

NO. 41842-8-II

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

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STATE OF WASHINGTON,

Appellant

v.

DAKOTA PENA-GAROUTTE,

Respondent.

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

The Honorable Kitty-Ann van Doorninck, Judge

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BRIEF OF RESPONDENT

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**TABLE OF CONTENTS**

	<b>Page</b>
A. <u>RESPONSE TO ASSIGNMENTS OF ERROR</u> .....	1
1. The trial court was statutorily authorized to dismiss with prejudice the order of deferred disposition.	
2. The trial court was not authorized to maintain restitution after dismissal of the deferred disposition.	
<u>Issue Presented on Appeal</u> .....	1
1. Did the trial court err in dismissing with prejudice the order of deferred disposition?	
2. Did the trial court err in maintaining restitution after dismissing with prejudice the order of deferred disposition?	
B. <u>STATEMENT OF THE CASE</u> .....	1
C. <u>ARGUMENT</u> .....	2
1. THE TRIAL COURT DID NOT ERR IN DISMISSING WITH PREJUDICE THE ORDER OF DEFERRED DISPOSITION PRIOR TO RESPONDENT PAYING HIS RESTITUTION OBLIGATION.....	2
a. <u>RCW 13.40.127 Deferred Disposition</u> .....	2

b.	<u>Trial Court Was Authorized to Fashion An Appropriate Resolution</u> .....	5
2.	THE ORDER OF RESTITUTION MUST BE VACATED.....	7
a.	<u>Inability to Pay Restitution</u> .....	7
D.	<u>CONCLUSION</u> .....	9

## TABLE OF AUTHORITIES

Page

### WASHINGTON CASES

<i>State v. C.R.H.</i> , 107 Wn.App. 591, 27 P.3d 660 (2001).....	4
<i>State v. Davidson</i> , 116 Wn.2d 917, 809 P.2d 1374 (1991).....	7
<i>State v. E.C.</i> 83 Wn. App. 523, 922 P.2d 152 (1996).....	6
<i>State v. J.A.</i> , 105 Wn, App. 879, 20 P.2d 487 (2001).....	2, 5, 6, 7
<i>State v. Landrum</i> , 66 Wn.App. 791, 832, 832 P. 2d 1359 (1992).....	8, 9
<i>State v. Mahamoud</i> , 159 Wn. App. 753, 246 P.3d 849 (2011).....	4
<i>State v. M.C.</i> , 148 Wn. App. 968, 201 P.3d 413 (2009).....	3,4,5
<i>State v. T.C.</i> , 99 Wn. App. 701, 995 P.2d 98 (2000).....	6, 7

### STATUTES, RULES AND OTHERS

BLACK'S LAW DICTIONARY, 471 (6th ed.1990).....	4
RCW 13.40.127.....	2, 3, 4, 5
RCW 13.40.190.....	3, 7, 8
RCW 13.50.050(11).....	7, 8

A. RESPONSE TO ASSIGNMENTS OF ERROR

1. The trial court was statutorily authorized to dismiss with prejudice the order of deferred disposition.
2. The trial court was not authorized to maintain restitution after dismissing with prejudice the deferred disposition.

Issues Presented on Appeal

1. Did the trial court err in dismissing with prejudice the order of deferred disposition.
2. Did the trial court err in maintaining restitution after dismissing with prejudice the order of deferred disposition?

B. STATEMENT OF THE CASE

Dakota Pena Garoutte entered into a deferred disposition for one count of residential burglary. CP 29-35. Dakota did not enter the home or take anything but his 18 year old neighbor, who was not charged entered the home and took property. RP 2 (April 7, 2010). The court ordered restitution in the amount of \$ 26,658.00. CP 37-39. Dakota petitioned the court to vacate or reduce the restitution. The court reduced the restitution to \$22,658. CP 50.

Dakota complied with all conditions of the deferred disposition except he was unable to make any payments towards

restitution. RP 10 (February 14, 2011). Dakota petitioned the court to dismiss the deferred disposition with prejudice which the court granted but retained the order of restitution. CP 66-67. The state appealed. CP 68-70.

