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NO. 69522-3-I

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

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2013 MAR 28 PM 4:34

STATE OF WASHINGTON,

Respondent,

v.

DOUGLAS MATHEW STEELMAN, II.,

Appellant.

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

The Honorable Joseph P. Wilson, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred when it sanctioned appellant by imposing more than 30 days' detention for violating the conditions of his disposition.

Issue Pertaining to Assignment of Error

By statute and case law, the maximum cumulative sanction that can be imposed at a hearing to address juvenile disposition violations is 30 days' confinement. Did the juvenile court err in this case when it attempted to circumvent that limitation by scheduling separate hearings to consider the violations?

B. STATEMENT OF THE CASE

The Snohomish County Prosecutor's Office charged Douglas Steelman – 17-years old at the time – with one count of Child Molestation in the Second Degree for sexual contact with a minor whom he was dating. CP 89-92. Steelman pled guilty on April 6, 2011. CP 71-86.

At sentencing, the court imposed a Special Sex Offender Disposition Alternative or "SSODA." CP 74. As part of that disposition, Steelman was placed on community supervision and ordered to comply with numerous conditions for a period of 24 months. CP 49-50, 54-56, 59-60.

Steelman found compliance difficult. From August of 2011 to April of 2012, he was sanctioned six times, ranging from 7 days' detention to 30 days' detention. CP 30-41; Supp. CP \_\_\_\_ (sub no. 40, Order Modifying Disposition); Supp. CP \_\_\_\_ (sub no. 51, Order Modifying Disposition).

On August 29, 2012, Steelman's probation officer moved the court to again find Steelman in violation of his supervision – this time in three respects: (1) he had failed to meet with his probation counselor on August 8, 2012; (2) he had unsupervised contact with a child (his own child) on August 28, 2012; and (3) he had been arrested for DUI on August 28, 2012. Supp. CP \_\_\_\_ (sub no. 64, Motion, Certification and Order To Show Cause).

The hearing on the allegations occurred on September 14, 2012. 1RP<sup>1</sup> 1. The Honorable Joseph Wilson inquired whether he had the authority to impose a sanction greater than 30 days' detention. 1RP 2. The probation officer indicated no, as did defense counsel, who told Judge Wilson he was limited to 30 days per violation hearing. 1RP 2.

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<sup>1</sup> This brief refers to the verbatim report of proceedings as follows: 1RP – September 14, 2012; 2RP – October 5, 2012; 3RP – October 19, 2012.

Judge Wilson indicated he was inclined to avoid the 30-day limit by considering each of the three allegations at separate hearings on separate days. 1RP 3. Defense counsel objected, noted that Steelman conceded all three allegations, and argued there was not good cause to continue any portion of the hearing. 1RP 3-4. Nonetheless, Judge Wilson limited himself to a finding on the first allegation – that Steelman had failed to report – and imposed 30 days. He continued consideration of the other two admitted allegations until October 5. 1RP 4.

Prior to the October 5 hearing, the parties submitted memoranda discussing the court's authority to exceed 30 days' punishment by scheduling separate hearings. CP 16-26. At the October 5 hearing, the prosecutor conceded that, looking at the relevant statutory authority, she believed the court was limited to 30 days "per hearing or for a set of violations that are brought at one time." 2RP 3. The court imposed an additional 30 days anyway, suspending that time on condition that Steelman comply with his supervision conditions for 120 days.<sup>2</sup> 2RP 6-7.

Steelman appealed the October 5, 2012 order. CP 1-4.

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<sup>2</sup> On October 19, a different judge sanctioned Steelman 30 days for a new violation, but left suspended the 30 days imposed on October 5. CP 5-12; 3RP 2, 11.

C. ARGUMENT

THE JUVENILE COURT MAY NOT CIRCUMVENT LEGISLATIVE INTENT BY HOLDING MULTIPLE VIOLATION HEARINGS.

This Court interprets statutes de novo. State v. Azpitarte, 140 Wn.2d 138, 140-41, 995 P.2d 31 (2000). The goal is to determine and give effect to the Legislature's intent. Burns v. City of Seattle, 161 Wn.2d 129, 140, 164 P.3d 475 (2007). To that end:

each provision of a statute should be read together (*in para materia*) with other provisions in order to determine legislative intent underlying the entire statutory scheme. The purpose of interpreting statutory provisions together with related provisions is to achieve a harmonious and unified statutory scheme that maintains the integrity of the respective statutes. Statutes relating to the same subject will be read as complimentary, instead of in conflict with each other.

State v. Chapman, 140 Wn.2d 436, 448, 998 P.2d 282 (footnotes omitted), cert. denied, 531 U.S. 984, 121 S. Ct. 438, 148 L. Ed. 2d 444 (2000).

Plain language requires no construction. But to the extent a statute is ambiguous in its requirements, the rule of lenity requires resolution of that ambiguity in the defendant's favor. State v. Carter, 138 Wn. App. 350, 356-57, 157 P.3d 420 (2008). This rule applies to the interpretation of sentencing statutes. In re Personal Restraint

of Sietz, 124 Wn.2d 645, 652, 880 P.2d 34 (1994); State v. Breaux, 167 Wn. App. 166, 176-179, 273 P.3d 447 (2012).

