

FILED
COURT OF APPEALS

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STATE OF WASHINGTON

BY: *[Signature]*
DEPUTY

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

JACOB L.T. MINOR,

Appellant.

COURT OF APPEALS
NO. 33193-4-II

MOTION FOR
ACCELERATED REVIEW

A. IDENTITY OF MOVING PARTY

The moving party is Jacob Minor, a minor, who was convicted by the court below of Unlawful Possession of a Firearm in the First Degree and received a manifest injustice disposition above the standard range.

B. THE OFFENSE IN THE JUVENILE PROCEEDING

Unlawful Possession of a Firearm in the First Degree.

C. THE DISPOSITION OF THE TRIAL COURT

Manifest Injustice of 190 to 238 weeks' commitment to the

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PM 6-30-05

Juvenile Rehabilitation Administration [JRA].

D. THE STANDARD RANGE FOR THE OFFENSE

15 to 36 weeks.

E. STATEMENT OF THE DISPOSITION URGED BY THE MOVING PARTY

Reversal of the adjudication of commitment of the offense or, in the alternative, disposition within the range of 15 to 36 weeks.

F. ASSIGNMENTS OF ERROR

1. The trial court erred in finding the Appellant committed the offense of first degree unlawful possession of a firearm.

2. The trial court judge erred in entering the following Finding of Fact:

[X] Respondent was found guilty at an adjudicatory hearing of: Count II UPSFR1 Committed on or about 09-30-04.

3. The trial court judge erred in imposing a manifest injustice disposition of 190 to 238 weeks' commitment to the Department of Social and Health Services, Juvenile Rehabilitation Administration.

4. The trial court judge erred in entering the following Findings of Fact regarding Manifest Injustice, entered April 5, 2005:

- [X] A sentence within the standard range constitutes a manifest injustice (RCW 13.40.020).
- [X] The following aggravating factors exist in this case:
 - [X] The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement.
 - [X] There are other complaints which [sic] have resulted in diversion or a finding or plea of guilty which [sic] are not included as criminal history; and
 - [X] The standard range disposition is clearly too lenient considering the seriousness of the juvenile's prior adjudications.
 - [X] Other: Jacob is a continuing threat to the community & himself. Jacob is in need of more substance abuse counseling.

5. The trial court erred in imposing the following
Conclusions of Law:

- [X] Respondent is guilty of the offense(s) as stated in the finding.
- [X] A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).

6. The Manifest Injustice disposition of 190 to 238 weeks is clearly excessive.

7. The portion of RCW 13.40.160 that promulgates a disposition in excess of the standard range in juvenile cases is unconstitutional on its face and as applied in this case.

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8. The trial court erred in imposing an exceptional sentence based on facts that were not proved to the finder of fact beyond a reasonable doubt, in violation of the Appellant's right to due process under the 14th Amendment of the United States Constitution and contrary to *State v. Hughes* and *Blakely v. Washington*?

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Can a Respondent be convicted of first degree unlawful possession of a firearm where a 2003 Order on Adjudication and Disposition finding the Appellant committed Residential Burglary in which a section giving notice that it was unlawful for the Appellant to own or possess firearms following the adjudication of guilt was not marked or "checked"? Assignments of Error No. 1 and 2.

2. Was the Appellant denied due process where he was adjudicated guilty of first degree unlawful possession of a firearm in 2003, and where the Order on Adjudication and Disposition entered by the predicate-offense court contained "check" marks by those sentences or clauses that the court imposed, and where the section pertaining to the ineligibility of the Appellant to possess or own firearms was not marked? Assignments of Error No. 1, 2, and 5.

3. Was the Appellant prejudiced by the failure of the predicate-offense court to notify him in writing, as required by RCW 9.41.047, of his ineligibility to own or possess firearms? Assignments of Error No. 1, 2, and 5.

4. Did the lower court judge err in finding and concluding that the Appellant is a threat to himself and the community, and that he needed substance abuse counselling in support of its imposition of a manifest injustice disposition, where the Appellant's offense was nonviolent and where the record contains no nexus between the length of commitment imposed and the court's assessment of the continuing need for treatment? Assignments of Error No. 3, 4, and 5.

5. Was a disposition of 190 to 238 weeks clearly excessive in light of the minimal aggravating factors presented at the disposition hearing and the availability of an adequate remedy of 15 to 36 weeks' commitment? Assignment of Error No. 5 and 6.

6. Is RCW 13.34.160, which authorizes an exceptional sentence for juvenile offenders, unconstitutional under the Fourteenth Amendment guarantee that all elements of an offense must be found by a finder of fact beyond a reasonable doubt, where the trial court imposed a manifest injustice disposition? Assignments of Error No. 7 and 8.

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7. Do the holdings of *State v. Hughes* and *Blakely v. Washington* apply to a juvenile court cases in which the trial court has imposed a manifest injustice disposition? Assignments of Error No. 7 and 8.

C. STATEMENT OF THE CASE

1. Procedural Facts:

Jacob Minor, who was born October 13, 1988, was charged by Information filed in the Juvenile Division of the Mason County Superior Court on January 24, 2005, with two counts of unlawful possession of a firearm in the first degree.¹ Clerk's Paper's [CP] at 1-3. The State alleged

¹RCW 9A.10.040 provides:

(1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section, or any of the following crimes when committed by one family or household member against another, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or

violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

(ii) After having previously been involuntarily committed for mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

(iii) If the person is under eighteen years of age, except as provided in RCW 9.41.042; and/or

(iv) If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010.

(b) Unlawful possession of a firearm in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted", whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted, or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-fact-finding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington State. A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4) Notwithstanding subsection (1) or (2) of this section, a person convicted of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401 and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction. Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the

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in Count 2 that during the spring or summer of 2004, Jacob, having previously been convicted of residential burglary, knowingly owned or

individual may petition a court of record to have his or her right to possess a firearm restored:

(a) Under RCW 9.41.047; and/or

(b)(i) If the conviction was for a felony offense, after five or more consecutive years in the community without being convicted or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

(ii) If the conviction was for a nonfelony offense, after three or more consecutive years in the community without being convicted or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under > RCW 9.94A.525 and the individual has completed all conditions of the sentence.

(5) In addition to any other penalty provided for by law, if a person under the age of eighteen years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within twenty-four hours and the person's privilege to drive shall be revoked under RCW 46.20.265.

(6) Nothing in chapter 129, Laws of 1995 shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense.

had in his possession a .38 caliber revolver, and that this occurred at a trailer located on Rain Street in Ocean Shores, Washington. CP at 1-2. The State alleged in Count 1 that Jacob had a black revolver in his possession at a residence in Ocean Shores in the period between September 1, 2004 to October 31, 2004. CP at 1. Count 1 was severed through a continuance on March 24, 2005, and ultimately dismissed without prejudice by the State. Report of Proceedings [RP] at 3, 21-22.

The case was tried to the Honorable Gordon Godfrey on March 24, 2005, who found Jacob committed the offense as charged. RP at 3-21.

2. Testimony from the Fact-Finding Hearing:

Count 1 was continued pursuant to the State's request due to the absence of a subpoenaed witness. RP at 3. The count was subsequently dismissed without prejudice on April 5, 2005. CP at 25. The fact-finding proceeded regarding Count 2 on March 24, 2005.

Ocean Shores police officer Christian Iversen received a complaint from a citizen² that a pistol had been stolen from him. RP at 4. Officer Iversen testified that he subsequently obtained a statement from Katie Robinson that she saw Jacob Minor in possession of a handgun. RP at 5.

²Only identified in the record as "Mr. Frost." RP at 4.

Robinson, who was under arrest for an unrelated matter, told Officer Iversen while at the Ocean Shores Police Department that she had seen Jacob in possession of a handgun sometime between spring and fall, 2004. RP at 6, 11. Robinson, age 21, testified that she saw Jacob with a .38 pistol, which she stated was “fully loaded,” during a party at a trailer in Ocean Shores. RP at 7, 8, 9. She testified that this incident occurred “between spring and fall” in 2004. RP at 7. She testified that the gun was “definitely real” and not a toy, had a “spin thing in the middle,” and “every hole had a bullet in it.” RP at 8. She stated, without objection, that Jacob told her not to talk about the alleged incident involving the gun. RP at 9, 10.

The State entered as Exhibit 1 a certified copy of Order on Adjudication and Disposition dated November 6, 2003, in which Jacob was adjudicated guilty of residential burglary. CP at 16; Appendix A-1 through A-7.

Jacob Minor, age 16, denied possessing a gun and denied showing a gun to Robinson. RP at 14-15, 16. He also denied telling Robinson to lie or not to testify. RP at 15.

Jacob acknowledged in response to questioning by the trial court that he was previously convicted of multiple offenses. RP at 17. He said

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that he had not been told that as a convicted felon he could not possess a firearm. RP at 17-18.

3. Ruling:

The juvenile court ruled that Jacob committed first degree unlawful possession of a firearm. RP at 19-20.

4. Disposition hearing:

The matter came on for disposition on April 5, 2005 before Judge Godfrey. Based on his criminal history, Jacob faced a standard range of 15 to 36 weeks in the custody of the Juvenile Rehabilitation Administration [JRA]. RP at 25. The state agreed to dismiss without prejudice the previously-continued first count of unlawful possession of a firearm. RP at 22.