C. ARGUMENTS

2. THE TRIAL COURT DID NOT ERR IN DISMISSING WITH PREJUDICE THE ORDER OF DEFERRED DISPOSITION.

The state argues that the trial court exceeded its authority by dismissing with prejudice the deferred disposition. The state is incorrect. The trial court entered a statutorily permissible order of disposition when it dismissed the deferred disposition with prejudice.

a. RCW 13.40.127 Deferred Disposition

The trial court is vested with broad discretion to impose a disposition that meets the need of the child. *State v. J.A.*, 105 Wn, App. 879, 886, 20 P.2d 487 (2001). RCW 13.40.127 provides in relevant part:

(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.

....  
(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.**

....  
(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.

(Emphasis added).

RCW 13.40.127(7) specifically authorizes the court to "enter an order of disposition" when the juvenile fails to comply with terms of supervision. *Id*; *State v. M.C.*, 148 Wn. App. 968, 971-972, 201 P.3d 413 (2009). RCW 13.40.127(4) provides, "[i]f a juvenile fails to comply with terms of supervision, the court shall enter an order of disposition." RCW 13.40.127(7). It is undisputed that respondent failed to comply with restitution. Dakota complied with all other conditions. "He's done everything that he can to do what [sic] he's supposed to." RP 10 (February 14, 2011).

“Disposition” in the deferred disposition statute means “the sentencing *or other final settlement of a criminal case.*” *M.C.*, 148 Wn. App. at 971-972, *quoting, C.R.H.*, 107 Wn .App. 591, 596, 27 P.3d 660 (2001), *quoting* BLACK’S LAW DICTIONARY, 471 (6th ed.1990). Dismissal with prejudice is a final settlement in a criminal case.

Statutory interpretation is a question of law reviewed de novo. In interpreting statutory provisions, the goal is to ascertain and give effect to the intent and purpose of the legislature in creating the statute. To determine legislative intent, the Courts look first to the language of the statute. If a statute is clear on its face, its meaning is to be derived from the plain language of the statute alone. Legislative definitions included in the statute are controlling, and in the absence of a statutory definition, Courts give the term its plain and ordinary meaning ascertained from a standard dictionary, as well as the context in which the statute appears, including related provisions. *State v. Mahamoud*, 159 Wn. App. 753, 757-758, 246 P.3d 849 (2011).

RCW 13.40.127(7) is clear on its face and thus not subject to statutory interpretation. *Mahamoud*, 159 Wn. App. at 757-758.

“disposition” is a final settlement in a criminal case, and dismissal with prejudice is a final settlement in a criminal case. Under *M.C.*, 148 Wn. App. at 971-972, dismissal with prejudice is an authorized “disposition” under RCW 13.40.127. The trial court did not err by dismissing the deferred disposition.

b. Trial Court Was Authorized to Fashion An Appropriate Resolution.

RCW 13.40.127 grants the trial court broad authority to “fashion orders that will effect both accountability and rehabilitation.” *J.A.*, 105 Wn, App. at 886. The trial court correctly attempted to meet the needs of the juvenile while balancing the needs of society, but missed in her delivery by retaining restitution. RCW 13.40.127.

In *J.A.*, the Court affirmed the trial court’s dismissal of a deferred disposition where the child committed new crimes during the deferral period. In affirming the trial court’s dismissal of the deferred disposition and vacation of the guilty finding, the Court held that the discretion provided in RCW 13.340.127(7) grants the juvenile court the authority to determine whether a juvenile has failed to comply with an order. *J.A.*, 105 Wn, App. at 886. Thus “even if a juvenile commits a technical violation of a deferred

disposition order, the court, in its discretion and in light of the attendant facts and circumstances, may enter an order finding no lack of compliance.” *J.A.*, 105 Wn, App. at 886.

In *State v. T.C.*, 99 Wn. App. 701, 995 P.2d 98 (2000), the court held that to meet the needs of the juvenile even without explicit statutory authority, a juvenile court could consider a juvenile offender's admitted but uncharged crimes in imposing a disposition. *T.C.*, 99 Wn. App. at 707-708; See also, *State v. E.C.* 83 Wn. App. 523, 530-531, 922 P.2d 152 (1996) (court entitled to act in conflict with statutory procedures regarding competency determinations if doing so would meet the needs of a juvenile offender and achieve the goals of the JJA.)

