

FILED
Court of Appeals
Division III
State of Washington
8/20/2018 8:00 AM

Nº. 35850-0-III

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

STATE OF WASHINGTON
Respondent,

v.

Donta Campbell,
Appellant.

OPENING BRIEF OF APPELLANT

Appeal from the Superior Court of Spokane County,
Cause No. 16-8-00503-5
The Honorable Maryann C. Moreno,
Presiding Judge

Reed Speir
WSBA No. 36270
Attorney for Appellant
3800 Bridgeport Way W., Ste. A #23
(253) 722-9767

TABLE OF CONTENTS

	<u>Page</u>
A. ASSIGNMENTS OF ERROR	1
B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR	
1. Can a trial court require a juvenile offender to undergo drug and alcohol testing and comply with any recommended treatment where there is no indication in the record that the offender has any drug or alcohol issues and no indication that drugs or alcohol played any role in the offense?	1
2. If the state substantially prevails on appeal and makes a proper request for costs, should the Court of Appeals decline to impose appellate costs because Mr. Campbell is indigent, as noted in the Order of Indigency?.....	1
C. STATEMENT OF THE CASE	1
D. ARGUMENT	
1. The trial court exceeded its statutory authority when it ordered Mr. Campbell to be evaluated for alcohol or other drug dependency and comply with all treatment recommendations where there was no indication that alcohol or drugs were a contributing factor to the crime or that Mr. Campbell has any drug or alcohol related issues.	6
2. If the State substantially prevails, the Court of Appeals should decline to award any appellate costs requested.	8
E. CONCLUSION	11

TABLE OF AUTHORITIES

Page

Table of Cases

Washington Cases

State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015)..... 9, 10, 11

State v. D.H., 102 Wn.App. 620, 9 P.3d 253 (2000) 7, 8

State v. H.E.J., 102 Wn.App. 84, 9 P.3d 835 (2000)..... 8

State v. Sinclair, 192 Wn.App. 380, 367 P.3d 612 (2016) *review denied*, 185 Wn.2d 1034 (2016)..... 9, 10

State v. Skillman, 60 Wn.App. 837, 809 P.2d 756 (1991) 6

State v. Stump, 185 Wn.2d 454, 374 P.3d 89 (2016)..... 10

Other Authorities

RCW 13.40.020..... 6, 7

RAP 15.2..... 10

A. ASSIGNMENTS OF ERROR

1. The trial court exceeded its statutory sentencing authority when it ordered Mr. Campbell to undergo drug and alcohol testing and comply with all recommended treatment where there is no indication in the record that Mr. Campbell has any drug or alcohol issues and no indication that drugs or alcohol played any role in the offense.
2. The Court of Appeals should decline to impose appellate costs, should Respondent substantially prevail and request such costs.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Can a trial court require a juvenile offender to undergo drug and alcohol testing and comply with any recommended treatment where there is no indication in the record that the offender has any drug or alcohol issues and no indication that drugs or alcohol played any role in the offense? (Assignment of Error No. 1)
2. If the state substantially prevails on appeal and makes a proper request for costs, should the Court of Appeals decline to impose appellate costs because Mr. Campbell is indigent, as noted in the Order of Indigency? (Assignment of Error No. 2)

C. STATEMENT OF THE CASE

Factual and Procedural Background

In April of 2016, Crystal Huett was living in Spokane with her husband, Tim, her son, E.H., her nephew, B.D., and other family members.¹ In April of 2016, E.H. and B.D. were seven years old.² E.H. and B.D. often played with A.C. and Donta Campbell, children who lived

¹ RP 12-15, 68, 104, 108, 137, 360-361.

² RP 362-363.

next door.³ Donta Campbell was twelve years old and A.C. was the same age as E.H. and B.D.⁴ A.C. has head and heart problems.⁵

In March of 2016, E.H. and B.D. were grounded for a month after they were caught doing sexually inappropriate things with each other and with A.C.⁶ E.H. and B.D. put their penises in each other's and A.C.'s anus as well as in A.C.'s mouth.⁷ E.H. and B.D. had done this previously with each other and B.D. had taught E.H. about it.⁸ As part of the punishment, the boys were prohibited from playing with A.C. and Donta Campbell for a month.⁹ Once the grounding was over the boys again played with the neighbor children.¹⁰

One night in April of 2016, after the grounding of the boys had ended, Crystal Huett was giving B.D. a bath and speaking to him about appropriate and inappropriate kinds of touching between little boys and other people.¹¹ During this conversation, B.D. told Ms. Huett that Donta Campbell had made E.H. "suck his wiener."¹² Ms. Huett told her husband, Tim Huett, what B.D. had told her and Mr. Huett took E.H.