The Juvenile Rehabilitation Administration probation officer prepared a Predisposition Investigative Report, filed March 30, 2005. CP at 20-24. Appendix B-1 through B-4. Jacob was granted a diversion in his first three offenses, which date back to June 2000. CP at 21. He was granted a Chemical Dependency Dispositional Alternative [CDDA] in the Juvenile Division of the Pierce County Superior Court on August 7, 2002. CP at 21; RP at 22. The CDDA was revoked on September 23, 2002 and

he was committed to JRA in November, 2003 pursuant to a 26-week manifest injustice disposition that was previously suspended. CP at 21.

Jacob was later committed to the JRA pursuant to a conviction for residential burglary in Grays Harbor County cause number 03-8-00453-5. He received a manifest injustice disposition of 30 to 40 weeks. CP at 21. Appendix A-1

In the instant case, the JRA representative recommended a manifest injustice disposition of 60 weeks. RP at 23. Jacob's defense counsel recommended a standard range of 15 to 36 weeks. RP at 25. Jacob was given an opportunity to address the court. He denied the contention that he got in trouble "all the time." RP at 26.

Judge Godfrey announced that "[h]is sentence will be as much as I can give him, so if that's 52, that's it. If it's till he's 21, that's it." RP at 30. The disposition was 190 weeks to 238 weeks. CP at 29. Appendix C-1. He received credit for 60 days served in detention. CP at 29. Appendix C-1 through C-8.

The court entered the following Findings of Fact and Conclusions of Law:

II. FINDINGS OF FACT

[X] Respondent was found guilty at an adjudicatory

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hearing of: Count II UPSFR1 Committed on or about 09-30-04.

- [X] Respondent's offender score is 2.25, which is based upon his/her criminal history.
- [X] The court considered the respondent's eligibility for the chemical dependency disposition alternative.
- [X] A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).
- [X] The following aggravating factors exist in this case:
 - [X] The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement.
 - [X] There are other complaints which [sic] have resulted in diversion or a finding or plea of guilty which [sic] are not included as criminal history; and
 - [X] The standard range disposition is clearly too lenient considering the seriousness of the juvenile's prior adjudications.
- [X] Other: Jacob is a continuing threat to the community & himself. Jacob is in need of more substance abuse counseling.

III. CONCLUSIONS OF LAW

- [X] Respondent is guilty of the offense(s) as stated in the finding.
- [X] A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).

CP at 26-33; Appendix C-1 through C-8.

Jacob appeals from the adjudication for first degree unlawful possession of a firearm and the manifest injustice disposition. He timely filed Notice of Appeal. Supplemental Clerk's Paper at 1.

D. ARGUMENT

1. **RCW 9.41.047 REQUIRES THAT WHEN A RESPONDENT IS ADJUDICATED GUILTY OF AN OFFENSE THAT MAKES HIM INELIGIBLE TO POSSESS A FIREARM AND THE PREDICATE-OFFENSE COURT FAILS TO PROVIDE WRITTEN NOTICE THAT POSSESSION OF FIREARM IS UNLAWFUL, A SUBSEQUENT CONVICTION MUST BE REVERSED**

- a. **The trial court failed to advise Minor in writing that it was unlawful for him to possess a firearm at the time of disposition in the predicate offense**

Jacob Minor was convicted by plea of one count of residential burglary in Grays Harbor County Superior Court Cause Number 03-8-00453-5. An Order of Adjudication was entered November 6, 2003. Exhibit 1; Appendix A-1.

In 1994, the legislature amended RCW 9.41.040 to provide that both adults and juveniles who had previously been convicted of a "serious offense" were prohibited from possessing any firearm. Laws of 1994, 1st Sp. Sess., ch. 7, § 402. RCW 9.41.040(1) (a) provides:

A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted in this state or elsewhere of any serious offense as defined in this chapter.

RCW 9.41.010(12) includes residential burglary as a "serious offense."³

³"Serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

- (a) Any crime of violence;
- (b) Any felony violation of the uniform controlled substances act, chapter 69.50 RCW, that is classified as a class B felony or that has a maximum term of imprisonment of at least ten years;
- (c) Child molestation in the second degree;
- (d) Incest when committed against a child under age fourteen;
- (e) Indecent liberties;
- (f) Leading organized crime;
- (g) Promoting prostitution in the first degree;
- (h) Rape in the third degree;
- (i) Drive-by shooting;
- (j) Sexual exploitation;
- (k) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;
- (l) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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Also in 1994, the legislature enacted RCW 9.41.047.⁴ Laws of 1994, 1st Sp. Sess., ch. 7, § 404. The statute requires the court to give the

(m) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under RCW 9.94.303;

(n) Any other felony with a deadly weapon verdict under RCW 9.94A.602; or

(o) Any felony offense in effect at any time prior to June 6, 1996, that is comparable to a serious offense, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious offense.

9.41.047 provides:

(1) At the time a person is convicted of an offense making the person ineligible to possess a firearm, or at the time a person is committed by court order under RCW 71.05.320, 71.34.090, or chapter 10.77 RCW for mental health treatment, the convicting or committing court shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record.

The convicting or committing court also shall forward a copy of the person's driver's license or identicard, or comparable information, to the department of licensing, along with the date of conviction or commitment.

(2) Upon receipt of the information provided for by subsection (1) of this section, the department of licensing shall determine if the convicted or committed person has a concealed pistol license. If the person does have a concealed pistol license, the department of licensing shall immediately notify the license-issuing authority which, upon receipt of such notification, shall immediately revoke the license.

(3)(a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or equivalent statutes of another jurisdiction may, upon discharge, petition a court of record to have his or her right to possess a firearm restored. At the time of commitment, the court shall specifically state to the person that he or she is barred from possession of firearms.

(b) The secretary of social and health services shall develop appropriate rules to create an approval process under this subsection. The rules must provide for the restoration of the right to possess a firearm upon a showing in a court of competent

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person who has been convicted of a crime that made him or her ineligible to possess a firearm both oral and written notice that he or she may not possess a firearm unless the right to do so is restored by the court. RCW 9.41.047. RCW 9.41.047(1) provides in pertinent part:

At the time a person is convicted of an offense making the person ineligible to possess a firearm, the convicting court shall notify the person, **orally and in writing**, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record.

RCW 9.41.047(1) (emphasis added.)

Conviction for residential burglary falls within the classes of crimes for which the Legislature has prohibited firearm possession. RCW 9.41.040(1)(b)(i). After Jacob was convicted of residential burglary, RCW 9.41.047(1) required the sentencing court to advise him both orally **and in writing** that he could no longer possess a firearm. In jACOB's predicate offense, the Order on Adjudication and Disposition was entered

jurisdiction that the person is no longer required to participate in an inpatient or outpatient treatment program, is no longer required to take medication to treat any condition related to the commitment, and does not present a substantial danger to himself or herself, others, or the public. Unlawful possession of a firearm under this subsection shall be punished as a class C felony under chapter 9A.20 RCW.

(c) A person petitioning the court under this subsection (3) shall bear the burden of proving by a preponderance of the evidence that the circumstances resulting in the commitment no longer exist and are not reasonably likely to recur.

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November 6, 2003. Exhibit 1. Appendix A-1. The Order on Adjudication and Disposition is a pre-prepared standard form presented by a Grays Harbor County Deputy prosecuting attorney. To the left side of each provision or clause in the form are brackets that appear as “[].” Some of the brackets are interlineated with a manuscript “X”, denoting those provisions that the court imposed on Jacob at disposition. Appendix A-1, A-2, A-4, A-5, A-6, A-7. At page 7 the Order on Adjudication and Disposition provides:

4.18 [] FELONY FIREARM PROHIBITION: Respondent shall not use or possess firearm, ammunition or other dangerous weapon until his or her right to do so is restored by a court of record. The court clerk is directed to immediately forward a copy of the respondent’s driver’s license or identicard, or comparable information, along with the date of conviction, to the Department of Licensing. RCW 9.41.047

Exhibit 1; Appendix A-7.

Section 4.18 is not marked with an “[X]” on nor otherwise denoted as applicable to Jacob.

The record is silent as whether the court advised Jacob orally at disposition on November 6, 2003, that he could not possess a firearm. Inasmuch as the statute explicitly requires both verbal and written advisement, however, whether he was advised orally at the time of disposition is moot: the statute requires both forms of notice.

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Jacob testified that he was not aware that as a felon he was not permitted to have a firearm. RP at 17. In his ruling, Judge Godfrey noted that ignorance of the law is not an excuse that prevents a respondent from being guilty of an offence. RP at 19. Washington case law provides that knowledge of the illegality of firearm possession is not an element of the crime. Rather, the State must prove only that the defendant knew he possessed the firearm. *State v. Semakula*, 88 Wn. App. 719, 726, 946 P.2d 795 (1997), *review denied* 134 Wn.2d 1022, 958 P.2d 317 (1998).

