

FILED
Court of Appeals
Division II
State of Washington
3/15/2018 10:35 AM

NO. 50239-9-II

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

STATE OF WASHINGTON,
Respondent,

v.

TEAGAN ANN DOVER,
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE DAVID L. EDWARDS, JUDGE

BRIEF OF RESPONDENT

KATHERINE L. SVOBODA
Prosecuting Attorney
for Grays Harbor County

BY: 

LYNDA J. STONE
Deputy Prosecuting Attorney
WSBA #38749

OFFICE AND POST OFFICE ADDRESS
County Courthouse
102 W. Broadway, Rm. 102
Montesano, Washington 98563
Telephone: (360) 249-3951

TABLE

Table of Contents

A. ASSIGNMENT OF ERROR1
B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR1
C. STATEMENT OF THE CASE.....1
D. ARGUMENT.....1
E. CONCLUSION5

TABLE OF AUTHORITIES

Cases

Delno v. Market St. Ry. Co., 124 F.2d 965, 967 (9th Cir.1942)2
Dioxin/Organochlorine Ctr. v. Pollution Control Hearings Bd., 131
Wash.2d 345, 351, 932 P.2d 158 (1997)4
In re Dependency of H., 71 Wash.App. 524, 527, 859 P.2d 1258 (1993)...4
In re Marriage of Littlefield, 133 Wash.2d 39, 47, 940 P.2d 1362 (1997)..1
In re Pers. Restraint of Bovan, 157 Wn.App. 588, 592-93, 238 P.3d 528
(2010).....4
In re Pers. Restraint of Mattson, 166 Wn.2d 730, 736m 214 P.3d 141
(2009).....4
In re Pers. Restraint of Cross, 99 Wn.2d 373, 377, 662 P.2d 828 (1983)...4
Lee v. Hamilton, 56 Wash.App. 880, 882, 785 P.2d 1156 (1990).....4
Sorenson v. City of Bellingham, 80 Wn.2d 547, 558-59, 496 P.2d 512
(1972).....4
State v. Barker, 114 Wn. App. 504, 58 P.3d 908 (2002)2
State v. Clark, 581958 P.2d 10283
State v. Edgley 92 Wash.App. 478, 966 P.2d 381 (1998), *review denied*,
137 Wash.2d 1026, 980 P.2d 1285 (1999)2
State v. Lamb, 2012175 Wash.2d 121285 P.3d 271
State v. Powell, 126 Wash.2d 244, 258, 893 P.2d 615 (1995)1

Statutes

RCW 13.40.2002

A. ASSIGNMENT OF ERROR

Respondent accepts Appellant's Assignment of Error as stated.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Respondent accepts Appellant's Issue Pertaining to Assignment of Error.

C. STATEMENT OF THE CASE

Respondent accepts Appellant's Statement of the Case with the following exception: the Appellant did deny the allegation in probation #3, which is why the matter went to a testimonial hearing. RP 2. It was not until Appellant's closing remarks that the court was informed the Appellant was admitting it was a violation of the court's order. RP 7.

D. ARGUMENT

In *State v. Lamb*, 2012175 Wash.2d 121285 P.3d 27, the court stated a trial court abuses its discretion if its decision "is manifestly unreasonable or based upon untenable grounds or reasons." Id. at 31 quoting *State v. Powell*, 126 Wash.2d 244, 258, 893 P.2d 615 (1995). A court's decision "is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." *In re Marriage of Littlefield*, 133 Wash.2d 39, 47, 940 P.2d 1362 (1997). "A court's decision is manifestly unreasonable if it is outside

the range of acceptable choices, given the facts and the applicable legal standard.” *Id.* The “untenable grounds” basis applies “if the factual findings are unsupported by the record.” *Id.*

The court concluded by adopting a test from *Delno v. Market St. Ry. Co.*, 124 F.2d 965, 967 (9th Cir.1942), that discretion is abused: when the judicial action is arbitrary, fanciful or unreasonable, which is another way of saying that discretion is abused only where no reasonable man would take the view adopted by the trial court. If reasonable men could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion.

