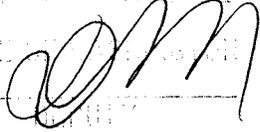


No. 39519-3-II

COURT OF APPEALS
DIVISION II
FILED
BY 

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

V.

IAN KEITH CHRISTENSEN

BRIEF OF APPELLANT

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A. Assignment of Error

Assignment of Error

The Kitsap County Juvenile Court erred by ordering Mr. Christensen to complete a term of detention as part of his deferred disposition.

Issues Pertaining to Assignment of Error

1. Mr. Christensen's appeal is technically moot as he has completed the term of detention and remains on community supervision pursuant to his deferred disposition. Is this case one of continuing and substantial public interest such that this Court should determine the case on its merits?

2. Does the deferred disposition statute, RCW 13.40.127, authorize the juvenile court to impose a term of detention as a condition of completing the deferred disposition?

B. Statement of the Case

Appellant Ian Christensen was charged in Kitsap Juvenile Court with third degree assault. CP, 1. Prior to trial, he filed a Motion for Deferred Disposition. CP, 5. The juvenile court granted the motion for deferred disposition. CP, 16. As part of its order on deferred disposition, the court ordered Mr. Christensen to complete 12 months of community

supervision, 32 hours of community restitution work, and 15 days in detention. CP, 18. The Court also set out the conditions of community supervision. CP, 18-21.

At the disposition hearing, held on May 28, 2009, most of the issues were agreed. No one objected to the Court imposing a deferred disposition. RP, 3. The one issue that was contested was whether the Court should impose detention time and, if so, how much. The juvenile department asked the Court to impose five days of detention with no objection to that being served in jail alternatives. RP, 10. The prosecutor asked for twenty days of detention with no opportunity for jail alternatives. RP, 10.

Mr. Christensen objected to the Court imposing any detention time. RP, 14. Defense counsel commented, “[I]n my review of the law in this case under the statute 13.40.127 and the definitions under [Chapter 13.40 RCW], I don’t believe that detention’s even permissible under the deferred disposition statute. In fact, other jurisdictions don’t impose detention for deferred don’t even have a line for detention and in actually for the statement for the juvenile to sign it states in there specifically what the penalty might be and detention is conspicuously absent from that.” RP, 14-15.

The Court imposed 15 days in detention, with four days to be served in the detention facility and the remaining 11 days served on jail alternatives. RP, 20. Regarding the issue of whether the Court had authority to impose detention time on a deferred disposition, the Court simply said that it thought there was case law that authorized detention. RP, 22.

C. Argument

1. Mr. Christensen's case, while technically moot, is a case of public interest that should be decided by this Court.

Mr. Christensen's sole assignment of error is that the juvenile court erred by imposing detention as a condition of his deferred disposition. Technically, Mr. Christensen's case is moot because he has already completed the detention time. But this Court has discretion to decide the appeal on the merits when it involves a matter of continuing and substantial public interest. In determining whether an issue involves a substantial public interest, Courts consider the public or private nature of the question presented, the need for an authoritative determination that will provide future guidance to public officers, and the likelihood the question will recur. In re M.B., 101 Wn.App. 425, 432-33, 3 P.3d 780 (2000).

As is clear from the record in this case, the Kitsap County Juvenile Court believes it has the authority to impose detention time as part of a deferred disposition. Both the prosecutor and the probation officer recommended detention time, although they differed on how much. The judge expressed the opinion that there is case law authorizing detention time, although the judge did not cite a case and undersigned counsel has been unable to find any such case. This is an issue of public importance that is likely to recur in future cases and there is a need for an authoritative determination of the question.

It is worth noting that State v. M.C., infra, footnote 1, which involved a similar question, was also technically moot, but the Court of Appeals opted to decide the case on the merits rather than dismiss the appeal. Mr. Christensen's case should not be dismissed.

2. The deferred disposition statute, RCW 13.40.127, does not authorize the juvenile court to impose a term of detention as a condition of completing the deferred disposition.

Under Washington's Juvenile Justice Act, juvenile offenders charged with their first non-violent felony have the opportunity to petition for a deferred disposition. After completing a period of community supervision, successful petitioners have their cases dismissed with

prejudice. RCW 13.40.127 governs deferred dispositions. It reads, in its entirety:

- (1) A juvenile is eligible for deferred disposition unless he or she:
 - (a) Is charged with a sex or violent offense;
 - (b) Has a criminal history which includes any felony;
 - (c) Has a prior deferred disposition or deferred adjudication;or
 - (d) Has two or more adjudications.