Although ignorance of the law is generally not a defense, this Court held that a narrowly-defined class of cases has determined that affirmative, misleading information from a governmental entity is a violation of due process. *State v. Leavitt*, 107 Wn. App. 361, 371, 27 P.3d 622 (2001).

b. Failure of the predicate-offense court to advise Jacob in writing that he is unable to lawfully possess firearms mandates reversal under *Leavitt*

In *Leavitt*, the sentencing court for the underlying predicate conviction failed to give the defendant the statutorily required notice prohibiting firearm possession beyond a one-year probation period. The court, through its words and actions, misled the defendant into believing that any restriction on firearm possession was limited to his one-year

probationary period. The Court held that Leavitt's subsequent conviction for illegal possession of firearms violated due process. *Id.* at 371, 27 P.3d 622.

This Court held in *Levitt*:

We agree with *Miller* that the "ignorance of the law" axiom should not automatically apply to *malum prohibitum*, such as unlawful firearm possession, in those instances where the predicate sentencing court has failed to follow the law requiring it to advise the defendant that he may no longer possess firearms. The *Miller* court referenced the United States Supreme Court's decision in *Raley*, 360 U.S. 423, 79 S.Ct. 1257, 3 L.Ed.2d 1344, which found that a governmental commission's representations to *Raley* were legally erroneous and "active[ly] misleading," especially because the commission was "the voice of the State most presently speaking to the [defendants]." *Miller*, 492 S.E.2d at 486, *citing Raley*, 360 U.S. at 438-39, 79 S.Ct. 1257. Similarly, here, the predicate sentencing court was the "voice of the State" speaking to Leavitt, or failing to speak to Leavitt, about the constraints on his ability to possess firearms. The 1998 sentencing court had the authority and issued a written order that was binding upon Leavitt. Leavitt relied in reasonable good faith upon the terms of the written order.

Leavitt, at 365.

c. Jacob Minor was prejudiced by the failure of the predicate-conviction court to provide written notice of his ineligibility to possess firearms

As was the case in *Leavitt*, the predicate-conviction court did not make express "affirmative assurances" that he could have a firearm. In

both cases the predicate-conviction court failed to advise the respondent (or defendant in Leavitt's case) that he lost his right to possess firearms for an indefinite period as required by statute. In *Leavitt*, the lower court gave Leavitt written notice of an apparently one-year firearm-possession restriction, and did not seize Leavitt's concealed weapon permit. *Leavitt*, at 366.

Unlike the facts of *State v. Blum*, 121 Wn.App. 1, 85 P.3d 373(2004), the failure of the predicate-offense court to notify Jacob in writing of the firearm prohibit constituted a denial of due process. Moreover, Jacob was prejudiced by the court's omission, as evidenced by his testimony that he was unaware that he could not possess a firearm following his 2003 residential burglary conviction. The court's failure to mark Section 4.18 of the Order on Adjudication misled Jacob concerning his right to possess firearms. *Blum* is inapposite in that Blum made no claim that he was misled about his right to possess a firearm.

Just as was the case in *Leavitt*, Jacob submits that the failure of the predicate-sentencing court to advise him in writing of his ineligibility to own or possess firearms under RCW 9.41.047 constitutes a violation of due process, and that he was prejudiced by the court's failure to comply with the statute's mandate to advise him about the statutory firearm-

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possession prohibition. Therefore, as this court held in *Leavitt*, “RCW 9.41.047 cannot serve as the basis for convicting him of unlawful firearm possession.” *Leavitt*, at 366. This Court holds that “where a defendant can demonstrate actual prejudice arising from a sentencing court's failure to comply with the statute's mandate to advise him about the statutory firearm-possession prohibition, RCW 9.41.047 cannot serve as the basis for convicting him of unlawful firearm possession.”

Under *Leavitt*, this Court must reverse Jacob’s conviction for first degree unlawful possession of a firearm. The Appellant urges this Court to follow its holding in *Leavitt*.

2. **THE TRIAL COURT ERRED BY MAKING THE FINDINGS THAT THE STANDARD RANGE DISPOSITION IS CLEARLY TOO LENIENT CONSIDERING THE SERIOUSNESS OF THE APPELLANT’S PRIOR ADJUDICATIONS THAT THE APPELLANT IS A CONTINUING THREAT TO COMMUNITY AND HIMSELF, AND THAT HE IS NEED OF MORE SUBSTANCE ABUSE COUNSELING SUCH THAT A DISPOSITION WITHIN THE STANDARD RANGE WOULD CREATE A MANIFEST INJUSTICE ARE NOT SUPPORTED BY THE RECORD**

In a juvenile case, disposition outside the standard range may be imposed only if the trial court concludes that a standard range disposition

would effectuate a manifest injustice. RCW 13.40.160(2).⁵ “‘Manifest injustice’ means a disposition that would impose a serious and clear danger to society in light of the purposes of [the Juvenile Justice Act of 1977.]” RCW 13.40.020(17).

Under RCW 13.40.160(2), the juvenile court may impose a disposition in excess of the standard range only when the court determines that the imposition of a standard range would constitute a manifest injustice.

If the standard range sentence imposes a “serious, and clear danger to society,” then manifest injustice results. RCW 13.40.020(17). A

⁵ RCW 13.40.160 provides in relevant part:

(1) The standard range disposition for a juvenile adjudicated of an offense is determined according to RCW 13.40.0357. (a) When the court sentences an offender to a local sanction as provided in RCW 13.40.0357 option A, the court shall impose a determinate disposition within the standard ranges, except as provided in subsection (2), (3), (4), (5), or (6) of this section. The disposition may be comprised of one or more local sanctions. (b) When the court sentences an offender to a standard range as provided in RCW 13.40.0357 option A that includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement, except as provided in subsection (2), (3), (4), (5), or (6) of this section.

(2) If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option D of RCW 13.40.0357. The court’s finding of manifest injustice shall be supported by clear and convincing evidence. A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230 by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230.

finding that a disposition within a standard range would effectuate a manifest injustice, however, vests the juvenile court “‘with broad discretion’ in determining the appropriate sentence to impose.” *State v. B.E.W.*, 65 Wn. App. 370, 375, 828 P.2d 87 (1992) (quoting *State v. Taulala*, 54 Wn.App. 81, 86, 771 P.2d 1188, *review denied*, 113 Wn.2d 1007, 779 P.2d 727 (1989)).

When a juvenile appeals a manifest injustice disposition over the standard range, the appellate court may uphold the disposition only if three conditions are satisfied. RCW 13.40.230(2)⁶ denotes the three factors to

⁶RCW 13.40.230 provides:

- 1) Dispositions reviewed pursuant to RCW 13.40.160 shall be reviewed in the appropriate division of the court of appeals. An appeal under this section shall be heard solely upon the record that was before the disposition court. No written briefs may be required, and the appeal shall be heard within thirty days following the date of sentencing and a decision rendered within fifteen days following the argument. The supreme court shall promulgate any necessary rules to effectuate the purposes of this section.
- (2) To uphold a disposition outside the standard range, the court of appeals must find (a) that the reasons supplied by the disposition judge are supported by the record which was before the judge and that those reasons clearly and convincingly support the conclusion that a disposition within the range would constitute a manifest injustice, and (b) that the sentence imposed was neither clearly excessive nor clearly too lenient.
- (3) If the court does not find subsection (2)(a) of this section it shall remand the case for disposition within the standard range.
- (4) If the court finds subsection (2)(a) but not subsection (2)(b) of this section it shall remand the case with instructions for further proceedings consistent with the provisions of this chapter.
- (5) The disposition court may impose conditions on release pending appeal as provided in RCW 13.40.040(4) and 13.40.050(6).
- (6) Appeal of a disposition under this section does not affect the finality or appeal of the underlying adjudication of guilt.

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be used by the Appellate Court in reviewing a juvenile disposition order outside the standard range:

To uphold a disposition outside the standard range, the court of appeals must find (a) that the reasons supplied by the disposition judge are supported by the record which was before the judge and that those reasons clearly and convincing support the conclusion that a disposition within the range would constitute a manifest injustice, and (b) that the sentence imposed was neither clearly excessive nor clearly too lenient.

See also, *State v. Rhodes*, 92 Wn.2d 755, 760, 600 P.2d 1264 (1979).

The Supreme Court has held that the phrase ‘manifest injustice’ represents a demanding standard. *State v. Taylor*, 83 Wn.2d 594, 521 P.2d 699 (1974). Thus, in order to stand on review, the standard range for this offense and this respondent must present, beyond a reasonable doubt, a clear danger to society. *Rhodes*, 92 Wn.2d at 760 (*citations omitted*). If a manifest injustice disposition fails any of the three prongs, it may not be upheld. RCW 13.40.230(3). The threshold for a manifest injustice is high; it cannot be breached for an upward departure from the standard range unless there is clear and convincing evidence a disposition within the standard range present a clear danger to society. *Rhodes*, 92 Wn.2d at 760. The Appellant is entitled to remand for disposition within the standard range if this Court determines the trial court’s reasoning does not

support the disposition beyond a reasonable doubt. RCW 13.40.230(3).
State v. J.S., 70 Wn.App 659, 664, 855 P.2d 230(1993).

