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NO. 53841-5-II

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON,**

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

S.D.H.,

Appellant.

RESPONDENT'S BRIEF

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I. STATE'S RESPONSE TO ASSIGNMENT OF ERROR

- A. The trial court properly sentenced S.D.H. pursuant to RCW 13.40.0357 and 13.40.150 of the JJA because the statutes were created to sentence juveniles in juvenile court.
- B. The trial court did not err where it found that S.D.H. did not prove by clear and convincing evidence that any mitigating factors under RCW 13.40.150 applied and sentenced S.D.H. to the standard range.
- C. There is a rational basis for the JJA to require juveniles to meet the clear and convincing evidence standard for a manifest injustice sentence downward while the SRA requires a preponderance of the evidence standard, because the JJA and the SRA do not share a fundamental purpose for sentencing.

II. ISSUES PERTAINING TO THE STATE'S RESPONSE TO ASSIGNMENT OF ERROR

- A. SHOULD THE TRIAL COURT HAVE APPLIED A STANDARD BASED ON SENTENCING JUVENILES IN ADULT COURT WHERE S.D.H. WAS SENTENCED IN JUVENILE COURT AND DID NOT RECEIVE AN ADULT SENTENCE?
- B. DID THE TRIAL COURT ERR WHEN IT FOUND THAT S.D.H. DID NOT PROVE BY CLEAR AND CONVINCING EVIDENCE THAT ANY MITIGATING FACTORS UNDER RCW 13.40.150 APPLIED, AND SENTENCED S.D.H. TO THE STANDARD RANGE?
- C. IS THERE A RATIONAL BASIS FOR THE JJA TO REQUIRE JUVENILES TO MEET THE CLEAR AND CONVINCING EVIDENCE STANDARD FOR A MANIFEST INJUSTICE SENTENCE DOWNWARD WHEN THE JJA AND SRA DO NOT SHARE A FUNDAMENTAL PURPOSE FOR SENTENCING?

III. STATEMENT OF THE CASE

On February 26, 2019, just before 6:00 a.m., Caitlyn McCall walked to her job at Beachway Gas and Grocery and opened up the store

“just like any other day.” RP 13, CP 2. She completed her opening tasks and then went to the restroom to brush her teeth. RP 13. While in the restroom, the store’s buzzer indicated she had a customer. RP 13. She exited the restroom and greeted S.D.H. who had entered the store. RP 13. She noticed S.D.H.’s face was completely covered and she “instantly felt scared.” RP 13. S.D.H. wore a blue hospital mask, a black sweatshirt, black pants, and a backpack with a “Peace Health” logo. CP 2. Ms. McCall asked S.D.H. to remove his hood. RP 13. Instead of complying, he “started charging the front counter and register.” RP 13. When S.D.H. got close, he “pulled a gun out of his waistband” and pointed it at Ms. McCall’s face, demanded money from the cash register, and threatened to “F*** her up.” RP 13, CP 2. Ms. McCall described the weapon to law enforcement as what looked like “a black semi-automatic handgun.” CP 2.

During the robbery, Ms. McCall did everything S.D.H. told her to do while trying to hide behind the glass for protection. RP 13. She had never been so scared in her life. CP 13. One of her good friends had recently been shot and killed while working as a cashier. CP 13. Ms. McCall provided S.D.H. with approximately \$300 cash from the register, and he fled out the door on foot. CP 2.

After S.D.H. fled, Ms. McCall was able to contact Longview police, and they responded shortly after 6:00 a.m. CP 1. A K-9 track led

officers southeast from the store to a nearby apartment rented by S.D.H.'s mother, a former Beachway employee. CP 2. S.D.H. was at the residence when law enforcement arrived. CP 2. Officers detained him, and he shouted and cursed at them. CP 2. Inside S.D.H.'s bedroom, law enforcement located the clothing S.D.H. had worn during the robbery, a replica airsoft gun, the "Peace Health" backpack, and the blue hospital mask. CP 2.

On July 22, 2019, S.D.H. pled guilty to one count of robbery in the first degree. CP 22. At sentencing, S.D.H. asked the court for a manifest injustice sentence downward. RP 9. The State presented testimony by Caitlyn McCall. RP 12-14. Ms. McCall described seeing her life flash before her eyes during the robbery, and becoming so afraid to work that she lost her job. RP 13-14.