³ RP 361.

⁴ RP 116-117, 582-583.

⁵ RP 584.

⁶ RP 366-367, 375-377, 402-403, 422-429, 464-465, 493, 502-504, 518.

⁷ RP 422-423, 425-426.

⁸ RP 427, 504-505.

⁹ RP 366-367, 377-378.

¹⁰ RP 494.

¹¹ RP 363-364.

¹² RP 363, 464.

upstairs and spoke with him about B.D.'s allegation.¹³ E.H. also said that Donta Campbell had made E.H. put Mr. Campbell's penis in his mouth.¹⁴

Mr. Huett went next door and confronted Melody Campbell, Donta Campbell's mother, then returned home and called police.¹⁵ Police responded and spoke with the Huetts and Mr. Campbell's parents.¹⁶

Several days after B.D. reported the alleged abuse of E.H. by Mr. Campbell, B.D. told Ms. Huett that Mr. Campbell had "done the same thing" to him.¹⁷

B.D. and E.H. were forensically interviewed by Karen Winston on May 19, 2016.¹⁸ B.D. and E.H. both stated that Mr. Campbell had made them suck his penis.¹⁹ E.H. indicated that it only happened one time and Mr. Campbell made E.H. suck Mr. Campbell's penis while they were outside next to Mr. Campbell's house.²⁰ B.D. stated that the alleged abuse of both he and E.H. occurred only one time and happened in Mr. Campbell's bedroom.²¹

On June 27, 2016 the State charged Mr. Campbell with two counts of rape of a child in the first degree and two counts of child molestation in

¹³ RP 402, 495-496.

¹⁴ RP 495.

¹⁵ RP 364-365, 497-498.

¹⁶ RP 345-348, 498.

¹⁷ RP 464.

¹⁸ RP 525-528.

¹⁹ RP 537-538, 545.

²⁰ RP 537-538, 559-560, 562.

²¹ RP 545, 558-559.

the first, one count of each crime for B.D. and one count of each crime for E.H.²²

On July 20, 2016, the trial proceedings were stayed until September 20, 2016, pending a competency evaluation of Mr. Campbell.²³ On September 21, 2016, the proceedings were stayed until November 1, 2016, again to allow a competency evaluation of Mr. Campbell.²⁴

On November 1, 2016, the trial court entered an order lifting the stay of proceedings and finding Mr. Campbell competent.²⁵ Arraignment was scheduled for November 15, 2016.²⁶

On November 17, 2016, the State filed notice that it would seek to introduce the hearsay statements of E.H. and B.D. pursuant to RCW 9A.44.120.²⁷

After numerous continuances,²⁸ on October 23 and October 24, 2017 a hearing was held to determine the admissibility under the child hearsay statute, RCW 9A.44.120, of various hearsay statements made by E.H. and B.D.²⁹ At the close of the hearing, the trial court identified five of statements made by E.H. and B.D. which might be admissible under

²² CP 1-2.

²³ CP 10.

²⁴ CP 13.

²⁵ CP 14.

²⁶ CP 14.

²⁷ CP 16-19.

²⁸ CP 114-132.

²⁹ RP 8-305.

RCW 9A.44.120: (1) B.D.'s initial statements to Ms. Huett in the bathtub; (2) B.D.'s later statement that the same thing that happened to E.H. happened to him; (3) E.H.'s statements to Mr. Huett; (4) B.D.'s statements to Ms. Winston; and (5) E.H.'s statements to Ms. Winston.³⁰

The trial court ruled that B.D.'s initial statement to Ms. Huett was not admissible under RCW 9A.44.120 because it described abuse to a different person.³¹ The trial court held that B.D.'s second statement that the same thing happened to him was not reliable enough to be admitted under RCW 9A.44.120.³² The trial court ruled that E.H.'s statements to Mr. Huett and E.H.'s and B.D.'s statements to Ms. Winston were admissible under RCW 9A.44.120.³³

Following the adjudicative hearing, the court found Mr. Campbell not guilty of the charges of rape and child molestation involving B.D. but guilty of rape of a child in the first degree in relation to E.H.³⁴

Notice of Appeal was filed on January 31, 2018.³⁵

³⁰ RP 300

³¹ RP 300.

³² RP 300-303.

³³ CP 168-171; RP 303-305.

³⁴ CP 180; RP 672-673.

³⁵ CP 190-202.