When an appellate court reviews a finding of manifest injustice, the reasoning of the trial court is held to a stringent standard. *See State v. Payne*, 58 Wn.App. 215, 219, 795 P.2d 134 (1990). Manifest injustice dispositions may only be entered in cases where the imposition of a standard range disposition would “either impose an excessive penalty on the juvenile or would impose a serious, and clear danger to society.” RCW 13.40.020(16). The reasons given do not support a manifest injustice disposition beyond a reasonable doubt if the appellate court finds that the trial court relied on factors that do not justify disposition outside the standard range, and the trial court would not have entered the same sentence based on the remaining factors, if any. *State v. S.H.*, 75 Wn. App. 1, 12, 877 P.2d 205 (1994) *rev. denied*, 125 Wn.2d 1016 (1995). An appeal from a finding of manifest injustice “shall be heard solely upon the record that was before the disposition court.” RCW 13.40.230(1).

Whether an aggravating factor justifies departure from the standard range is a question of law. *S.H.*, 75 Wn.App. at 9, (citing *State v. Scott*, 72 Wn. App. 207, 213, 866 P.2d 1258 (1993), *aff’d sub nom.*, *State v. Richie*, 126 Wn.2d 388, 894 P.2d 1308 (1995)).

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JRA Diagnostic Coordinator Larry Sturgill filed a Predisposition Investigation Report dated march 28, 2005, requesting a manifest injustice of a minimum of 52 weeks and a maximum of 60 weeks. CP at 20-24.

Jacob submits that the record presented at trial provides insufficient evidence to support a manifest injustice disposition and appears to be based solely on his robust criminal history, prior Manifest Injustice commitments, and the judge's stated desire to commit him to age 21, "as much as I can give him." RP at 30. The Appellant does concede, however, that criminal history is a specifically enumerated aggravating factor under RCW 13.40.160.

The need for treatment can in some cases be a valid reason in support of a manifest injustice disposition. *State v. S.H.* 75 Wn.App. 1, 877 P.2nd 205 (1994). Nevertheless, the "appropriate treatment must be determined by the special needs of the offender in each case." *State v. J.N.*, 64 Wn. App. 112, 117, 823 P.2d 1128 (1992). In the absence of testimony regarding the precise amount of time it would take to achieve such needs in treatment, the record before this Court does not clearly and convincingly support the conclusion that any treatment that Jacob may need supports the imposition of a manifest injustice disposition, and that it could not be accomplished during a 15 to 36 week period, rather than

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commitment to 21. The record is devoid of a showing that a 238 week—
commitment to age 21—is necessary to achieve the results desired by the
court.

Jacob contends that the appropriate measure of punishment for this
offense is already provided for by the 15 to 36 week period of
commitment contemplated by the Legislature, and that there is no showing
that that offense and manner in which he committed the offense for which
he was convicted can be distinguished from the “garden variety” version
of the crime of unlawful possession of a firearm. Simply put, there are no
facts that set this Appellant’s offense apart from the myriad other fact
patterns that comply with commission of this offense in other cases and that a
desire to commit Jacob for as long as legally possible is not a supportable
basis for Manifest Injustice.

The record does not support the court’s reasons for imposing a
manifest injustice. The Appellant submits that remand is necessary.

3. **A DISPOSITION OF 238 WEEKS IS
CLEARLY EXCESSIVE IN LIGHT OF THE
MINIMAL AGGRAVATING FACTS
PRESENTED AT THE DISPOSITION
HEARING**

The third requirement of RCW 13.40.230 is “that the sentence
imposed is neither clearly excessive nor clearly too lenient.” While a

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juvenile court's determination of the appropriate length of a sentence is a matter of discretion, the court "should not pick a number out of thin air. *State v. Sledge*, 83 Wn. App. 639, 646, 922 P.2d 832 (1996) (citing *State v. B.E.W.*, 65 Wn. App. 370, 828 P.2d 87 (1992)). A disposition has been determined to be excessive where "it cannot be justified by any reasonable view which may be taken of the record." *State v. Taulala*, 54 Wn. App. 81, 87, 771 P.2d 1188, review denied, 113 Wn.2d 1007, 779 P.2d 727 (1989) (quoting *State v. Strong*, 23 Wn. App. 789, 794-95, 599 P.2d 20 (1979)). Once the juvenile court has concluded that a disposition within the standard range would effectuate a manifest injustice, the court is vested with broad discretion to determine the appropriate disposition. *State v. M.L.*, 134 Wn.2d 657, 952 P.2d 187 (1998). In the present case, there is no factual basis whatsoever to make a determination of the time needed to effectuate any treatment that the court believed that Jacob needs.

4. **THE TRIAL COURT ERRED IN IMPOSING A
MANIFEST INJUSTICE DISPOSITION
WHERE THE U.S. SUPREME COURT HAS
NOW INVALIDATED IN *BLAKELY* v.
WASHINGTON THE METHOD USED IN
WASHINGTON TO IMPOSE EXCEPTIONAL
SENTENCES IN ADULT CASES.**

a. **Jacob has standing to raise this issue on appeal:**

Jacob contests that the portion of RCW 13.40.160 that authorizes manifest injustice and asserts that it is unconstitutional on its face and as applied in violation of the 14th amendment of the United States Constitution. Issues of constitutional magnitude may be raised for the first time on appeal. RAP 2.5(a).

b. The 14th Amendment Protects the Right to Due Process, Including the Right to Have all Elements of a Crime Proved Beyond a Reasonable Doubt in Adult and Juvenile Criminal Matters

The 14th Amendment to the United States Constitution and Article I, Section 3 of the Washington Constitution both provide that all defendants in a criminal action be provided with due process of law. “Taken together, these rights indisputably entitle a criminal defendant to a jury determination that [he or she] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt.” *Apprendi v. New Jersey*, 530 U.S. 466, 147 L.Ed2d 435, 920 S.Ct. 2348 (2000).

In Washington, an adult convicted of a criminal offense faces sentencing under the Sentencing Reform Act (RCW 9.94A.010 (*et seq.*)). Under the Act, the judge has the authority to sentence the individual within a specified set of sentencing guidelines that provide minimum and maximum sentence for the crime charged in conjunction with the

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defendant's criminal history. Using the legislatively drafted scale, the court determines and applies the presumptive sentence absent special findings of fact. The statute further provides that the defendant may be sentenced under an exceptional sentence." After consideration of specific factors delineated in RCW 9.94A.390, the statute provides a non-exclusive list of factors. Unless there has been a finding of aggravating or mitigating factors, the court must sentence the defendant within the standard range, unless statutorily authorized to modify the sentence to effect a specific sentencing provision, such as SSOSA or DOSA.

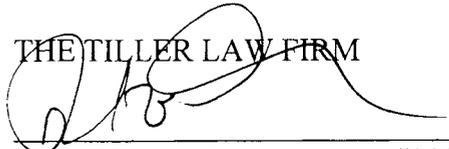
Although this case originates from the juvenile division of the superior court, the Appellant asserts that the recent rulings in *State v. Hughes* and *Blakely v. Washington* apply and that the court erred in imposing an exceptional sentence.

E. CONCLUSION

The foregoing reasons, this Court should grant Jacob Minor's Motion for Accelerated Review and vacate the conviction for first degree unlawful possession of a firearm, or the alternative, vacate the finding of manifest injustice and remand for a new disposition hearing within the standard range.

Dated: June 30, 2005.

THE TILLER LAW FIRM



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CERTIFICATE

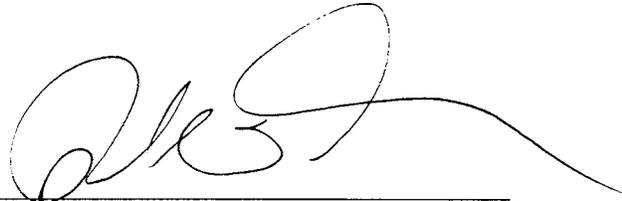
I certify that I mailed a copy of the foregoing Motion for Accelerated Review, postage prepaid on June 30, 2005, to the following:

Mr. David Ponzoha
Clerk of the Court
WA State Court of Appeals
950 Broadway, Ste. 300
Tacoma, WA 98402

Mr. Gerald R. Fuller
Chief Criminal Deputy
Grays Harbor County
Prosecutor's Office
102 W. Broadway, Room 102
Montesano, WA 98563

Mr. Jacob L.T. Minor
c/o Green Hill School
375 SW 11th Street
Chehalis, WA 98532

Dated: June 30, 2005.



PETER B. TILLER, WSBA NO. 20835

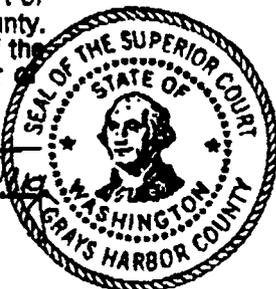
FILED
COURT APPEALS
05 JUL -1 PM 1:05
STATE OF WASHINGTON
BY _____
DEPUTY

APPENDIX A

JW
PK
#

Certificate of Clerk of the Superior Court of Washington in and for Grays Harbor County. The above is a true and correct copy of the original instrument which is on file or record in this court.