S.D.H. presented Marty Beyer, who testified about S.D.H.'s background. CP 29-52. Her report detailed S.D.H.'s regular use of marijuana. CP 32, RP 81. The State cross-examined Ms. Beyer using information from the State's pre-sentencing investigation written by psychologist Wendy Hartinger. RP 54.

The trial court ruled that in designing RCW 13.40.0357 (juvenile standard sentencing range statute), the legislature set the sentencing range applicable to S.D.H. for robbery in the first degree according to age. RP

122. S.D.H. would have been sentenced to a longer Juvenile Rehabilitation (“JR”) range if he had been even one year older when committing the robbery. RP 122. The legislature set up the sentencing framework in consideration of sentencing juveniles in juvenile court. RP 122. The trial court considered RCW 13.40.150, and found that S.D.H. did not make a clear and convincing showing of a basis to support a manifest injustice sentence downward from the standard range of 103-129 weeks at JR. RP 127.

The trial court found that S.D.H.’s actions during the robbery threatened serious bodily injury to Ms. McCall. RP 123. “Whether it was a fake gun or not, the victim in this case feared for her life. So there is no question that the conduct did, in fact, threaten serious bodily injury based on his actions.” RP 123.

The trial court also found that S.D.H. did not act under strong and immediate provocation. RP 123. Instead, he had formed a plan. Prior to the robbery, S.D.H. had:

[T]alked to a friend about robbing a place, and the friend told him that was not a good idea. That did not stop him. He took the air soft gun and colored it specifically to look like a real gun. Stayed up all night beforehand, thinking about what he was going to do. He did not stop at that; but, in fact, carried through with his plan. Yes, a simple plan; or was it?

RP 126.

Further, the trial court found that S.D.H. did not compensate or make a good faith effort to compensate Ms. McCall or Beachway Gas and Grocery prior to detection. RP 124. In fact, he “lied about what he did with the cash he had stolen. Certainly, his family was in hard times; but again, what’s to say that won’t happen again?” RP 126. S.D.H. gave the money to his mother to hide. RP 126.

In determining whether S.D.H. was suffering from a mental or physical condition that significantly reduced his culpability for the offense, the trial court acknowledged that S.D.H. had been through trauma in his life. RP 124. However, that trauma did not equate to a mental or physical condition that significantly reduced his culpability for the robbery. RP 124.

S.D.H. did not have any prior criminal history and the court found the factor did not apply. RP 124.

The trial court then considered whether S.D.H. could serve his sentence within the local community. RP 125-26. Based upon the evidence, this was not a reasonable option due to S.D.H.’s lack of appropriate supervision by his mother, his history of failing to follow through with services, and his claim that he was involved in illegal activities unknown to law enforcement. RP 125-26.

The trial court found that Ms. Beyer's testimony was not applicable within the framework set up by the legislature in mitigating S.D.H.'s sentence. RP 126. "Even if the Court could . . . find it more appropriate to tailor a sentence according to a specific person, which the Court does not find under these circumstances," the trial court doubted whether S.D.H. would participate for the extensive amount of time it would take to make such a plan successful. RP 127. The trial court sentenced S.D.H. to 103-129 weeks at JR, which is the standard range for a 15-year-old. RP 127.

IV. ARGUMENT

A. THE TRIAL COURT PROPERLY SENTENCED S.D.H. PURSUANT TO RCW 13.40.0357 AND 13.40.150 OF THE JJA BECAUSE THE STATUTES WERE CREATED TO SENTENCE JUVENILES IN JUVENILE COURT.

