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4-29-15
Court of Appeals
Division I
State of Washington

NO. 72827-0-I

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

STATE OF WASHINGTON,

Respondent,

v.

T.L.,

Appellant.

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

The Honorable Janice E. Ellis, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The juvenile court erred in failing to consult appellant's father before entering the dispositional order.

2. The juvenile court erred in failing to specify the duration of the no-contact order imposed in the dispositional order. CP 24.

Issues Pertaining to Assignments of Error

1. Under RCW 13.40.150(3)(d), did the juvenile court err in failing to consult with appellant's father at the dispositional hearing before entering the dispositional order?

2. Under State v. Broadaway,¹ is the dispositional order insufficiently specific because it fails to set a definite expiration date for the no-contact order?

B. STATEMENT OF THE CASE

1. Procedural Facts

The Snohomish County prosecutor charged appellant T.L.² with third-degree theft. CP 30. The juvenile court entered findings of fact and conclusions of law and entered an order of adjudication finding her guilty.

¹ State v. Broadaway, 133 Wn.2d 118, 135-36, 942 P.2d 363 (1997).

² For purposes of confidentiality, T.L. is referred to by her initials and the other juveniles involved are referred to by their first name only. Cf. State v. C.A.E., 148 Wn. App. 720, 201 P.3d 361 (2009) ("It is appropriate to provide some confidentiality in this case. Accordingly, it is hereby ordered that initials will be used in the case caption and in the body of the opinion to identify the parties and other juveniles involved, except for governmental agencies.")

CP 15-17. The court also imposed a standard range disposition of six months of community supervision and 16 hours of community service. CP 19, 23. Notice of appeal was timely filed. CP 1.

2. Substantive Facts

Steven, a classmate of T.L.'s, testified she borrowed his I-pod and refused to give it back after numerous requests. 1RP³ 14-15. T.L. denied refusing to return the I-pod. 1RP 38. She testified Steven was busy packing up and she needed to leave, so she handed it to her friend Madisyn and told her to give to Steven. 1RP 38-39. Madisyn testified she did not know what to do with it, so she handed to another friend with instructions to give it back to Steven. 1RP 24-25, 28-29. Madisyn testified T.L. never asked her to give the I-pod to Steven. 1RP 42. The I-pod was never returned to Steven. 1RP 17-18.

The juvenile court found the case rested on credibility and found Steven that T.L. refused to return the I-pod. CP 15-16. The court therefore found T.L. guilty of third degree theft. CP 16, 17.

At the dispositional hearing, the court asked T.L. if she had anything she wanted to say. 2RP 3-4. She did not. Id. The court then announced it would follow the probation counselor's recommended disposition. 2RP 4. During the subsequent discussion of attorney fees and crime victim penalty,

³ There are two volumes of Verbatim Report of Proceedings referenced as follows: 1RP – Nov. 18, 2014; 2RP – Nov. 20, 2014.

T.L.'s father explained he was no longer working and an updated affidavit of indigency was filed. 2RP 7, 10.

The dispositional order mandates that T.L. "shall have no contact, direct or indirect, with Steven [last name omitted] (except incidental, as required for school attendance)." CP 24. The order does not specify how long this prohibition is to endure. CP 24.

C. ARGUMENT

1. THE COURT ERRED IN FAILING TO CONSULT T.L.'S FATHER BEFORE ENTERING THE DISPOSITIONAL ORDER.

Dispositional hearings in juvenile court must be conducted according to the procedures mandated by RCW 13.40.150. JuCR 7.12(b). That process requires that the court "shall . . . (d) Consult with the respondent's parent, guardian, or custodian on the appropriateness of dispositional options under consideration and afford the respondent and the respondent's parent, guardian, or custodian an opportunity to speak in the respondent's behalf." RCW 13.40.150. Here, it was evident that T.L.'s father was present at the dispositional hearing. 2RP 7, 10. Yet the record shows no effort by the court to consult him regarding the dispositional options, nor any effort to afford him an opportunity to speak on his daughter's behalf.

The court appears to have given T.L. an opportunity to speak, 2RP 3-4, but this does not satisfy the requirement that the court consult with her

parent. Cf. State v. Roberson, 118 Wn. App. 151, 160-61, 74 P.3d 1208 (2003), overruled on other grounds by State v. Hughes, 154 Wn.2d 118, 152-53, 110 P.3d 192 (2005) (“comments by Roberson’s father are no substitute for Roberson’s addressing the court on his own behalf”).