Done this 25th day of Jan. 2005
Cheryl Brown, Clerk By B. McCallister
Deputy Clerk



FILED
IN THE OFFICE
OF COUNTY CLERK
GRAYS HARBOR CO. WA.

2003 NOV -6 1 P 1:49

CHERYL BROWN
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON
COUNTY OF GRAYS HARBOR
JUVENILE COURT

STATE OF WASHINGTON v.

Jacob Lucas Minor

Respondent(s).

D.O.B.:

10/13/88

NO: 03-8-00453-5

ORDER ON ADJUDICATION AND
DISPOSITION
(ORD)

J031092

Clerk's Action Required. Paragraphs 4.1, 4.6, 4.11, 4.17, 4.18

I. HEARING

1.1 Respondent appeared for a disposition hearing on 11/06/03 (Date).

1.2 Persons appearing were:

Respondent

Respondent's Attorney

Prosecuting Attorney

Probation Counselor

Parent(s)

Other

1.3 The court heard evidence and argument, reviewed the files, and now enters the following:

II. FINDINGS OF FACT

Respondent pled guilty to:

Respondent was found guilty at an adjudicatory hearing of:

Count: <u>1</u>	Offense: <u>Residential Burg.</u>	Committed on or about: <u>10/8/03</u>
Count: <u>6</u>	Offense: _____	Committed on or about: _____
Count: _____	Offense: _____	Committed on or about: _____

The State failed to prove the following offense(s) and Count(s) _____

SAME COURSE OF CONDUCT. The conduct in Count(s) _____ is the same course of conduct.

Respondent waived the right to counsel, arraignment on amended information, and/or speedy disposition.

ORDER ON ADJ/DISP (ORD) - Page 1 of 7
WPF JU 07.0600 (6/2002) JuCR 7.12; RCW 13.40.120, .150 - .190, .300

03-9-80300-8

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- Respondent has violated the terms of his/her DEFERRED DISPOSITION entered on _____
- Respondent's offender score is 1.50, which is based upon his/her criminal history.
- The court considered the respondent's eligibility for the chemical dependency disposition alternative.
- Respondent has declined to enter a Diversion Agreement.
- Respondent may be ordered to pay restitution pertaining to matters not here adjudicated, and/or Court(s) _____, notwithstanding dismissal, because respondent, with counsel, so agreed and stipulated.
- A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).
- The following mitigating factors exist in this case.
 - The respondent's conduct neither caused nor threatened serious bodily injury, or the respondent did not contemplate that his/her conduct would cause or threaten serious bodily injury;
 - The respondent acted under strong and immediate provocation;
 - The respondent was suffering from a mental or physical condition that significantly reduced his/her culpability for the offense through failing to establish a defense;
 - 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
 - There has been at least one year between the respondent's current offense and any prior criminal offense.
 - Other: _____

- The following aggravating factors exist in this case:
 - In the commission of the offense, or in flight therefrom, the respondent inflicted or attempted to inflict serious bodily injury to another;
 - The offense was committed in an especially heinous, cruel, or depraved manner;
 - The victim was particularly vulnerable;
 - The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement;
 - The current offense included a finding of sexual motivation pursuant to RCW 13.40.135;
 - The respondent was the leader of a criminal enterprise involving several persons;
 - There are other complaints which have resulted in diversion or a finding or plea of guilty which are not included as criminal history; and
 - The standard range disposition is clearly too lenient considering the seriousness of the juvenile's prior adjudications.
 - Other: Youth is A Threat to the Community & to Self, NEED FOR TREATMENT.

III. CONCLUSIONS OF LAW

- Respondent is guilty of the offense(s) as stated in the findings.
- Respondent is not guilty of the offense(s) as stated in the findings.

- A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).
- Respondent is eligible for the chemical dependency disposition alternative on Count _____. A standard range disposition for that Count would constitute a manifest injustice.
- Respondent's Deferred Disposition is revoked.

IV. ORDER

IT IS HEREBY ORDERED that:

4.1 The state's motion respondent's motion to dismiss Count(s) _____
 Crimes(s) _____
 Statute(s) _____
 is granted, and said Count(s) shall be dismissed.

RANGE OF DISPOSITION:

- 4.2 Count _____: Disposition shall be within the standard range.
- 4.3 Count _____: Disposition within the standard range for this offense would effectuate a manifest injustice.
- 4.4 Count _____: Disposition shall be within the Special Sex Offender Dispositional Alternative.
- 4.5 Count _____: Chemical Dependency Disposition Alternative (RCW 13.40.165):
 Respondent is committed to the Department of Social and Health Services, Juvenile Rehabilitation Administration for a total of _____ weeks. Disposition is suspended. If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition.

4.6 COMMUNITY SUPERVISION:

Count: _____	_____ months
Count: _____	_____ months
Count: _____	_____ months

4.7 COMMUNITY RESTITUTION WORK:

Count: _____	_____ hours community restitution	with _____ hours credited for _____ days served
Count: _____	_____ hours community restitution	with _____ hours credited for _____ days served
Count: _____	_____ hours community restitution	with _____ hours credited for _____ days served

4.8 CONFINEMENT:

Count: _____	_____ days	With credit for _____ days served
Count: _____	_____ days	With credit for _____ days served
Count: _____	_____ days	With credit for _____ days served

These days are to be served immediately, upon negative progress review.

Temporary releases from confinement for school, work, medical appointments, etc. are authorized at the discretion of the probation counselor.

4.9 COMMITMENT to the custody of the Department of Social and Health Services, Juvenile Rehabilitation Administration for institutional placement:

Count: <u>1</u>	<u>30</u> weeks to <u>40</u> weeks	With credit for <u>28</u> days served
Count: _____	_____ weeks to _____ weeks	With credit for _____ days served
Count: _____	_____ weeks to _____ weeks	With credit for _____ days served

Respondent shall be held in detention facility pending transportation.

4.10 STATUTORY FIREARMS ENHANCEMENTS:

The court finds that respondent possessed a firearm in violation of RCW 9.41.040(1)(e). In addition to the sentence otherwise imposed herein, respondent is sentenced to _____ days confinement (10 days minimum). If the total period of confinement ordered herein exceeds 30 days, respondent is committed to the custody of JRA to serve the ordered confinement.

The court finds that respondent or an accomplice was armed with a firearm while committing a felony, and thus hereby imposes:

6 months (Class A felony) 4 months (Class B felony) 2 months (Class C felony) confinement in addition to any other sentence imposed herein and respondent is committed to the custody of JRA to serve said confinement.

Any term of confinement ordered in this paragraph 4.10 shall run consecutively to any other term of confinement ordered.

4.11 CONDITIONS OF SUPERVISION:

- A. The respondent is ordered to refrain from committing new offenses.
- B. Respondent is further ordered to comply with the **MANDATORY SCHOOL ATTENDANCE** provisions of RCW 28A.225, and to inform respondent's school of the existence of this requirement. I attend _____ School.
- C. Respondent shall report regularly, and on time, to the assigned probation counselor (or probation counselor's designee), as the probation counselor shall schedule or direct.
- D. Respondent shall keep probation counselor informed of respondent's current address and telephone number and shall notify probation counselor before moving to a different address.
- E. Respondent shall attend information classes and/or other educational programs, as directed by probation counselor.

(Items F through M apply only if the box is checked)

F. CURFEW to be set at the discretion of the probation counselor.

_____ p.m. - _____ a.m.

G. Respondent shall NOT USE OR POSSESS FIREARMS, AMMUNITION OR OTHER DANGEROUS WEAPONS during this period of community supervision. Probation counselor is authorized to search respondent and items carried or controlled by respondent at scheduled appointments and other reasonable times, and may specify in writing further details of this prohibition.

H. Respondent shall participate in counseling, in/outpatient substance abuse treatment programs, outpatient mental health programs, sex offender, and/or anger management classes, as probation counselor directs. Respondent shall cooperate fully.

I. Respondent shall be EVALUATED FOR ALCOHOL OR OTHER DRUG DEPENDENCY at the direction of the probation counselor and shall comply with all treatment recommendations.

J. Respondent shall refrain from using illegal drugs and alcohol and is subject to RANDOM URINALYSIS as directed by the probation counselor and shall fully cooperate.

K. Respondent is ordered not to go upon the following premises or geographic areas:

L. MEETING: The minor shall meet with a probation counselor when scheduled to do so, shall obtain permission prior to any change of residence or travel out of state, and shall attend any counseling and/or contact his/her probation counselor as deemed necessary by his/her probation counselor.

M. Respondent shall not contact, except through counsel or a probation counselor, the following person(s):

N. Respondent shall reside in a placement approved by the supervising probation counselor or approved by court order.

O. Respondent shall not knowingly associate with any person, adult or juvenile, who is under the supervision of any court of this or any other state for any juvenile offense or crime.

P. Other conditions:

Q. The previously ordered conditions of release are dismissed.

The Department of Social and Health Services may consent to necessary medical, surgical, dental or psychiatric care for respondent, including immunization required for public school students.

The minor shall pay the following costs, fees, and restitution to the
Grays Harbor County Clerk
102 West Broadway, Room 203
Montesano, Washington 98553

4.12 Respondent is ordered to pay:

A FINE of \$ _____, which respondent shall pay as scheduled by probation counselor.