(2) The juvenile court may, upon motion at least fourteen days before commencement of trial and, after consulting the juvenile's custodial parent or parents or guardian and with the consent of the juvenile, continue the case for disposition for a period not to exceed one year from the date the juvenile is found guilty. The court shall consider whether the offender and the community will benefit from a deferred disposition before deferring the disposition.

(3) Any juvenile who agrees to a deferral of disposition shall:

- (a) Stipulate to the admissibility of the facts contained in the written police report;
- (b) Acknowledge that the report will be entered and used to support a finding of guilt and to impose a disposition if the juvenile fails to comply with terms of supervision; and
- (c) Waive the following rights to: (i) A speedy disposition; and (ii) call and confront witnesses.

The adjudicatory hearing shall be limited to a reading of the court's record.

(4) Following the stipulation, acknowledgment, waiver, and entry of a finding or plea of guilt, the court shall defer entry of an order of disposition of the juvenile.

(5) Any juvenile granted a deferral of disposition under this section shall be placed under community supervision. The court may impose any conditions of supervision that it deems appropriate including posting a probation bond. Payment of

restitution under RCW 13.40.190 shall be a condition of community supervision under this section.

The court may require a juvenile offender convicted of animal cruelty in the first degree to submit to a mental health evaluation to determine if the offender would benefit from treatment and such intervention would promote the safety of the community. After consideration of the results of the evaluation, as a condition of community supervision, the court may order the offender to attend treatment to address issues pertinent to the offense.

(6) A parent who signed for a probation bond has the right to notify the counselor if the juvenile fails to comply with the bond or conditions of supervision. The counselor shall notify the court and surety of any failure to comply. A surety shall notify the court of the juvenile's failure to comply with the probation bond. 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.

(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.

(8) At any time following deferral of disposition the court may, following a hearing, continue the case for an additional one-year period for good cause.

(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 and payment of full restitution, the respondent's conviction shall be vacated and the court shall dismiss the case with prejudice, except that a conviction under RCW 16.52.205 shall not be vacated.

Under the terms of the statute, the Court is limited in its order to placing the juvenile offender "under community supervision" and

requiring the payment of restitution. RCW 13.40.127(5). Community supervision, within the meaning of this statute, is governed by RCW 13.40.020(4), which reads:

"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.

(Emphasis added.) By including the phrase "or an order granting a deferred disposition," the legislature indicated its intention that RCW 13.40.127 and .020(4) be read together to determine what a court is authorized to do when granting a deferred disposition.

Also relevant to this discussion is RCW 13.40.020(18), which defines the term "Monitoring and reporting requirements."

(18) "Monitoring and reporting requirements" means one or more of the following: Curfews; requirements to remain at home, school, work, or court-ordered treatment programs during specified hours; restrictions from leaving or entering specified geographical areas; requirements to report to the probation officer as directed and to

remain under the probation officer's supervision; and other conditions or limitations as the court may require *which may not include confinement*.

(Emphasis added.) Read together, these three statutes contemplate that any sanctions or rehabilitation be “community-based.” The only mention of “confinement” or “detention” in any of these statutes is in RCW 13.40.020(18), which specifically prohibits confinement. See State v. Loun, 116 Wash.App. 402, 405, 66 P.3d 660 (2003) (commenting that deferred disposition is designed to “defer[] the imposition of confinement . . . [and] impose a community-based disposition”).

Mr. Christensen’s position is consistent with the approach of the Court of Appeals in State v. M.C., 148 Wn.App. 968, 201 P.3d 413 (2009). In M.C., the issue was whether the juvenile court had the authority to impose a crime victim’s assessment after granting a deferred disposition. The juvenile court had relied on its general authority to impose a crime victim’s assessment for any disposition. RCW 7.68.035(1)(b). The Court of Appeals reversed saying that an order granting a deferred disposition is not itself a disposition. Implicit in the Court’s analysis is that anything not explicitly authorized by RCW 13.40.127 is prohibited. Because the crime victim assessment is not mentioned, its imposition is not authorized. The Court commented, “We note that RCW 13.40.127 requires payment of restitution as a condition to

receiving an order deferring disposition. It does not contain any language expressly requiring payment of a victim's penalty assessment.” M.C. at 972. Accord State v. Watson, 146 Wn.2d 947, 956, 51 P.3d 66 (2002) (RCW 13.40.127 is a statutorily authorized alternative and there is no need for judicial interpretation beyond its plain language); State v. Lopez, 105 Wn.App. 688, 697, 20 P.3d 978 (2001) (Court does not have authority to suspend or defer juvenile sentence except as expressly authorized by the legislature).