It is well established that the directives of RCW 13.40.150 concerning the dispositional hearing are mandatory. See, e.g., State v. Malychewski, 41 Wn. App. 488, 489-90, 704 P.2d 678 (1985) (“[T]he disposition court must nevertheless follow the directives of chapter 13.40 RCW.”); State v. Fellers, 37 Wn. App. 613, 618, 683 P.2d 209 (1984) (RCW 13.40.150(3) “sets forth the procedures which the court must follow . . . before entering a disposition order.”). In Fellers, the court reversed a juvenile adjudication of guilt where the court “failed to determine whether the defendant was a minor or first offender, to give the defendant’s parents an opportunity to speak on his behalf, and to consider any mitigating factors.” 37 Wn. App. at 618. The court determined the record was insufficient to show what factors the juvenile court considered, what facts it found to establish guilt, and whether it followed the statutory directives. Id. at 618-21. In fairness to the defendant, the court reversed and dismissed rather than delay for entry of new findings. Id. at 621. In this case, the failure to follow procedures appears to apply only to the dispositional

hearing. Under the circumstances, the correct remedy would be to remand for a new dispositional hearing.

2. THE COURT ERRED IN FAILING TO SET A DEFINITE TERM FOR THE NO CONTACT PROVISION OF THE DISPOSITIONAL ORDER.

In general, sentences imposed on persons convicted of criminal offenses must be “definite and certain.” State v. Jones, 93 Wn. App. 14, 17, 968 P.2d 2 (1998) (quoting Grant v. Smith, 24 Wn.2d 839, 840, 167 P.2d 123 (1946)). This requirement applies not only to the term of confinement, but also to conditions that will apply upon release such as community placement or community custody: “Where a sentence is insufficiently specific about the period of community placement required by law, remand for amendment of the judgment and sentence to expressly provide for the correct period of community placement is the proper course.” State v. Broadaway, 133 Wn.2d 118, 136, 942 P.2d 363 (1997).

As the court advised T.L. at the hearing, there are consequences for failing to abide by the terms of a no-contact order, such as sanctions including being held in custody. 2RP 12. But the validity of any such sanctions would be gravely in doubt because the dispositional order fails to provide fair notice of when it is in effect.

For example, in State v. Edwards, 87 Wn. App. 305, 307-10, 941 P.2d 697 (1997), overruled in part by State v. Miller, 156 Wn.2d 23, 123

P.3d 827 (2005), the court reversed a conviction for violation of a no-contact order on the grounds that the duration of the order was ambiguous on its face, resulting in lack of clear notice to the defendant that the order was still in effect at the time of its alleged violation. Edwards, 87 Wn. App. at 307-10. The Miller Court agreed with Edwards that there must be clear notice regarding a no contact order's expiration date.⁴ Miller, 156 Wn.2d at 29 (“In Edwards, the order was vague and was inadequate to give the defendant notice of what conduct was criminal and what conduct was innocent. The court was rightly loath to allow a person to be convicted under such circumstances.”).

Edwards and Miller demonstrate the importance of clearly specifying the expiration date of a no-contact order. First, it protects the innocent from being wrongly prosecuted. Miller, 156 Wn.2d at 29. Second, it avoids the needless waste of limited prosecutorial and judicial resources resulting from reversal of a conviction due to insufficient notice. Id. Clarification is necessary because, under some circumstances, courts have authority to impose no-contact orders that extend beyond the usual end of juvenile court jurisdiction when the offender turns 18. See State v. W.S., 176 Wn. App. 231, 243, 309 P.3d 589 (2013) (juvenile court has authority to impose

⁴ Miller disagreed with Edwards only on whether the validity of the underlying order is an element of the crime for the jury or a question of law for the judge. Miller, 156 Wn.2d at 30-31.

domestic violence no-contact order for the statutory maximum of the offense).

Courts have the authority to clarify insufficiently specific sentences. Broadaway, 133 Wn.2d at 136; State v. Moultrie, 143 Wn. App. 387, 396-98, 177 P.3d 776 (2008). This Court should therefore remand the case to state a definite end-date for the no-contact provision imposed in the dispositional order.

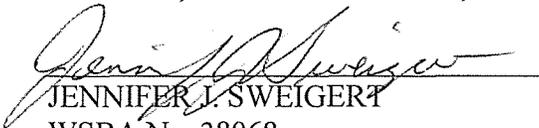
D. CONCLUSION

For the foregoing reasons, this Court should remand for a new dispositional hearing at which the court properly consults with T.L.'s father and specifies the expiration date of the no-contact provision.

DATED this 29th day of April, 2015.

Respectfully submitted,

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DIVISION ONE**

STATE OF WASHINGTON)	
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Respondent,)	
)	
v.)	COA NO. 72827-0-I
)	
T.L.,)	
)	
Appellant.)	

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 29TH DAY OF APRIL 2015, 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] T.L.
DOC NO. 742917
4411 223RD ST. SW
MOUNTLAKE TERRACE, WA 98043

SIGNED IN SEATTLE WASHINGTON, THIS 29TH DAY OF APRIL 2015.

x *Patrick Mayovsky*