Court costs of \$5.00.

Victims' Compensation Fund statutory ASSESSMENT: \$100 \$75

Pursuant to RCW 43.43.690 Washington crime laboratory fees: \$100 Waived.

Restitution in the total sum of \$ TBD

COUNT I: 1, 15680 ^{NOT AGreed} Payable to: Ginnin & Bruce Kruger
 Address: PO BOX 93 MoClips WA 98563

COUNT II: _____ Payable to: _____
 Address: _____

COUNT III: _____ Payable to: _____
 Address: _____

- A hearing to confirm restitution discovery is set for _____
- A restitution hearing is set for ^{to be} _____
- Juvenile Rehabilitation Administration is ordered to provide transportation of respondent to and from the above-ordered restitution hearing.
- The respondent waives his/her right to be present at the restitution hearing.
- Restitution liability is joint and several with: (if and when convicted)

_____ Cause No.: _____
 _____ Cause No.: _____
 _____ Cause No.: _____

Monetary amounts ordered shall be paid at the rate of at least \$ _____ per month.
 The probation counselor may revise this schedule in writing.

All payments shall be paid as follows:

 Respondent shall remain under the court's jurisdiction for a maximum term of ten (10) years after respondent's 18th birthday (unless extended for an additional 10 years) for the collection of ordered restitution and penalty assessment, unless these amounts have been converted to a civil judgment pursuant to RCW 9.94A.145 and/or RCW 13.40.192 and/or RCW 13.40.198.

4.13 HIV TESTING. The Department of Health or designee shall test and counsel the respondent for HIV as soon as possible and the respondent shall fully cooperate in the testing. RCW 70.24.340.

4.14 DNA TESTING. The respondent shall have a biological sample collected for purposes of DNA identification analysis and the respondent shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the respondent's release from confinement. RCW 43.43.754.

4.15 JURISDICTION IS HEREBY TRANSFERRED TO _____ County for supervision of this order. IT IS FURTHER ORDERED that the clerk of this court shall transfer the file in this matter to the clerk of _____ County Superior Court.

4.16 EXTENDED JURISDICTION: Jurisdiction is extended beyond the minor's eighteenth birthday until _____ to accommodate the terms of this order pursuant to RCW 13.40.300.

4.17 DRIVER'S LICENSE REVOCATION: The court finds that Count _____ is a felony in the commission of which a motor vehicle was used; or the unlawful possession of a firearm in a motor vehicle; or unlawful possession of a firearm 2nd; or _____. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.265, RCW 9.41.040(5), RCW 46.20.285, RCW 13.40.265.

4.18 FELONY FIREARM PROHIBITION: Respondent shall not use or possess a firearm, ammunition or other dangerous weapon until his or her right to do so is restored by a court of record. The court clerk is directed to immediately forward a copy of the respondent's driver's license or identicard, or comparable information, along with the date of conviction, to the Department of Licensing. RCW 9.41.047

4.19 OTHER ORDERS:

75% of any monies earned within JRA shall
be sent to the County Clerk for dispersal

DATED: 11/6/03

Jamasa J. Jant
JUDGE/COMMISSIONER

Presented by:

Robert A. Willis
DEPUTY PROSECUTING ATTORNEY
WSBA # 11342

Copy Received; Approved for Entry; Notice of Presentation Waived:

ADMINISTRATIVE MEMORANDUM

Does conviction require a license surrender?
 Yes No
Surrendered Refused
No/Lost license affidavit given Yes No
Respondent held in custody Yes No
RCW 46.20.270

ATTORNEY FOR RESPONDENT
WSBA #

X

RESPONDENT

COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100, RCW 10.73.090.

APPENDIX B



FILED
IN THE OFFICE
OF COUNTY CLERK
GRAYS HARBOR CO. WA.

2005 MAR 30 A 11:02

CHERYL L. HUNTER
COUNTY CLERK

Juvenile Rehabilitation Administration
Predisposition Diagnostic Report

COUNTY Grays Harbor	DATE 03/28/2005	
YOUTH'S NAME Jacob Lucas Minor	BIRTHDATE 10/13/88	AGE 16.5
JUVIS NUMBER 682274	SOCIAL SECURITY NUMBER 536-13-0584	
JRA NUMBER 823 925	COURT NUMBER 05-8-00018-8	
ETHNICITY Native American/Caucasian	UNITED STATES CITIZEN: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO CITIZENSHIP: _____	
PRIMARY LANGUAGE ENGLISH: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO OTHER: _____	TRIBAL AFFILIATION: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO TRIBE(S): _____	

SOURCES OF CONTACT AND INFORMATION

Police Incident Reports
Interview with Respondent
Conversation with Respondent's Mother; Joanne Minor
Review of Social File
Review of Legal File

LEGAL INFORMATION

On March 24, 2005 Jacob was found guilty on one count of unlawful possession of a firearm (B) which occurred on or about September 30, 2004. Another similar count is currently pending. Standard range for this offense is a 15-36 week commitment to JRA.

Disposition is also pending on one count of assault in the fourth degree from October 5, 2003 and one count of minor in possession from September 17, 2004. Jacob pled guilty to those offenses on November 18, 2004. Standard range is local sanctions. Jacob was also recently arraigned on a charge of minor in possession from March 4, 2005.

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Jacob was found guilty of possessing a .38 caliber pistol which was similar to one reported missing by one of Jacob's female peers. The gun has not been recovered and was reportedly sold to an individual who denies any knowledge. The pistol in question was described by more than one person as matching the one reported stolen. Jacob had apparently boasted that he had "robbed" a house and taken the gun, cigarettes and coins. Another youth familiar to this department also reported in a statement to authorities that Jacob had tried to sell the gun to him also.

CRIMINAL HISTORY

Jacob's criminal history dates back to June, 2000. He was given diversion on his first 3 offenses; possession of a dangerous weapon from June 6, 2000, and assault in the fourth degree from February 20, 2001 and September 20, 2001.

On August 7, 2002 he was granted a CDDA in Pierce County on 3 counts of assault in the fourth degree and 1 count of minor in possession from July 14, 2002. A 26 week manifest injustice up sentence to JRA was suspended. He did not comply with any conditions and reoffended on September 23, 2002 by obstructing a police officer. On September 30, 2002 the CDDA was revoked and Jacob was given the remaining time of the original 26 week sentence and an additional 30 days on the obstructing charge. He entered Echo Glen on October 11, 2002 and was released to parole on March 28, 2003.

On November 6, 2003 Jacob was committed to JRA by this court on a charge of residential burglary which occurred on October 8, 2003 (a charge of assault in the fourth degree from October 5, 2003 is awaiting disposition). He was given a manifest injustice up sentence of 30 to 40 weeks and was placed at Maple Lane.

Jacob's parole has been revoked some 4 times. There were 4 warrants issued for his arrest while on parole. Violations have included; curfew, school, contact, and drug issues.

Since October 31, 2001 there have been 9 probation violations filed. Since October 31, 2001 there have been some 10 warrants issued. Truancy petitions were first filed in October, 2001.

Charges either dismissed or not filed upon by the prosecutor include; disorderly conduct from July 14, 2002, possession of drug paraphernalia from September 23, 2002 and theft in the third degree from October 8, 2003.

COMMUNITY SERVICES AND INTERVENTION

Jacob completed an 8 week drug treatment program while at Maple Lane between January 7, 2004 and March 8, 2004. However, he refused most aftercare programs that were offered.

He was transitioned to the Touchstone Group Home in Olympia on March 26, 2004 and was expelled from that program after a short time.

While serving time on a parole revocation in December, 2004, Jacob was transitioned to Sunrise Group Home prior to his release.

Jacob and his parents were also involved in an FFT (Functional Family Therapy) program while he was on parole.

Prior to his commitments to JRA, Jacob was involved in counseling in Pierce County and at Evergreen Counseling Center in Hoquiam, Washington. He was prescribed medication but refused to take it. While at Echo Glen Jacob was also involved in a drug/alcohol treatment program.

DETENTION BEHAVIOR/ADJUSTMENT

Jacob has only had minor problems within the detention setting. Including his time at Pierce and Grays Harbor County detention, he has spent more than 300 days since September, 2001. While at Echo Glen, he entered into a pact (which never developed) to overpower staff. He has also been disciplined in JRA for aggression, being profane, and failing to comply. Disrespect has also been a problem. He has a past history of assaults in detention, the community, at home and at school.

While Jacob claims he has never been suicidal, he has reported significant mood swings which included depression. Drug and alcohol abuse has often accompanied those swings.

While Jacob has run from home and when pressured by compliance demands, there are no indications that he has made plans to escape from detention.

Recently, he has not been disrespectful to staff or other detainees.

FAMILY HISTORY

Jacob was born in Tacoma, Washington. He is the youngest of 11 siblings or stepsiblings. His nearest to age sibling is a brother 5 years older than he. That brother spent 1 year at Maple Lane some time back. He may also have sexually and physically abused Jacob. That brother had an extensive criminal history and drug problems. Many aunts, uncles and grandparents have had similar problems. Jacob's mother and 3 siblings have attempted suicide. Jacob's parents support him, but it appears he does not like them because he has been subject to such abuse.