While M.C. is not directly on point, using the same approach as the Court of Appeals leads to the conclusion that detention is not authorized by RCW 13.40.127. Because neither RCW 13.40.127 nor RCW 13.40.020(4) authorize detention, it is prohibited. This is consistent with RCW 13.40.020(18), which explicitly prohibits detention.

It is worth noting that, among the published decisions interpreting RCW 13.40.127, many of them reference the community supervision conditions imposed by the juvenile court. In no reported case did the juvenile court impose detention. See State v. Loun, 116 Wn.App. 402, 405, 66 P.3d 660 (2003) (community service hours, treatment, attend school, submit to urinalysis, restitution, and obey home rules); State v. Watson, 146 Wn.2d 947, 956, 51 P.3d 66 (2002) (court required 24 hours of community service, 6 months of community supervision, and no

unwanted contact with the victim, along with other ‘good behavior’ requirements such as proper school attendance, counseling, and a curfew); State v. J.A., 105 Wn. App. 879, 20 P.3d 487 (2001), (Court imposed 12 months community supervision, 48 hours community service, counseling, regular school attendance, no use or possession of drugs, alcohol or weapons, drug and alcohol evaluation and random urinalysis tests, no new probable cause referrals or law offenses, and a fine of \$100); State v. C.R.H., 107 Wn. App. 591, 27 P.3d 660 (2001) (ordered to comply with certain specified conditions, including 6 months of community supervision, 24 hours of community service, regular school attendance, counseling, and a curfew.).

RCW 13.40.127 is a statute that must be read strictly. It unambiguously authorizes community-based sanctions, but no where authorizes detention time. The juvenile court’s order of detention was in error and this case should be reversed.

D. Conclusion

The Kitsap County Juvenile Court’s order requiring detention as a condition of completing the deferred disposition should be reversed.

DATED this 26th day of August, 2009.

A handwritten signature in black ink, appearing to be 'T. E. Weaver', written over a horizontal line.

Thomas E. Weaver, WSBA #22488
Attorney for Defendant

COURT OF APPEALS
DIVISION II

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

STATE OF WASHINGTON,)	Case No.: 09-8-00256-1
)	Court of Appeals No.: 39519-3-II
Respondent,)	
)	AFFIDAVIT OF SERVICE
vs.)	
)	
IAN KEITH CHRISTENSEN,)	
)	
Defendant.)	

STATE OF WASHINGTON)
)
 COUNTY OF KITSAP)

THOMAS E. WEAVER, being first duly sworn on oath, does depose and state:

I am a resident of Kitsap County, am of legal age, not a party to the above-entitled action,
and competent to be a witness.

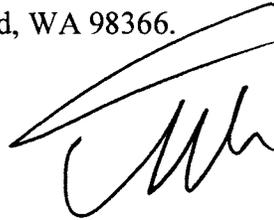
On August 26, 2009, I sent an original and a copy, postage prepaid, of the BRIEF OF
APPELLANT, to the Washington State Court of Appeals, Division Two, 950 Broadway, Suite
300, Tacoma, WA 98402.

ORIGINAL

1 On August 26, 2009, I sent a copy, postage prepaid, of the BRIEF OF APPELLANT, to
2 the Kitsap County Prosecutor's Office, 614 Division St. MSC 35, Port Orchard, WA 98366-
3 4683.

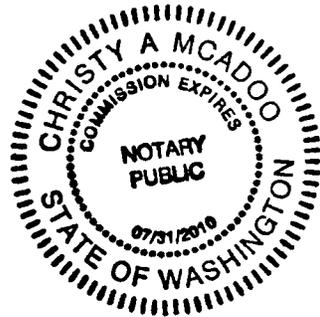
4 On August 26, 2009, I sent a copy, postage prepaid, of the BRIEF OF APPELLANT, to
5 Mr. Ian Christensen, 5250 E Collins Road, Port Orchard, WA 98366.

6 Dated this 26th day of August, 2009.



7
8
9 Thomas E. Weaver
WSBA #22488
Attorney for Defendant

10
11 SUBSCRIBED AND SWORN to before me this 26th day of August, 2009.



12
13 Christy A. McAdoo
14 NOTARY PUBLIC in and for
15 the State of Washington.
16 My commission expires: 07/31/2010