Because RCW 13.40.0357 and RCW 13.40.150 (the juvenile sentencing statutes) were specifically created to sentence juveniles in juvenile court, and both allow age to be considered within their framework, the trial court properly followed the juvenile sentencing statutes in this case. "An offender's age is relevant to the Eighth Amendment, and [so] criminal procedure laws that fail to take defendants' youth into account at all would be flawed." *Graham v. Florida*, 560 U.S. 48, 76, 130 S. Ct. 2011, L. Ed.2d 825 (2011). S.D.H. claims that *Houston-*

Sconiers, 188 Wn.2d 1, 391 P.3d 409 (2017) and *State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015) establish authority for the trial court to impose a manifest injustice downward sentence where the trial court did not find that any mitigating factors set forth in RCW 13.40.150 applied. This reasoning is flawed for two reasons. First, by design, both of the juvenile sentencing statutes allow the court to take youthfulness into account. Second, *Houston-Sconiers* and *O'Dell* were decided under the adult Sentencing Reform Act ("SRA," chapter 9.94A RCW) rather than the Juvenile Justice Act ("JJA," chapter 13.40 RCW. In *Houston-Sconiers*, two defendants under the age of 18 were sentenced in adult court, and *O'Dell* was sentenced in adult court for a crime he committed 10 days after he turned 18. 188 Wn.2d at 8; 183 Wn.2d at 683. *O'Dell* ended up facing 78-102 months in prison under the SRA when the JJA range was only 15-36 weeks at JR. 183 Wn.2d at 685. The trial court properly decided this case according to the JJA's mitigating factors because S.D.H. was a juvenile who was not declined to adult court, thus he was provided with the rehabilitative benefits offered by the juvenile justice system.

Sentencing under the JJA is unique from sentencing under the SRA due to the JJA's equal focus on rehabilitation and retribution. Washington's juvenile offender system was created for "responding to the needs of youthful offenders," while also holding them "accountable for

their offenses.” RCW 13.40.010. The JJA’s sentencing statutes are RCW 13.40.0357 and RCW 13.40.150. The former sets forth the standard range for each offense, considering factors such as seriousness of the offense committed, criminal history, and for some offenses, age. *See* RCW 13.40.0357. The latter sets forth aggravating and mitigating factors a trial court must consider to determine whether a manifest injustice sentence is appropriate. RCW 13.40.150. A manifest injustice sentence is a sentence outside of the standard range set forth in RCW 13.40.0357. After a finding that a juvenile meets mitigating factors by a showing of clear and convincing evidence, a trial court judge has broad discretion to order the range of time it deems appropriate given the juvenile’s individualized circumstances. *State v. T.E.H.*, 91 Wn. App. 908, 918-19, 960 P.2d 441 (1998).

RCW 13.40.0357 divides juveniles who commit robbery in the first degree into two age groups. If committed at 15 years or younger, a juvenile faces 103 to 129 weeks at a JR facility. RCW 13.40.0357. A juvenile who commits the same offense at 16 or 17 years old faces 129 to 260 weeks at JR. *Id.*¹

¹ There are three secure residential JR facilities in Washington: Echo Glen, Green Hill, and Naselle. In addition, juveniles with a JR sentence can transition to one of eight community facilities that provide services. For example, Canyon View in Wenatchee offers youth “many opportunities to be in the community to participate in shopping, recreation, field trips, local community services, family visits including earning

Whether a youth will fall under the JJA is a jurisdictional inquiry, not merely a question of chronological age. To be a “juvenile” a minor must fit the statutory definition. RCW 13.40.020(15). A youth is a juvenile if he or she “is under the chronological age of eighteen years and . . . has not been previously transferred to adult court . . . or who is not otherwise under adult court jurisdiction.” *Id.* Thus, if a 16-year-old is declined to adult court jurisdiction, he or she is not a “juvenile” for JJA purposes.

In *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed.2d 1 (2005), *Graham*, 560 U.S. 48, and *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed.2d 407 (2012), the United States Supreme Court made decisions involving youth sentenced to lengthy adult sentences. Likewise, in *Houston-Sconiers*, the Washington Supreme Court held that “[t]rial courts must consider the mitigating qualities of youth at sentencing and must have discretion to impose any sentence below the otherwise applicable SRA range and/or sentence enhancements.” *Houston-Sconiers*, 188 Wn.2d at 21. *O’Dell* also held that trial courts can consider a defendant’s youth as a mitigating factor when sentenced pursuant to the SRA. 183 Wn.2d 680 at 688-89. However, these cases all deal with

community involvement passes to go out in the community with family. Canyon view staff work with families and supportive others to successfully transition youth back to their community upon release.” See <https://www.dcyf.wa.gov/services/juvenile-rehabilitation/residential-facilities>.

juveniles who are sentenced in adult courts, pursuant to the SRA and other adult sentencing statutes.