In July, 2002, the parents moved to Moclips, Washington in northern Grays Harbor County. They wanted to escape the street gangs, etc. and the big city atmosphere of Tacoma. The father had lost a long time job at Sears. Currently, both parents attend college and are working to become chemical dependency and mental health counselors. Jacob's mother is at Grays Harbor College where she is also the student council secretary. Jacob's father attends Evergreen State College in Olympia, Washington. Jacob is the last child in the home. Jacob has 8 sisters and 2 brothers.

While Jacob's mother claims he has been doing much better this time around (minimize) it is documented that Jacob does not necessarily like or get along with his parents. Perhaps they do attempt to put some restraints on him.

The assault in the fourth degree charge which is now pending was the result of Jacob throwing a screwdriver at his sister. She had stated previously that she was afraid of Jacob and his violent outbursts.

Jacob's mother states she is a member of the Koniag/Lesnoi Tribe of Alaska. She is registered and stated that Jacob is one-eighth and is listed.

MENTAL HEALTH/MEDICAL

Jacob reports he is in good health. He has been diagnosed with ADHD, Bi-Polar Disorder, and Conduct Disorder. Certainly, there is alcohol and marijuana dependency. Medication has been prescribed in the past and Jacob has taken it on a limited basis; usually at his discretion.

Jacob has disclosed that he has had flashbacks of trauma in his life. His mother and 3 siblings have attempted suicide and he was physically abused by a brother who is 5 years his senior.

In the past, Jacob has taken Risperdal, Guanfacine, Traxodone, Ritalin, Dexedrine, and Wellbutrin.

Jacob is allergic to sulpha drugs.

CHEMICAL USE/ABUSE/DEPENDENCY

Jacob has used and been dependent on alcohol, marijuana, inhalants, amphetamines, hallucinogens and opiates. At the age of 5 he began using nicotine and at the age of 8 he was smoking pot and using alcohol. Regular use began at age 11. Methamphetamine use also began at the age of 11 and valium use at 13. Jacob has also used ecstasy, mushrooms, and LSD. He has sold drugs and he comes from a family with a long history of substance abuse. He has 9 siblings who were (are) involved with drugs and his parents were interested in becoming counselors. He has also inhaled Formaldehyde extensively.

While in the community, Jacob never complied with orders to get involved in treatment programs. While at Echo Glen he completed the Exodus program and while at Maple Lane he completed the OMNI program. However, he never followed up with aftercare.

A U.A. taken on November 21, 2004 was positive for opiates and marijuana. Jacob was also arrested for minor in possession 2 times since September 17, 2004.

SEXUAL OFFENDER

There is no documentation that Jacob has ever molested anyone. His mother thinks that he may have been molested by an older brother. Jacob speaks of "trauma" in his life, but will not be more specific. His anger and preoccupation with drug use to "self medicate" may indeed be the result of such abuse.

EDUCATIONAL/OCCUPATIONAL HISTORY

Jacob has continued to remain in the ninth grade at North Beach High School. He has been working on his GED - reluctantly. His behavior remains the same as it was in the past; he is disruptive, disrespectful and noncompliant. While he is on a modified schedule and only expected to be in school for a short period of time, he wastes what little time he does have. He roams the halls, does not follow direction, uses profanity, and associates with other non-

productive individuals. One teacher believes that he comes to school to make drug deals rather than progress. WRAT scores completed at this detention school on March 28, 2005 show Jacob working at the high school level in reading and spelling and the sixth grade level in math.

TREATMENT NEEDS

Jacob has completed 2 treatment programs during his previous commitments to JRA. He continues to use. His participation in those programs was productive according to reports.

Jacob also participated in anger replacement counseling and behavior therapy. Those may have had some impact - according to his mother. However, a statement from a witness regarding this current offense reported Jacob being "drunk and angry" while displaying the stolen gun to peers. Such behavior cannot be described as maintenance of self control.

Jacob should also continue with his education.

RECOMMENDATIONS

While Jacob does well within a structured setting, it is obvious that he has little regard for his standing within the community. He has continued to be noncompliant with parole standards as he was with probation. His mother prefers to cut him more slack this time. She reports that he is not as angry as in the past. She also minimizes his negative behavior and lack of productivity. It is obvious that she is not as involved in his everyday life as she thinks she is. While she acknowledges his noncompliance and new crimes, she fails to connect his failures and only refers to his better attitude or the fact that he might do better in a different educational setting, etc. The fact that she mentioned how well he does in a structured setting (while minimizing his recent behavior) means she is oblivious to the real problem or situation. The facts that Jacob continues to commit crimes, do drugs, be noncompliant in school and the community only means that he has not learned from past experience (2 previous commitments to JRA) and/or that he has no intent to change.

Therefore, it is the recommendation of the Juvenile Department that Jacob be given a manifest injustice up sentence of 60 weeks maximum and 52 weeks minimum.


LARRY STURGILL / Date
Diagnostic Coordinator


Reviewed By / Date

Phone: (360) 533-3919 x-750

E-Mail: lsturgil@co.grays-harbor.wa.us

APPENDIX C

#2

FILED
IN THE OFFICE
OF COUNTY CLERK
GRAYS HARBOR CO. WA.

2005 APR -51 A 10: 58

CHERYL BROWN
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON
COUNTY OF GRAYS HARBOR
JUVENILE COURT

J350289

STATE OF WASHINGTON v.

JACOB LUCAS MINOR

Respondent(s).
D.O.B.: 10-13-88

NO: 05-8-00018-8

ORDER ON ADJUDICATION AND
DISPOSITION
(ORD)
 Clerk's Action Required. Paragraphs 4.1, 4.6,
4.11, 4.17, 4.18

I. HEARING

1.1 Respondent appeared for a disposition hearing on 03-31-05 (Date).

1.2 Persons appearing were:

- Respondent
- Prosecuting Attorney
- Parent(s)
- Respondent's Attorney
- Probation Counselor
- Other

1.3 The court heard evidence and argument, reviewed the files, and now enters the following:

II. FINDINGS OF FACT

Respondent pled guilty to: Respondent was found guilty at an adjudicatory hearing of:

Count: <u>II</u>	Offense: <u>UPSFR1</u>	Committed on or about: <u>09-30-04</u>
Count: _____	Offense: _____	Committed on or about: _____
Count: _____	Offense: _____	Committed on or about: _____

The State failed to prove the following offense(s) and Count(s) _____

SAME COURSE OF CONDUCT. The conduct in Count(s) _____ is the same course of conduct.

Respondent waived the right to counsel, arraignment on amended information, and/or speedy disposition.

35

- Respondent has violated the terms of his/her **DEFERRED DISPOSITION** entered on _____.
- Respondent's offender score is 2.25, which is based upon his/her criminal history.
- The court considered the respondent's eligibility for the chemical dependency disposition alternative.
- Respondent has declined to enter a Diversion Agreement.
- Respondent may be ordered to pay restitution pertaining to matters not here adjudicated, and/or Count(s) _____, notwithstanding dismissal, because respondent, with counsel, so agreed and stipulated.
- A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).
- The following mitigating factors exist in this case:
- The respondent's conduct neither caused nor threatened serious bodily injury, or the respondent did not contemplate that his/her conduct would cause or threaten serious bodily injury;
 - The respondent acted under strong and immediate provocation;
 - The respondent was suffering from a mental or physical condition that significantly reduced his/her culpability for the offense through failing to establish a defense;
 - 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
 - There has been at least one year between the respondent's current offense and any prior criminal offense.
 - Other: _____
- The following aggravating factors exist in this case:
- In the commission of the offense, or in flight therefrom, the respondent inflicted or attempted to inflict serious bodily injury to another;
 - The offense was committed in an especially heinous, cruel, or depraved manner;
 - ~~The victim was particularly vulnerable;~~
 - The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement;
 - The current offense included a finding of sexual motivation pursuant to RCW 13.40.135;
 - The respondent was the leader of a criminal enterprise involving several persons;
 - There are other complaints which have resulted in diversion or a finding or plea of guilty which are not included as criminal history; and
 - The standard range disposition is clearly too lenient considering the seriousness of the juvenile's prior adjudications.
 - Other: Jacob is a continuing threat to the community & himself. Jacob is in need of more substance abuse counseling.

III. CONCLUSIONS OF LAW

- Respondent is guilty of the offense(s) as stated in the findings.
- Respondent is not guilty of the offense(s) as stated in the findings.

A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).

Respondent is eligible for the chemical dependency disposition alternative on Count _____.
A standard range disposition for that Count would constitute a manifest injustice.

Respondent's **Deferred Disposition** is revoked.

IV. ORDER

IT IS HEREBY ORDERED that:

4.1 The state's motion respondent's motion to dismiss Count(s) _____
Crimes(s) _____
Statute(s) _____
is granted, and said Count(s) shall be dismissed.

RANGE OF DISPOSITION:

4.2 Count _____: Disposition shall be within the standard range.

4.3 Count _____: Disposition within the standard range for this offense would effectuate a manifest injustice.

4.4 Count _____: Disposition shall be within the Special Sex Offender Dispositional Alternative.

4.5 Count _____: Chemical Dependency Disposition Alternative (RCW 13.40.165):

Respondent is committed to the Department of Social and Health Services, Juvenile Rehabilitation Administration for a total of _____ weeks. Disposition is suspended. If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition.

