke the deferred disposition, and continued the case to December 20, 2010. RP 39.

Motion to Dismiss

On December 20, 2010, Ronnie was finally transported to juvenile court for a hearing on the defense motion to dismiss, and the State requested a continuance to prepare for the motion hearing.

² This was the fourth appearance where the State was informed that Ronnie was in custody at King County Jail, yet failed to transport him to juvenile court.

³ The court also noted that without the respondent present, the juvenile court lacked the authority to revoke or to extend jurisdiction. RP 38. Defense counsel reminded the court that prior judges had already extended jurisdiction despite the State's failure to transport Ronnie to court. Id.

RP 42-43. On December 22, 2010, the court heard argument on the defense motion to dismiss nunc pro tunc.

Ronnie argued that the State had given no notice of any violations of the terms of the deferred disposition, and that the court had erroneously continued the review hearing four times after the original July 1st date. CP 16-21. He also argued that the State failed to transport him from the King County Jail for any of his hearings, causing a substantial and unreasonable delay in the resolution of this matter. The delay and the juvenile court's failure to dismiss this case ultimately resulted in additional points on Ronnie's offender score on his adult case. CP 21-22.

The State responded that since Ronnie had not been present at the July 12th hearing where the deferred disposition and juvenile court jurisdiction were extended, the extensions were invalid and the juvenile court no longer had jurisdiction over the case. RP 82. Therefore, the court lacked the authority to act on the deferred disposition by either dismissing or by revoking. RP 82-83. Although the State conceded that it had never filed a motion to revoke, it maintained that the juvenile court had no authority to dismiss because of Ronnie's failure to appear in court before the expiration

of the deferred disposition period. RP 85-86. The State thus withdrew the sole motion to revoke it had filed on the date of the hearing. CP 63-65.⁴

On January 26, 2011, the juvenile court issued an Order of Dismissal Without Vacating Adjudication of Guilt. CP 153-63.

On March 2, 2011, following the Supreme Court's first published decision in State v. Tucker, 171 Wn.2d 50, 246 P.3d 1275 (2011), Ronnie moved for reconsideration. CP 164-69; RP 101-04. The State opposed reconsideration, arguing the instant case was distinguishable from Tucker, due to Ronnie's non-appearance (or non-transport by the State) in court. RP 103.

On April 4, 2011, the juvenile court issued an Order on Motion for Reconsideration, granting Ronnie's motion to dismiss and vacate, effective July 19, 2010. CP 182; RP 110-11.

On April 28, 2011, in light of the Supreme Court's Order Changing Opinion in State v. Tucker, the State moved for reconsideration of the court's order. CP 183-87; RP 112-38. On April 28, 2011, the juvenile court granted the State's motion and reinstated its Order of Dismissal Without Vacating Adjudication of Guilt, previously issued on January 26, 2010. CP 188; RP 133-38.

⁴ The State's sole motion to revoke was both filed and withdrawn on the

Ronnie appeals. CP 189-201.

D. ARGUMENT.

THE DEFERRED DISPOSTION SHOULD HAVE BEEN DISMISSED AND VACATED ON JULY 1, 2010, OR ON JULY 12, 2010, AT THE LATEST.

According to the terms of the deferred disposition order, if Ronnie met all of the conditions of community supervision, the case would be dismissed on July 1, 2010. Neither the State, nor the JPC provided notice of any violation of the deferred disposition prior to July 1st. Indeed, on July 1st, the JPC moved for dismissal of the deferred disposition. CP 14.

1. Under RCW 13.40.127, a juvenile who has received a deferred disposition is entitled to adjudication and finality within the time period set forth in the order. The Juvenile Justice Act (JJA) clearly specifies the procedures for notification in case of a violation in RCW 13.40.127(6):

The [juvenile probation] counselor shall notify the court ... of any failure to comply ... the state shall bear the burden to prove, by a preponderance of the evidence, that the juvenile has failed to comply with the terms of community supervision.

[emphasis added]

same date -- December 20, 2010. CP 63-65.

Once a juvenile has been found out of compliance with a deferred disposition, a written motion must be brought before the expiration of the deferred disposition period, as described in RCW 13.40.127(7):

A juvenile's lack of compliance shall be determined by the judge upon written motion by the prosecutor or the juvenile's juvenile court community supervision counselor. If a juvenile fails to comply with terms of supervision, the court shall enter an order of disposition.

[emphasis added]

Finally, when a juvenile has been found in full compliance with a deferred disposition order, the conviction must be dismissed, pursuant to RCW 13.40.127(9):

At the conclusion of the period set forth in the order of deferral and upon a finding by the court of full compliance with conditions of supervision ...the respondent's conviction shall be vacated and the court shall dismiss the case with prejudice.

[emphasis added]

Under the terms of the deferred disposition agreement, and pursuant to the JPC's report on July 1, 2010, Ronnie's case should have been dismissed on that date, in the absence of any notice of non-compliance, and in the absence of a motion to revoke filed by either the State or the JPC – at any time – but particularly prior to July 1, 2010.

2. Neither the State nor the JPC filed a written motion to revoke prior to July 1, 2010. It is undisputed that on July 1, 2010, the date of the expiration of the deferred disposition period, the JPC recommended dismissal. CP 14; RP 86. It is also undisputed that neither the State nor the JPC filed a motion to revoke. RP 85-86.