Washington's legislature has recognized that children are different, and has designed an alternate sentencing scheme from the SRA to account for the mitigating factors of youth. For example, juvenile sentences are shorter than SRA sentences. *See Houston-Sconiers*; 188 Wn.2d 1; *See O'Dell*, 183 Wn.2d 680. *O'Dell* held that when determining whether a mitigating factor legally supports departure from the standard SRA range, it "cannot support the imposition of an exceptional sentence if the legislature necessarily considered that factor when it established the standard sentence range." 183 Wn.2d 680. If the same test were applied to the JJA, the legislature necessarily considered age when it established RCW 13.40.0357's shorter ranges than adults face, and also a shorter range for juveniles who commit robbery while under the age of 16. In addition, RCW 13.40.150 allows for the consideration of age by allowing a mitigated sentence if a mental or physical disorder significantly reduced a juvenile's culpability. The juvenile would need to show that he or she had a mental disorder, and that the disorder significantly reduced his or her culpability when committing the offense. Thus, the JJA has codified its recognition that juveniles are generally less culpable than adults into both juvenile sentencing statutes.

Houston-Sconiers illustrates why in some instances it can be problematic when juveniles are automatically declined to adult court and ordered to serve adult sentencing ranges not designed for youth. 188 Wn.2d 1. In *Houston-Sconiers*, two co-defendants, who were 16 and 17 years old, were charged with multiple counts of robbery in the first degree and firearm enhancements. At the time, the robbery charges triggered automatic transfer of the case from juvenile to adult court.” *Id.* at 188. Under the SRA, *Houston-Sconiers* faced 41.75-45.25 years in prison. *Houston-Sconiers*, 188 Wn.2d at 8. In contrast, the standard range for robbery in the first degree under the JJA was 103-129 weeks in a JR facility. RCW 13.40.0357 (2017).

Following *Houston-Sconiers*, the legislature reformed Washington’s automatic adult jurisdiction statute to exclude robbery in the first degree. As a result, juveniles who commit robbery at ages 16 or 17 are no longer automatically declined to face SRA sentences absent criminal history that warrants transfer. *See* RCW 13.04.030. Instead, they face a longer sentence than juveniles who commit robbery under the age of 16. RCW 13.40.0357.

In addition, the JJA prohibits incarceration past the age of 25-years-old. RCW 13.40.300. At age 25, Juvenile jurisdiction ends, and offenders sentenced under the JJA are released back into the community

with skills acquired from JR's reintegration programs. Washington's legislature made these reforms to the JJA after having the opportunity to review *Roper*, *Graham*, *Miller*, *Houston-Sconiers*, and *O'Dell*, and in light of current scientific literature on brain development.²

S.D.H. claims that *Houston Sconiers* and *O'Dell* establish authority for the trial court to impose a manifest injustice sentence downward where the trial court found that none of RCW 13.40.150's enumerated mitigating factors apply. However, the line of cases S.D.H. relies upon do not apply to juveniles sentenced under the JJA in juvenile court. *Houston-Sconiers* and *O'Dell* involved youth that were sentenced in adult court under the SRA.

Because S.D.H. was only 15 when he committed the robbery, he never faced the possibility of sentencing under the SRA. He did not face 42 years in adult prison like *Houston-Sconiers*, but 103-129 weeks at a structured rehabilitative facility that ultimately reintegrates juveniles into society. S.D.H. was a "juvenile" under the JJA and received the benefits of JJA sentencing. Due to being under 18-years-old, S.D.H. faced a shorter

² "These studies reveal fundamental differences between adolescent and mature brains in the areas of risk and consequence assessment, impulse control, tendency toward antisocial behaviors, and susceptibility to peer pressure." *O'Dell*, 183 Wn.2d 680. The *O'Dell* Court was concerned with these studies because *O'Dell* was only 10 days past his 18th birthday when he committed his offense, but "the 'parts of the brain involved in behavior control' continue to develop well into a person's 20s." *Id.* at 691-92. As a result, *O'Dell* faced a much longer sentence than he would have under the JJA.

sentence than an adult who commits robbery in the first degree. Additionally, by being under the age of 16, he faced a shorter JR range than older juveniles who commit the same offense. In this case, the legislature's splitting youth into age categories to account for less culpability in younger juveniles benefited S.D.H. tremendously. S.D.H. also benefited by being sentenced in a system that cannot incarcerate him past his 25th birthday. Essentially, S.D.H. benefited from a court system that refuses to give up on him due to his youth.

