

NO. 68378-1-1

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

STATE OF WASHINGTON,

Respondent,

v.

W.S.,

Appellant.

REC'D
NOV 30 2012
King County Prosecutor
Appellate Unit

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

The Honorable J. Wesley Saint Clair, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

THE JUVENILE COURT HAD NO JURISDICTION TO ENTER AN ORDER PROHIBITING CONTACT FOR TEN YEARS.

Citing State v. Bourgeois, 72 Wn. App. 650, 866 P.2d 43 (1994), the State argues that the length of jurisdiction does not limit juvenile courts when imposing sentence. Brief of Respondent, at 7-8. Bourgeois is easily distinguished, however.

In Bourgeois, the juvenile court imposed a manifest injustice disposition that extended beyond the defendant's 21st birthday by approximately 33 weeks. Bourgeois, 72 Wn. App. at 655-656. On appeal, the defendant claimed that a disposition order imposing confinement beyond his 21st birthday exceeded the court's jurisdiction under RCW 13.40.300(1), which provides:

In no case may a juvenile offender be committed by the juvenile court to the department of social and health services for placement in a juvenile correctional institution beyond the juvenile offender's twenty-first birthday.

Id. at 656.

In rejecting the defendant's claim, this Court interpreted RCW 13.40.300 to mean juvenile courts can impose a term of confinement beyond the offender's 21st birthday, but the offender will "simply be released at age 21 regardless of the term of confinement imposed at

disposition.” Bourgeois, 72 Wn. App. at 658.

While this interpretation makes perfect sense when assessing a term of confinement, it does not make sense for a no contact order.

Unlike the offender who is automatically released from confinement at age 21 regardless whether the disposition order indicates additional time to serve, there is no similar automatic release for no-contact orders. Indeed, the order here expressly warns, “Only the court can change the order upon written application.” CP 21-22. Without a judicial modification of the order, it will continue in full effect for the entire 10-year-period (until 2/22/22) and well beyond W.S.’s 21st birthday, subjecting him to adult criminal prosecution for any violations. The only way to rectify this error is modification of the order to terminate upon the loss of juvenile court jurisdiction.

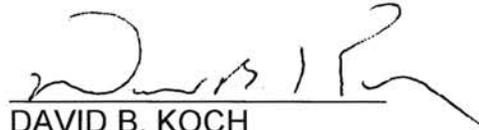
B. CONCLUSION

This Court should strike the current no-contact order and remand for entry of an order that terminates upon the loss of juvenile court jurisdiction.

DATED this 30th day of November, 2012.

Respectfully submitted,

NIELSEN, BROMAN & KOCH

A handwritten signature in black ink, appearing to read "David B. Koch", written over a horizontal line.

DAVID B. KOCH
WSBA No. 23789
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Attorneys for Appellant

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

STATE OF WASHINGTON,)	
)	
Appellant,)	
)	
vs.)	COA NO. 68378-1-I
)	
WILSON SMITH,)	
)	
Respondent.)	

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 30TH DAY OF NOVEMBER, 2012, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] WILSON SMITH
GREENHILL SCHOOL
375 SW 11TH ST.
CHEHALIS, WA 98532

SIGNED IN SEATTLE WASHINGTON, THIS 30TH DAY OF NOVEMBER, 2012.

x Patrick Mayovsky

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