D. ARGUMENT

- 1. The trial court exceeded its statutory authority when it ordered Mr. Campbell to be evaluated for alcohol or other drug dependency and comply with all treatment recommendations where there was no indication that alcohol or drugs were a contributing factor to the crime or that Mr. Campbell has any drug or alcohol related issues.**

The trial court ordered Mr. Campbell to serve 24 months of community supervision³⁶ and imposed as a condition of that community supervision the requirement that Mr. Campbell “be evaluated for alcohol or other drug dependency at the direction of the probation counselor and shall comply with all treatment recommendations.”³⁷

A court's sentencing authority is limited to that granted by statute.³⁸ RCW 13.40.020(5) permits a sentencing court to order a juvenile convicted of first degree rape of a child to serve up to two years community supervision. In addition to the mandatory conditions that the juvenile refrain from committing new offenses, attend school, and inform the school of the requirements, “[c]ommunity supervision is ‘an individualized program comprised of one or more of the following: (a) [c]ommunity-based sanctions; (b) [c]ommunity-based rehabilitation; (c) [m]onitoring and reporting requirements; (d) [p]osting of a probation

³⁶ CP 156.

³⁷ CP 158.

³⁸ *State v. Skillman*, 60 Wn.App. 837, 838, 809 P.2d 756 (1991).

bond.”³⁹

“The juvenile court has broad discretion to fashion an individualized rehabilitative disposition that includes a broad range of community supervision conditions.”⁴⁰

“Community-based rehabilitation” is defined as:

Employment; attendance of information classes; literacy classes; counseling, outpatient substance abuse treatment programs, outpatient mental health programs, anger management classes, education or outpatient treatment programs to prevent animal cruelty, or other services including, when appropriate, restorative justice programs; or attendance at school or other educational programs appropriate for the juvenile as determined by the school district.⁴¹

Monitoring and reporting requirements are broadly defined to include:

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.⁴²

Community supervision, however, must be individualized, and a disposition should be tailored to meet the juvenile's specific needs.⁴³ In

³⁹ RCW 13.40.020(5).

⁴⁰ *State v. D.H.*, 102 Wn.App. 620, 629, 9 P.3d 253 (2000).

⁴¹ RCW 13.40.020(2).

⁴² RCW 13.40.020(20).

⁴³ *State v. H.E.J.*, 102 Wn. App. 84, 87, 9 P.3d 835 (2000).

H.E.J., the court suggests there must be a nexus between conditions of community supervision and the underlying offense. The juvenile court "retains discretion to tailor the disposition to meet the needs of the juvenile and the rehabilitative and accountability goals of the juvenile code."⁴⁴

Here, the court's order requiring Mr. Campbell to obtain a drug/alcohol evaluation and follow any treatment recommendation if requested by the probation officer is not tailored to meet Mr. Campbell's specific needs. There is no indication in the record that Mr. Campbell has any drug or alcohol issues and no indication that drugs or alcohol played any role in the offense. Because this condition is not tailored to meet Mr. Campbell's specific needs, it should be stricken from his disposition.

2. If the State substantially prevails, the Court of Appeals should decline to award any appellate costs requested.

At this point in the appellate process, the Court of Appeals has yet to issue a decision terminating review. Neither the state nor the appellant can be characterized as the substantially prevailing party. Nonetheless, the Court of Appeals has indicated that indigent appellants must object in advance to any cost bill that might eventually be filed by the state, should

⁴⁴ *H.E.J.*, 102 Wn. App. at 87 (quotation omitted). See also *State v. D.H.*, 102 Wn. App. 620, 629, 9 P.3d 253 (2000), *review denied*, 142 Wn.2d 1025 (2001) (juvenile court has considerable discretion to fashion individualized rehabilitative disposition including a broad range of community supervision conditions).

it substantially prevail.⁴⁵ Pursuant to the General Court Order dated June 10, 2016 and Title 17 of the Rules on Appeal, Mr. Campbell respectfully requests that due to his continued indigency, the court should decline to impose appellate costs in the event he does not prevail. His report as to continued indigency will be filed shortly after this brief.

In *State v. Blazina*, 182 Wn.2d 827, 835, 344 P.3d 680 (2015), the Washington Supreme Court responded to growing national attention to the societal burdens associated with imposing unpayable legal financial obligations on indigent defendants, including "increased difficulty in reentering society, the doubtful recoupment of money by the government, and inequities in administration." Under Washington's system, unpaid obligations accrue interest at 12% per annum and can be subject to collection fees, creating the perverse outcome that impoverished defendants who pay only \$25 per month toward their obligations will, on average, owe more after ten years than at the time of the initial assessment.⁴⁶ As a result, unpaid financial obligations can become a burden on gaining (and keeping) employment, housing, and credit rating, and increase the chances of recidivism.⁴⁷

⁴⁵ *State v. Sinclair*, 192 Wn.App. 380, 385-394, 367 P.3d 612 (2016) *review denied*, 185 Wn.2d 1034 (2016).