As part of Steelman's SSODA, he was placed on community supervision for 24 months and required to comply with many conditions. RCW 13.40.200 controls the juvenile court's discretion when an offender violates one or more supervision conditions:

If the court finds that a respondent has willfully violated the terms of an order . . . it may impose a penalty of up to thirty days' confinement. Penalties for multiple violations occurring prior to the hearing shall not be aggregated to exceed thirty days' confinement. Regardless of the number of times a respondent is brought to court for violations of the terms of a single disposition order, the combined total number of days spent by the respondent in detention shall never exceed the maximum term to which an adult could be sentenced for the underlying offense.

RCW 13.40.200(3) (emphasis added).

This statute indicates that the Legislature has prohibited juvenile courts from imposing more than 30 days in detention for multiple violations of a single disposition order occurring prior to a hearing. State v. Barker, 114 Wn. App. 504, 505, 507-508, 58 P.3d 908 (2002); see also State v. Veazie, 123 Wn. App. 392, 394, 98 P.3d 100 (2004) (following Barker but distinguishing situation where there are multiple disposition orders).

The only question is whether, because Steelman received a SSODA, a different rule applies. The answer is no.

RCW 13.40.162, which governs SSODAs, provides:

(8)(a) If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition or the court may impose a penalty up to thirty days confinement for violating conditions of the disposition.

(b) The court may order both execution of the disposition and up to thirty days confinement for the violation of the conditions of the disposition.

RCW 13.40.162(8)(a)-(b). Nowhere in this statute does the Legislature indicate an intention to impose a rule different from that in RCW 13.40.200(3).

Granted, it would have been best had the Legislature simply said, if the offender violates any term of the SSOSA, “the court may impose sanctions pursuant to RCW 13.40.200.” The Legislature used this format for both the Mental Health Disposition Alternative and the Chemical Dependency Disposition Alternative. See RCW 13.40.165(6); RCW 13.40.167(9).

But the intent behind RCW 13.40.162(8) is the same. The statute says that violation of “any condition” of the SSOSA disposition authorizes “a penalty up to thirty days confinement for

violating conditions of the disposition.” “Any” means “every” and “all.” State v. Westling, 145 Wn.2d 607, 611-612, 40 P.3d 669 (2002); State v. Smith, 117 Wn.2d 263, 271, 814 P.2d 652 (1991). And, of course, “conditions” is also plural. As with RCW 13.40.200(3), the Legislature intended to limit to 30 days the sanction for all violations preceding the hearing. This results in a harmonious and unified statutory scheme.

Indeed, when the Legislature intends a different result for violations of sentence conditions, it knows how to adopt the necessary statute. RCW 9.94B.040 – which controls noncompliance with conditions of SRA sentences for crimes committed prior to July 1, 2000 – provides, “If the court finds that a violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation . . .” RCW 9.94B.040(3)(c) (emphases added). With this language, the SRA authorizes separate and consecutive 60-day sanctions for each violation. See State v. McDougal, 120 Wn.2d 334, 348-352, 841 P.2d 1232 (1992).<sup>3</sup> The same language is found in RCW 9.94A.633, which addresses violations of conditions of SRA

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<sup>3</sup> McDougal addressed former RCW 9.94A.200, later codified as RCW 9.94A.634 and now codified as RCW 9.94B.040. See Laws 2001, ch. 10, § 6; Laws 2008, ch. 231, § 56.

sentences for more recent crimes. See RCW 9.94A.633(1)(a) (“up to sixty days’ confinement for each violation”). The absence of similar language in RCW 13.40.162(8) is telling.

Moreover, under the SRA, sentencing courts have the same custody option for violations of SSOSA sentences (60 days’ custody per violation) as they do for violations of non-SSOSA sentences. State v. Partee; 141 Wn. App. 355, 362-365, 170 P.3d 60 (2007); RCW 9.94A.670(10)(a)-(12) (adopting sanction of 60 days per violation found in RCW 9.94A.633(1)). There is no indication the Legislature intended a different approach for SSODA sentences, meaning – as with any violation of a juvenile non-SSODA disposition condition – RCW 13.40.200(3) limits the juvenile court’s authority to 30 days’ *total* confinement for all violations preceding the violation hearing.

Finally, even assuming RCW 13.40.162(8) is ambiguous, the rule of lenity requires this Court to adopt the interpretation most favorable to Steelman. Carter, 138 Wn. App. at 356-57.

Because juvenile courts are limited to imposing a 30-day sanction for each and every violation of the conditions of disposition occurring prior to a hearing, Judge Wilson was limited to that sanction for all three of Steelman’s admitted violations at the

September 14, 2012 hearing. He was not permitted to avoid this rule (and circumvent the Legislature's intent) by scheduling separate hearings for the violations.