4.6 COMMUNITY SUPERVISION:

Count: _____	_____ months
Count: _____	_____ months
Count: _____	_____ months

4.7 COMMUNITY RESTITUTION WORK:

Count: _____	_____ hours community restitution	with _____ hours credited for _____ days served
Count: _____	_____ hours community restitution	with _____ hours credited for _____ days served
Count: _____	_____ hours community restitution	with _____ hours credited for _____ days served

4.8 CONFINEMENT:

Count: _____	_____ days	With credit for _____ days served
Count: _____	_____ days	With credit for _____ days served
Count: _____	_____ days	With credit for _____ days served

These days are to be served immediately, upon negative progress review.

Temporary releases from confinement for school, work, medical appointments, etc. are authorized at the discretion of the probation counselor.

4.9 **COMMITMENT** to the custody of the Department of Social and Health Services, Juvenile Rehabilitation Administration for institutional placement:

PSC

Count: 11	11 weeks to 11 weeks	With credit for _____ days served
Count: 11	190 weeks to 238 weeks	With credit for 60 days served
Count: _____	_____ weeks to _____ weeks	With credit for _____ days served

Respondent shall be held in detention facility pending transportation.

4.10 STATUTORY FIREARMS ENHANCEMENTS:

The court finds that respondent possessed a firearm in violation of RCW 9A.040(1)(e). In addition to the sentence otherwise imposed herein, respondent is sentenced to _____ days confinement (10 days minimum). If the total period of confinement ordered herein exceeds 30 days, respondent is committed to the custody of JRA to serve the ordered confinement.

The court finds that respondent or an accomplice was armed with a firearm while committing a felony, and thus hereby imposes:

6 months (Class A felony) 4 months (Class B felony) 2 months (Class C felony) confinement in addition to any other sentence imposed herein and respondent is committed to the custody of JRA to serve said confinement.

Any term of confinement ordered in this paragraph 4.10 shall run consecutively to any other term of confinement ordered.

4.11 CONDITIONS OF SUPERVISION:

A. The respondent is ordered to refrain from committing new offenses.

B. Respondent is further ordered to comply with the **MANDATORY SCHOOL ATTENDANCE** provisions of RCW 28A.225, and to inform respondent's school of the existence of this requirement. I attend _____ School.

C. Respondent shall report regularly, and on time, to the assigned probation counselor (or probation counselor's designee), as the probation counselor shall schedule or direct.

D. Respondent shall keep probation counselor informed of respondent's current address and telephone number and shall notify probation counselor before moving to a different address.

E. Respondent shall attend information classes and/or other educational programs, as directed by probation counselor.

(Items F through M apply only if the box is checked)

F. **CURFEW** to be set at the discretion of the probation counselor.

_____ p.m. - _____ a.m.

- G. Respondent shall **NOT USE OR POSSESS FIREARMS, AMMUNITION OR OTHER DANGEROUS WEAPONS** during this period of community supervision. Probation counselor is authorized to search respondent and items carried or controlled by respondent at scheduled appointments and other reasonable times, and may specify in writing further details of this prohibition.
- H. Respondent shall participate in counseling, in/outpatient substance abuse treatment programs, outpatient mental health programs, sex offender, and/or anger management classes, as probation counselor directs. Respondent shall cooperate fully.
- I. Respondent shall be **EVALUATED FOR ALCOHOL OR OTHER DRUG DEPENDENCY** at the direction of the probation counselor and shall comply with all treatment recommendations.
- J. Respondent shall refrain from using illegal drugs and alcohol and is subject to **RANDOM URINALYSIS** as directed by the probation counselor and shall fully cooperate.
- K. Respondent is ordered not to go upon the following premises or geographic areas:

- L. MEETING: The minor shall meet with a probation counselor when scheduled to do so, shall obtain permission prior to any change of residence or travel out of state, and shall attend any counseling and/or contact his/her probation counselor as deemed necessary by his/her probation counselor.
- M. Respondent shall not contact, except through counsel or a probation counselor, the following person(s): _____
- N. Respondent shall reside in a placement approved by the supervising probation counselor or approved by court order.
- O. Respondent shall not knowingly associate with any person, adult or juvenile, who is under the supervision of any court of this or any other state for any juvenile offense or crime.
- P. Other conditions: _____

- Q. The previously ordered conditions of release are dismissed.

The Department of Social and Health Services may consent to necessary medical, surgical, dental or psychiatric care for respondent, including immunization required for public school students.

**The minor shall pay the following costs, fees, and restitution to the
Grays Harbor County Clerk
102 West Broadway, Room 203
Montesano, Washington 98563**

4.12 Respondent is ordered to pay:

- A **FINE** of \$_____, which respondent shall pay as scheduled by probation counselor.
- Court costs of \$5.00.
- Victims' Compensation Fund statutory **ASSESSMENT**: \$100 \$75
- Pursuant to RCW 43.43.690 Washington crime laboratory fees: \$100 Waived.
- Restitution** in the total sum of \$_____

COUNT I: _____ Payable to: _____

Address: _____

COUNT II: _____ Payable to: _____

Address: _____

COUNT III: _____ Payable to: _____

Address: _____

BC

- A hearing to confirm restitution discovery is set for _____
- A restitution hearing is set for ~~_____~~ **To be determined**
- Juvenile Rehabilitation Administration is ordered to provide transportation of respondent to and from the above-ordered restitution hearing.
- The respondent waives his/her right to be present at the restitution hearing.
- Restitution liability is joint and several with: (if and when convicted)

_____ Cause No.: _____

_____ Cause No.: _____

_____ Cause No.: _____

Monetary amounts ordered shall be paid at the rate of at least \$_____ per month. The probation counselor may revise this schedule in writing.

All payments shall be paid as follows:

Respondent shall remain under the court's jurisdiction for a maximum term of ten (10) years after respondent's 18th birthday (unless extended for an additional 10 years) for the collection of ordered restitution and penalty assessment, unless these amounts have been converted to a civil judgment pursuant to RCW 9.94A.145 and/or RCW 13.40.192 and/or RCW 13.40.198.

4.13 **HIV TESTING.** The Department of Health or designee shall test and counsel the respondent for HIV as soon as possible and the respondent shall fully cooperate in the testing. RCW 70.24.340.

4.14 **DNA TESTING.** The respondent shall have a biological sample collected for purposes of DNA identification analysis and the respondent shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the respondent's release from confinement. RCW 43.43.754.

4.15 **JURISDICTION IS HEREBY TRANSFERRED TO** _____ County for supervision of this order. **IT IS FURTHER ORDERED** that the clerk of this court shall transfer the file in this matter to the clerk of _____ County Superior Court.

4.16 **EXTENDED JURISDICTION:** Jurisdiction is extended beyond the minor's eighteenth birthday until _____ to accommodate the terms of this order pursuant to RCW 13.40.300.

4.17 **DRIVER'S LICENSE REVOCATION:** The court finds that Count _____ is a felony in the commission of which a motor vehicle was used; or the unlawful possession of a firearm in a motor vehicle; or unlawful possession of a firearm 2nd; or _____. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.265, RCW 9.41.040(5), RCW 46.20.285, RCW 13.40.265.

4.18 **FELONY FIREARM PROHIBITION:** Respondent shall not use or possess a firearm, ammunition or other dangerous weapon until his or her right to do so is restored by a court of record. The court clerk is directed to immediately forward a copy of the respondent's driver's license or identicard, or comparable information, along with the date of conviction, to the Department of Licensing. RCW 9.41.047

4.19 **OTHER ORDERS:**

75% of any monies earned in JRA shall be sent to the
clerk's office for dispersal toward monies owed.

DATED: April 5, 2005

[Signature]
JUDGE/COMMISSIONER

Presented by:

[Signature]
DEPUTY PROSECUTING ATTORNEY
WSBA #

AS TO FORM

Copy Received; Approved for ~~Entry~~; Notice of Presentation Waived:

[Signature]
ATTORNEY FOR RESPONDENT
WSBA # 21310

ADMINISTRATIVE MEMORANDUM

Does conviction require a license surrender?

Yes No

Surrendered Refused

No/Lost license affidavit given Yes No

Respondent held in custody Yes No

RCW 46.20.270

[Signature] 4.5.05
RESPONDENT

COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100, RCW 10.73.090.

IN THE JUVENILE COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON,)

Plaintiff,)

Vs.)

Jacob L. Minor)

Respondent.)

D.O.B 10/13/88)

No. 05-8-00018-8

FINGERPRINTS OF RESPONDENT

I hereby certify that I am the Clerk of Grays Harbor County Superior Court, and I hereby attest that the fingerprints affixed below are those of the respondent herein, said fingerprints having been affixed in my presence.

RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY



x Jacob L. Minor

Signature of Respondent Fingerprinted

WITNESS MY HAND AND SEAL of the Superior Court this 5th day of

April, 2005

CHERYL BROWN, COUNTY CLERK

By B. Meriello
Deputy County Clerk