In this case, due to the severity of the circumstances, the trial court did not reach the point where it had full discretion to choose a lower range, because S.D.H. did not meet his burden of proving any of the RCW 13.40.150 mitigating factors. The trial court found that S.D.H. had a history of not following through with services within the community. Unlike *Houston-Sconiers*, where the trial court was frustrated due to the unanticipated result of SRA sentencing, the trial court in this case determined the standard range was appropriate and the only good option under the circumstances.

S.D.H. has not provided authority for departing from RCW 13.40.0357 and RCW 13.40.150 for juveniles sentenced in juvenile court under the JJA. *Houston-Sconiers*, and *O'Dell*, and the U.S. Supreme Court cases they are derived from do not address the issue of juveniles sentenced

in juvenile court. Instead, they focus on adult sentencing schemes which put less emphasis on rehabilitation. For this reason, trying to compare the SRA to the JJA does not make sense and will result in sentences unanticipated by the legislature. The trial court correctly applied the juvenile sentencing statutes, and found that no mitigating factors applied. Because the trial court did not find any mitigating factors applicable to S.D.H.'s case, the trial court did not err in ordering a standard range sentence. S.D.H.'s standard range sentence should be upheld.

B. THE TRIAL COURT DID NOT ERR WHERE IT FOUND THAT S.D.H. DID NOT PROVE BY CLEAR AND CONVINCING EVIDENCE THAT ANY MITIGATING FACTORS UNDER RCW 13.40.150 APPLIED, AND SENTENCED S.D.H. TO THE STANDARD JR RANGE.

Because S.D.H. did not show by clear and convincing evidence that any mitigating factors under RCW 13.40.150 applied, the trial court did not err in denying his request for a manifest injustice sentence downward and sentencing S.D.H. to the standard JR range of 103-129 weeks. The trial court must grant a manifest injustice sentence where “a disposition . . . would either impose an excessive penalty on the juvenile, or would impose a serious danger to society in light of the purposes of the Juvenile Justice Act of 1977.” *State v. M.L.*, 134 Wn.2d 657, 660, 952 P.2d 187 (1998). S.D.H. claims that he should have been granted a manifest injustice downward because he has faced trauma. S.D.H.'s

argument fails for two reasons. First, he did not show by clear and convincing evidence that the range of 103-129 weeks at JR would impose an excessive penalty on him. Second, the trial court did not find that any of RCW 13.40.150's mitigating factors applied.

A manifest injustice disposition is "a disposition that would either impose an excessive penalty on the juvenile, or would impose a serious and clear danger to society in light of the purposes of the Juvenile Justice Act of 1977." *M.L.*, 134 Wn.2d at 657. RCW 13.40.150 lists the mitigating factors necessary for a manifest injustice downward sentence as follows:

- (i) The respondent's conduct neither caused nor threatened serious bodily injury or the respondent did not contemplate that his or her conduct would cause or threaten serious bodily injury;
- (ii) The respondent acted under strong or immediate provocation;
- (iii) The respondent was suffering from a medical or physical condition that significantly reduced his or her culpability for the offense though failing to establish a defense;
- (iv) Prior to his or her detection, the respondent compensated or made a good faith attempt to compensate the victim for the injury or loss sustained; and
- (v) There has been at least one year between the respondent's current offense and any prior criminal offenses.

RCW 13.40.150(3)(h).