The 120-day period for which Judge Wilson suspended the 30-day sanction imposed on October 5, 2012 has now lapsed. Therefore, the issue of whether that sanction was authorized is technically moot. Nonetheless, this Court should decide the issue.

In determining whether an issue – despite being moot – warrants review, this Court looks to three factors:

- (1) whether the issue is of a public or private nature;
- (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3)
- whether the issue is likely to recur.

Veazie, 123 Wn. App. at 397. This Court also considers whether the case “properly and effectively addresses the issue.” Id. (citing Hart v. Dep’t of Soc. & Health Servs., 111 Wn.2d 445, 448, 759 P.2d 1206 (1988)).

The issue in this case is of a public nature because it impacts many juvenile offenders. A determination is desirable because no case precisely addresses the issue. This issue is likely to recur because Judge Wilson is not alone in his belief that he can stack penalties by simply dividing violations into separate hearings.

He indicated on the record that others shared his view. 2RP 4-5 (stating he had consulted other judges). Moreover, given the short duration of any sanction imposed in this type of case, the issue will almost always be moot by the time an appellate court can address it. This case presents a good opportunity to properly and effectively consider an important issue.

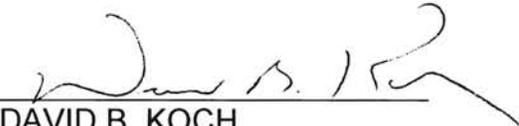
D. CONCLUSION

This Court should hold that – for violations of a single SSODA disposition – the juvenile court is limited to 30 days' total confinement as a sanction for all violations preceding a hearing.

DATED this 20<sup>th</sup> day of March, 2013.

Respectfully submitted,

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

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STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 69522-3-1
	)	
DOUGLAS STEELMAN,	)	
	)	
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 MARCH 2013, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] SNOHOMISH COUNTY PROSECUTOR'S OFFICE  
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- [X] DOUGLAS STEELMAN  
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**SIGNED** IN SEATTLE WASHINGTON, THIS 20<sup>TH</sup> DAY OF MARCH 2013.

x *Patrick Mayovsky*

RICHARD D. JOHNSON,  
Court Administrator/Clerk

*The Court of Appeals*  
of the  
*State of Washington*  
Seattle  
98101-4170

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NOTICE TO APPELLANT RE:  
STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

COURT OF APPEALS DIVISION I OF THE STATE OF WASHINGTON

Re: Case No. 69522-3, State v. Douglas Steelman II

Dear Appellant:

Your attorney has filed a proof of service indicating that you were mailed a copy of the opening brief in your appeal. If, after reviewing that brief, you believe there are additional grounds for review that were not included in your lawyer's brief, you may list those grounds in a Statement of Additional Grounds for Review. RAP 10.10.

Because the Statement of Additional Grounds for Review is not a brief, there is no required format and you may prepare it by hand. No citations to the record or legal authority are required, but you should sufficiently identify any alleged error so that the appellate court may consider your argument. A copy of the rule is enclosed for your reference.

Your Statement of Additional Grounds for Review must be sent to the Court within 30 days. It will be reviewed by the Court when your appeal is considered on the merits.

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

DATE: April 3, 2013



RULE OF APPELLAGE PROCEDURE 10.10  
STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

(a) Statement Permitted. A defendant/appellant in a review of a criminal case may file a pro se statement of additional grounds for review to identify and discuss those matters which the defendant/appellant believes have not been adequately addressed by the brief filed by the defendant/appellant's counsel.

(b) Length and Legibility. The statement, which shall be limited to no more than 50 pages, may be submitted in handwriting so long as it is legible and can be reproduced by the clerk.

(c) Citations; Identification of Errors. Reference to the record and citation to authorities are not necessary or required, but the appellate court will not consider a defendant/appellant's statement of additional grounds for review if it does not inform the court of the nature and occurrence of alleged errors. Except as required in cases in which counsel files a motion to withdraw as set forth in RAP 18.3(a)(2), the appellate court is not obligated to search the record in support of claims made in a defendant/appellant's statement of additional grounds for review.

(d) Time for Filing. The statement of additional grounds for review should be filed within 30 days after service upon the defendant/appellant of the brief prepared by defendant/appellant's counsel and the mailing of a notice from the clerk of the appellate court advising the defendant/appellant of the substance of this rule. The clerk will advise all parties if the defendant/appellant files a statement of additional grounds for review.

(e) Report of Proceedings. If within 30 days after service of the brief prepared by defendant/appellant's counsel, defendant/appellant requests a copy of the verbatim report of proceedings from defendant/appellant's counsel, counsel should promptly serve a copy of the verbatim report of proceedings on the defendant/appellant and should file in the appellate court proof of such service. The pro se statement of additional grounds for review should then be filed within 30 days after service of the verbatim report of proceedings. The cost for producing and mailing the verbatim report of proceedings for an indigent defendant/appellant will be reimbursed to counsel from the Office of Public Defense in accordance with Title 15 of these rules.

(f) Additional Briefing. The appellate court may, in the exercise of its discretion, request additional briefing from counsel to address issues raised in the defendant/appellant's pro se statement.