On similar facts, the Supreme Court recently held that where the State failed to institute revocation proceedings before a juvenile's supervision period had elapsed, the juvenile court lost jurisdiction. State v. Tucker, 171 Wn.2d 50, 54, 246 P.3d 1275 (2011). In Tucker, a 14 year-old received a deferred disposition for throwing a rock through a friend's window during an argument over an iPod. 171 Wn.2d at 51. Although the juvenile largely complied with the terms of community supervision, she failed to complete payment of restitution by the expiration of the deferred disposition date. Id. The Tucker Court held that since no written motion to revoke had been filed by the State or community supervision officer, the juvenile court had lost jurisdiction. Id. at 53. Thus, the order that the juvenile court had entered in response to a motion to revoke was vacated, and the respondent was left in the same position as before -- with the unsealed juvenile disposition on her record. Id. at 54.

Ronnie's circumstances are far different from those in Tucker. First, unlike Ms. Tucker, who was at liberty, Ronnie was confined and detained by the State, whose chronic failure to transport him to court for hearings delayed and contributed to the juvenile court's decision on the deferred disposition. The juvenile court found that Ronnie had a right to be present for the extension of juvenile court jurisdiction and community court supervision. In re Morris, 19 Wn. App. 613, 615, 576 P.2d 1333 (1978). However, in the next breath, the court appeared to indicate that the court's authority to manage its cases trumps a juvenile's due process right to appear. CP 162. Had Ronnie been transported to juvenile court to appear even one of the four times his case had been on the calendar, his case could have been dismissed as the JPC had initially requested on July 1, 2010.⁵

Instead, the instant case did not resolve until April 28, 2011 – almost ten months after the July 1, 2010 date for the expiration of the deferred disposition. This delay resulted in extreme prejudice to Ronnie, specifically, the juvenile disposition being subsequently counted toward his offender score on his adult case. CP 23. Judge Trickey recognized that the decision created “a difficult result,

⁵ Of course, Ronnie's motion to dismiss should have been granted, regardless of his non-appearance, since he was represented by counsel, and this motion was repeatedly made by counsel. RP 26-27, 35-36, 42-43, 58-74; CP 16-21.

because I understand it has direct consequences for Mr. S. ... I hope he can seal his juvenile matters once the appropriate time period has passed. I also understand it has direct consequences for his sentence in the adult matter.” RP 135.

Unlike Ronnie, the respondent in Tucker was still a juvenile and suffered no prejudice; she simply could continue paying restitution in installments and petition the court to seal her juvenile record, in order to remedy the juvenile court’s decision. RCW 13.50.050(12). Ronnie, in contrast, being 18 at the time of the deferred disposition hearing, was directly prejudiced by the juvenile court’s denial of his motion to dismiss and motion for reconsideration; he was again prejudiced when his sentence was increased on the adult matter. RP 135.⁶

It is undisputed that neither the State, nor the JPC, filed a written motion to revoke prior to the expiration of the deferred disposition period. RP 85-86. Therefore, dismissal with prejudice on July 1, 2010 was required. RCW 13.40.127(7).

3. The juvenile court abused its discretion when it refused to dismiss and seal Ronnie’s deferred disposition. In State

⁶ Ronnie stands to again experience the prejudice of the juvenile court’s decision, should he acquire another adult arrest, as his offender score now contains additional points, due to this deferred disposition. RP 135.

v. J.A., this Court held that “RCW 13.40.127(7) grants a juvenile court discretion to determine what constitutes lack of compliance with the conditions of a deferred disposition order.” 105 Wn. App. 887, 879, 20 P.3d 487 (2001). Here, it was undisputed that Ronnie had complied with the conditions of community supervision, and yet due to forces beyond his control – namely, the fact that he was in the custody of the State – he was unable to receive the dismissal to which he was entitled.

The State repeatedly implied that the juvenile court had no discretion, arguing that the court was not in “a legally comfortable position,” and that “this [issue] is going to be addressed, hopefully by the legislature this session.” RP 87-88. The State also informed the juvenile court that it must “do nothing because that’s all that the law allows you to do at this point in time, Your Honor.” RP 87.⁷

A court abuses its discretion when an “order is manifestly unreasonable or based on untenable grounds.” State v. Quismundo, 164 Wn.2d 499, 504, 192 P.3d 342 (2008) (defined as decisions resting on facts unsupported in the record or reached by applying the wrong legal standard); see also State v. Garcia-Martinez, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997) (abuse of discretion for court to

refuse to exercise discretion at all, or to rely upon improper basis for decision). Here, although the juvenile court had the discretion under J.A. to dismiss Ronnie's deferred disposition, the court failed to exercise its discretion. 105 Wn. App. at 887. This was an abuse of discretion requiring reversal.

As this Court said in J.A.,

[T]he Juvenile Justice Act seeks a balance between the poles of rehabilitation and retribution, the purposes of accountability and punishment are tempered by and at times must give way to the purposes of responding to the needs of the juvenile... [m]oreover, unlike the Sentencing Reform Act applicable in adult criminal proceedings, juvenile restitution is remedial, not punitive.

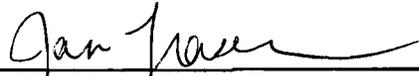
105 Wn. App. at 886 (internal cites omitted).

E. CONCLUSION.

For the foregoing reasons, Ronnie E.S. respectfully requests this Court reverse order of the juvenile court and remand the case for further proceedings.

DATED this 28th day of November, 2011.

Respectfully submitted,



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⁷ The State also argued that "the Court's hands are – are somewhat tied in this matter." RP 88.

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 67150-2-I
v.)	
)	
RONNIE S.,)	
)	
Juvenile Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 28TH DAY OF NOVEMBER, 2011, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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