State v. K.E., 97 Wn. App. 273, 982 P.2d 1212 (1999) illustrates how RCW 13.40.150(v) is applied when an offense is so significant that the JR range is the same regardless of the juvenile's criminal history. *K.E.*

entered a pizza parlor, “pointed a handgun in the face of two employees, ordered one of the employees to empty the . . . cash register, and fled with the money.” *Id.* at 276. The Court held that offense history is not considered where the JR range is the same regardless of a juvenile’s history.

At sentencing, the trial court must also consider the equally important competing interests of the JJA. RCW 13.40.010 states in part, “the legislature declares the following to be equally important purposes of this chapter:

(a) Protect citizenry from criminal behavior; . . . (c) Make the juvenile offender accountable for his criminal behavior; . . . (d) provide for punishment commensurate with age, crime, and criminal history of the juvenile offender; . . . (f) provide for the rehabilitation and reintegration of juvenile offenders; . . . Provide necessary treatment, supervision, and custody for juvenile offenders, . . . (h) provide for the handling of juvenile offenders by communities whenever consistent with public safety.

RCW 13.40.010.

S.D.H. claimed that all of the RCW 13.40.150 mitigating factors applied in his case. The trial court considered all of the mitigating factors and did not find that S.D.H. proved any of the mitigating factors by clear and convincing evidence. Looking at the first factor, S.D.H. claimed his conduct did not cause or threaten serious bodily injury to Ms. McCall. However, during the robbery, Ms. McCall sincerely believed the weapon

S.D.H. pointed at her face was a semi-automatic handgun. At such close range the weapon posed a risk of serious bodily harm to Ms. McCall. S.D.H.'s conduct during the robbery threatened serious bodily injury to Ms. McCall. She was so afraid that her "life flashed before her eyes." CP 2. The trial court did not err in finding that whether the gun was fake or not, Ms. McCall feared for her life. RP 123.

The trial court correctly concluded that S.D.H. did not act under strong or immediate provocation. The trial court found that S.D.H. formed a plan. He confided in a friend days before about his plan to rob a store, and his friend told him not to. S.D.H. had time to reflect on the advice, but disregarded the advice and committed the robbery anyway. He stayed up late the night before coloring his replica gun to look real. He dressed to hide his identity and covered his face with a mask.

The trial court considered whether a mental or physical condition may have significantly reduced S.D.H.'s culpability and found this factor did not apply. RP 124. The court acknowledged that S.D.H. had a "history of trauma from a variety of sources," but concluded "there was nothing . . . presented that showed he was suffering from a physical or mental condition that significantly reduced his culpability." RP 124.

The trial court found that S.D.H. did not make a good faith attempt, prior to his detection to compensate Ms. McCall or Beachway

Gas and Grocery. RP 124. Following the robbery, S.D.H. gave the money to his mother to hide. RP 124. S.D.H. did not claim to attempt to compensate Ms. McCall or Beachway Gas and Grocery and the trial court stated it was not aware of any such attempt. RP 124. Thus, the trial court correctly found that this factor did not apply.

When considering criminal history, the trial court found that S.D.H. did not have any criminal history. RP at 124. Therefore, the court did not find that the factor applied. However, robbery in the first degree is an offense so serious that the legislature set the same standard range regardless of a juvenile's history. Therefore, the same outcome would result whether S.D.H. had 0 points of criminal history or 4 points.

In addition to finding that S.D.H. did not prove any of the mitigating factors by clear and convincing evidence, the trial court found that S.R.H. was not amenable to the supervision and treatment he required in the community because he had a history of failing to follow through with services and his mother who had "shown herself not to be a responsible parent seeing to the needs of the Respondent." RP 125. The trial court did not err in ordering S.D.H. to the standard sentencing range at JR after determining that he did not prove any of the RCW 13.40.150 factors. S.D.H.'s standard range sentence should be affirmed.

C. THERE IS A RATIONAL BASIS FOR THE JJA TO REQUIRE JUVENILES TO MEET THE CLEAR AND CONVINCING EVIDENCE STANDARD FOR A MANIFEST INJUSTICE DOWNWARD.