In *State v. Barker*, 114 Wn. App. 504, 58 P.3d 908 (2002) the court discusses their holding in *State v. Edgley* 92 Wash.App. 478, 966 P.2d 381 (1998), *review denied*, 137 Wash.2d 1026, 980 P.2d 1285 (1999), stating each party in *Barker* relied on the court’s opinion in *Edgley*. However, the court opined the statute (RCW 13.40.200) did not apply in *Edgley*, as it did apply in *Barker*. RCW 13.40.200 provides in pertinent part:

(3) If the court finds that a respondent has willfully violated the terms of an order pursuant to subsections (1) and (2) of this section, 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.

Appellant's argument is because the UA provided by the Appellant was taken and results received prior to the hearing on March 30, 2017, the court should not have imposed any further time at the probation violation #3 hearing on April 20, 2017. It is accurate the Juvenile Probation Counselor knew about the positive UA prior to the March 30th hearing. RP 6. However, Appellant argued in closing remarks that the State was also aware of the results of the UA prior to the March 30th hearing but there is no evidence of that on the record. RP 7. In fact, the Motion and Declaration to Revoke/Modify Community Supervision PV #3 clearly states the Juvenile Probation Counselor did not provide the information to the State until March 31, 2017. CP 19-21.

What the court in *Barker* did not address is what the court is to do if a probation violation occurred, a hearing was held and then further violations from prior to the hearing come to light. The Respondent should still be held responsible and not simply get a pass because the violations were not reported or kept secret until the hearing was completed.

Finally, in *State v. Clark*, 581958 P.2d 1028, the court addressed the issue of mootness. Because the disposition orders in that case had expired, the court lacked the ability to provide an effective remedy, therefore, the case was moot. *Lee v. Hamilton*, 56 Wash.App. 880, 882,

785 P.2d 1156 (1990); *In re Pers. Restraint of Mattson*, 166 Wn.2d 730, 736m 214 P.3d 141 (2009). The appeal of a sentence that has already been completed is a classic example of mootness. *See, e.g., In re Pers. Restraint of Cross*, 99 Wn.2d 373, 377, 662 P.2d 828 (1983) (case moot where detention that is the subject of the appeal has already ended); *In re Pers. Restraint of Bovan*, 157 Wn.App. 588, 592-93, 238 P.3d 528 (2010) (case moot where defendant released from custody while personal restraint petition was pending). An appeal that raises only moot issues should be dismissed. *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558-59, 496 P.2d 512 (1972).

Ordinarily a reviewing court will not decide a moot case but it may do so if the case involves matters of continuing and substantial public interest. *Dioxin/Organochlorine Ctr. v. Pollution Control Hearings Bd.*, 131 Wash.2d 345, 351, 932 P.2d 158 (1997). The appellate court also will review issues of public interest that are capable of repetition yet easily evade review. *In re Dependency of H.*, 71 Wash.App. 524, 527, 859 P.2d 1258 (1993). The case at hand is exactly the same as *Clark*. The Appellant was ordered to serve 15 days on April 20, 2017 and completed the time in May of 2017. Appellant failed to mention the mootness of this

case and failed to address the issue of whether the case at hand is one of public interest. Therefore, the issue raised is not ripe for review.

E. CONCLUSION

The Appellant's argument is moot, therefore this court should uphold the Trial Court's ruling.

DATED this 15 day of March, 2018.

Respectfully Submitted,

By: 
LYNDA J. STONE
Deputy Prosecuting Attorney
WSBA #38749

LJS/lh

GRAYS HARBOR COUNTY PROSECUTOR'S OFFICE

March 15, 2018 - 10:35 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50239-9
Appellate Court Case Title: State of Washington, Respondent v Teagan Ann Dover, Appellant
Superior Court Case Number: 16-8-00054-0

The following documents have been uploaded:

- 502399_Briefs_20180315103250D2078681_7676.pdf
This File Contains:
Briefs - Respondents Reply
The Original File Name was brief.pdf

A copy of the uploaded files will be sent to:

- appeals@co.grays-harbor.wa.us
- lstone@co.grays-harbor.wa.us
- ltabbutlaw@gmail.com
- valerie.lisatabbut@gmail.com

Comments:

Sender Name: Lynda Stone - Email: lstone@co.grays-harbor.wa.us
Address:
102 W BROADWAY AVE
MONTESANO, WA, 98563-3621
Phone: 360-249-3951

Note: The Filing Id is 20180315103250D2078681