⁴⁶ *Blazina*, 182 Wn.2d at 836.

⁴⁷ *Blazina*, 182 Wn.2d at 837.

Appellate costs are “indisputably” discretionary in nature.⁴⁸ The concerns identified by the Supreme Court in *Blazina* apply with equal force to this court’s discretionary decisions on appellate costs. Furthermore, “[t]he future availability of a remission hearing in a trial court cannot displace [the Court of Appeals’] obligation to exercise discretion when properly requested to do so.”⁴⁹

The Court of Appeals has recognized that in the absence of information from the State showing a change in the appellant's financial circumstances, an award of appellate costs on an indigent appellant may not be appropriate.⁵⁰ Once an appellant is found indigent, the presumption of indigence continues throughout review.⁵¹ The Supreme Court has additionally recognized that application of RAP 14.2 should "allocate appellate costs in a fair and equitable manner depending on the realities of the case."⁵²

Lastly, the Washington Supreme Court recently amended RAP 14.2 to provide that costs should not be imposed if the commissioner determines the offender does not have the current or likely future ability to pay such costs. When the offender has been found indigent for appeal, that

⁴⁸ *Sinclair*, 192 Wn.App. at 388.

⁴⁹ *Sinclair*, 192 Wn.App. at 388

⁵⁰ *Sinclair*, 192 Wn. App. at 393.

⁵¹ RAP 15.2(f).

⁵² *State v. Stump*, 185 Wn.2d 454, 461, 374 P.3d 89 (2016).

presumption continues unless the commissioner determines that the offender's financial circumstances have significantly improved since the last determination of indigency. Because Mr. Campbell has been found indigent for this appeal, it is presumed he is unable to pay an appellate cost award unless the State presents evidence of a significant improvement in his financial condition.

The trial court determined that D.C. is indigent for purposes of this appeal.⁵³ There is no reason to believe that status will change. The *Blazina* court indicated that courts should “seriously question” the ability of a person who meets the GR 34 standard for indigency to pay discretionary legal financial obligations.⁵⁴

Under these circumstances, this court should exercise its discretion under RAP 14.2 to decline to impose appellate costs. Mr. Campbell has been found indigent and has complied with this court's General Order. Under the *Sinclair* standard as well as revised RAP 14.2, an appellate cost award is inappropriate in this case.

E. CONCLUSION

The trial court exceeded its authority in ordering Mr. Campbell undergo drug and alcohol evaluations and comply with any recommended treatment where there is no indication in the record that Mr. Campbell has

⁵³ CP 188-189.

⁵⁴ *Blazina*, 182 Wn.2d at 839.

any drug or alcohol issues and no indication that drugs or alcohol played any role in the offense.

This court should vacate the portions of Mr. Campbell's disposition order that requires him to undergo drug and alcohol evaluations and to comply with any recommended treatment

DATED this 20th day of August, 2018.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Reed Speir", is written above a horizontal line.

Reed Speir, WSBA No. 36270
Attorney for Appellant

CERTIFICATE OF SERVICE

Reed Speir hereby certifies under penalty of perjury under the laws of the State of Washington that on the 20th day of January, 2018, I delivered a true and correct copy of the Brief of Appellant to which this certificate is attached by United States Mail, to the following:

Brian Clayton O'Brien
Spokane County Prosecutors Office
1100 W. Mallon Ave.
Spokane, WA 99260-2043

And to:

Mr. Donta Campbell,
C/O Jamel Carlton
832 E. 11th
Spokane, WA 99202

Signed at Tacoma, Washington this 20th day of August, 2018.



Reed Speir, WSBA No. 36270

LAW OFFICE OF REED SPEIR

August 18, 2018 - 11:10 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35850-0
Appellate Court Case Title: State of Washington v. Donta William Campbell
Superior Court Case Number: 16-8-00503-5

The following documents have been uploaded:

- 358500_Briefs_20180818110959D3290442_7130.pdf
This File Contains:
Briefs - Appellants
The Original File Name was CAMPBELLOpeningBrief.pdf

A copy of the uploaded files will be sent to:

- bobrien@spokanecounty.org
- sapaappeals@spokanecounty.org

Comments:

Sender Name: Reed Speir - Email: reedspeirlaw@seanet.com

Address:

3800 BRIDGEPORT WAY W STE A23
UNIVERSITY PLACE, WA, 98466-4495

Phone: 253-722-9767

Note: The Filing Id is 20180818110959D3290442