There is a rational basis for the JJA to require juveniles to meet the clear and convincing evidence standard for a manifest injustice sentence downward because the JJA has a dual focus on rehabilitation and retribution. “Court interpretations of adult criminal statutes may be applied in juvenile proceedings, in the absence of language contrary, only if the purpose of the adult criminal statute is consistent with the purposes of the Juvenile Justice Act.” *State v. T.C.*, 99 Wn. App. 701, 704-05, 995 P.2d 98 (2000). S.D.H. claims it is unfair for the burden of proof for a manifest injustice sentence downward under the JJA to be clear and convincing evidence, while under the SRA it is the preponderance of the evidence. However S.D.H.’s claim fails to address that the JJA’s purposes are more complex than SRA’s purpose that does not emphasize rehabilitation. Because the JJA and the SRA have entirely different purposes in sentencing, the legislature has correctly chosen the burden of proof that fits the needs of the JJA.

““The purposes underlying the juvenile system and the procedures designed to effect those purposes are significantly different from the purposes and procedures of the adult system.”” *T.C.*, 99 Wn. App. 701 at

707. “The JJA’s purposes are ‘more complex’ than the SRA’s, and the ‘critical distinction’ is that the JJA’s policy of responding to the needs of offenders is found nowhere in the adult criminal justice system.” *Id.* “The JJA ‘attempts to tread an equatorial line somewhere between the poles of rehabilitation and retribution’ while the SRA does not focus on rehabilitation and has its ‘paramount purpose’ punishment. *State v. T.C.*, 99 Wn. App. at 707. “Court interpretations of adult criminal statutes may be applied in juvenile proceedings, in the absence of language contrary, only if the purpose of the adult criminal statute is consistent with the purposes of the Juvenile Justice Act.” *Id.*

The purposes of the sentencing statutes under the JJA and the SRA are not consistent. It makes little sense to conclude that the clear and convincing evidence standard is unfair as applied to juveniles by comparing it to the SRA, which makes punishment its primary purpose. Equally important goals of the JJA are: to protect the citizenry from criminal behavior, rehabilitation, to make the juvenile accountable for his or her criminal behavior, to provide for punishment commensurate with age, crime, and criminal history, and handling juvenile offenders by communities whenever consistent with public safety. RCW 13.40.010. The JJA’s goals are equally important, yet are in tension with one another. The idea of focusing on both rehabilitation and retribution is an example

because the two theories of punishment are fundamentally different. Because each child is different, therapy may be effective for one youth while detention may be the only option to get the attention of another. With a tension in goals that does not exist with the SRA, it is rational to require a juvenile to make a showing by clear and convincing evidence that his or her sentence should be reduced. Reducing JR ranges without a showing of clear and convincing evidence runs the risk of juveniles re-offending, running away due to lack of parental supervision, or potentially harming people who would have otherwise been protected during a standard range commitment. Thus, a showing of clear and convincing evidence is rationally related to the goals of the JJA.

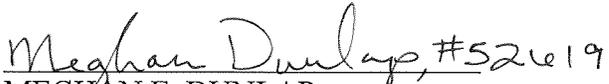
S.D.H. additionally claims the “clear and convincing” standard does not allow the trial court full judicial discretion. In a manifest injustice downward hearing, the burden is on the respondent. If he or she meets the burden of proof, the trial court judge then has full judicial discretion to determine the appropriate range for the individual. In this case, the trial court did not err because S.D.H.’s behavior was so egregious that he did not meet any of the mitigating factors. Nothing about his youth caused a mental or physical condition that significantly reduced his culpability. He was able to form a plan. Even after his peer advised him not to rob a store, he went home and reflected, and still made the decision to rob Beachway

Gas and Grocery. There is a rational basis for the clear and convincing evidence standard where the JJA and the SRA have fundamentally different purposes in sentencing. The trial court did not err by applying the appropriate standard. S.D.H.'s standard range sentence should be affirmed.

V. **CONCLUSION**

For the above stated reasons, S.D.H.'s standard range sentence should be affirmed.

Respectfully submitted this 2nd day of March, 2020.


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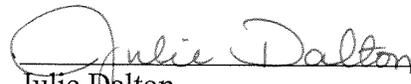
CERTIFICATE OF SERVICE

I, Julie Dalton, do hereby certify that opposing counsel listed below was served RESPONDENT'S BRIEF electronically via the Division II portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on March 2, 2020.


Julie Dalton

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

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