*T.C.* and *J.A.*, provide authority for the trial court's to fashion an appropriate resolution to meet the needs of the child and society. Herein, the trial court's dismissal of Dakota's deferred disposition order with prejudice was an order that met the needs of the child and society because in this case, as in *T.C.* and *J.A.*, the trial court recognized that Dakota would not be able to pay restitution and attempted to fashion a resolution that made sense. When dismissing the deferred disposition, the trial court recognized

that Dakota did everything he could do in his deferred disposition. As in *J.A.* and *T.C.*, The dismissal was appropriate because it stopped the state's losses from endless and useless future court dates to bring Dakota back for his inability to pay restitution.

3. THE ORDER OF RESTITUTION MUST BE VACATED.

"The authority to impose restitution is not an inherent power of the court, but is derived from statutes." *State v. Davidson*, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). If a juvenile court dismisses a deferred disposition under RCW 13.40.190 (d) and RCW 13.50.050(11), the court loses jurisdiction to maintain the order of restitution. *Id.* RCW 13.40.190 (d) provides:

The court may determine the amount, terms, and conditions of the restitution including a payment plan extending up to ten years if the court determines that the respondent does not have the means to make full restitution over a shorter period. For the purposes of this section, the respondent shall remain under the court's jurisdiction for a maximum term of ten years after the respondent's eighteenth birthday and, during this period, the restitution portion of the dispositional order may be modified as to amount, terms, and conditions at any time. Prior to the expiration of the ten-year period, the juvenile court may extend the judgment for the payment of restitution for an additional ten years. **If the court grants a respondent's petition pursuant to RCW 13.50.050,<sup>1</sup> the court's jurisdiction under this**

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<sup>1</sup> RCW 13.50.050(11) provides: In any case in which an information has been

**subsection shall terminate.**

RCW 13.40.190 (Emphasis added). When the trial court herein dismissed the deferred disposition it lost jurisdiction to maintain restitution. *Id.*

a. Inability to Pay Restitution.

RCW 13.40.190(1) requires juvenile courts to order restitution where appropriate unless the juvenile demonstrates an inability to pay. *State v. Landrum*, 66 Wn.App. 791, 794-95 & n. 4, 832, 832 P. 2d 1359 (1992)<sup>2</sup>. Dakota was unable to pay restitution and petitioned the court for an order dismissing restitution. Dakota established that as a 13 year old boy responsible for caring for his 12 year old autistic brother and nine year old sister, he would not be able to pay restitution. Nor would his mother who barely makes enough from her \$9 per hour job to care for the basic needs of her three children. RP 3-4;CP 54-55.

In *Landrum*, 66 Wn. App. at 794, fn. 4, the court held that a

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filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and, subject to subsection (23) of this section, order the sealing of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

trial court may not impose restitution when it knows that the defendant cannot pay the restitution. *Id.* Herein the trial court recognized that Dakota would not be able to pay any restitution. “[T]he likelihood of a 13-and-a-half-year old coming up with even \$5000 is highly, highly problematical...we’re setting him up to fail.” RP 10 (4-7-10). Under these circumstances the trial court was not authorized to impose restitution.

For these reasons, the trial court’s order of restitution must be vacated.

D. CONCLUSION

Dakota Pena Garoutte respectfully requests this Court affirm the trial court’s order dismissing with prejudice the deferred disposition and vacate the order of restitution.

DATED this 16<sup>th</sup> day of September 2011.

Respectfully submitted,



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I, Lise Ellner, a person over the age of 18 years of age, served the Pierce County Prosecutor (electronically at [pcpatcecf@co.pierce.wa.us](mailto:pcpatcecf@co.pierce.wa.us)) and Dakota Pena Garoutte 21906 43<sup>rd</sup> Ave. Ct. E Spanaway, WA 98387, a true copy of the document to which this certificate is affixed, on September 16, 2011. Service was made by depositing in the mails of the United States of America, properly stamped and addressed



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Signature

**ELLNER LAW OFFICE**

**September 19, 2011 - 1:07 PM**

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