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Supreme Court No. 79265-8

BY RONALD R. CARPENTER Court of Appeals No. 33240-0-II

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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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STATE OF WASHINGTON,  
Respondent,

vs.

**A.C.,**

Appellant/Petitioner

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Clallam County Superior Court  
Cause No. 04-8-333-9  
The Honorable Judge George L. Wood

**RESPONDENT'S SUPPLEMENTAL BRIEF**

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## **II. ISSUES REQUESTED FOR REVIEW**

Issue 1: Does a juvenile charged with a serious offenses and serious violent offenses have the right to a jury trial under the Washington State Constitution?

Issue 2: Does the legislature's failure to define assault (and the judiciary's development of the core meaning of that crime) violate the constitutional separation of powers?

## **III. STATEMENT OF FACTS AND PRIOR PROCEEDINGS**

A.C. was charged in Clallam County Juvenile Court with three counts of Attempted Murder in the First Degree, one count of Taking a Motor Vehicle Without Owner's Permission in the Second Degree, one count of Assault in the Second Degree with Firearm Enhancement, one count of Robbery in the First Degree with a Firearm Enhancement, and one count of Unlawful Possession of a Firearm in the Second Degree. CP 16-18.

The juvenile court retained jurisdiction after A.C. was evaluated by defense's expert and state's expert regarding the State's motion to decline A.C. to Clallam County Superior Court. Both experts agreed that A.C.'s needs would be better served by remaining in the juvenile court system. The basis for their opinion was if A.C. received the maximum

time allowed at Juvenile Rehabilitation Administration (JRA), A.C. could be rehabilitated. V.R.P. (4/15/05) pg 7-8, 22-25.

A.C. was tried before Judge George Wood without a jury. CP 7. The court found him guilty on all counts. A.C. was sentenced on June 15, 2005, and he appealed. CP 3, 7-15. The Court of Appeals upheld his convictions in a part-published opinion filed on August 22, 2006. State v. Chavez, 134 Wn.App. 657, 142 P.3d 1110 (2006).

#### IV. ARGUMENT

**A. The Washington State Constitution does not require a juvenile charged with violent and serious violent offenses to be afforded a jury trial.**

The crimes committed by A.C. were classified as serious and serious violent offenses and he received a standard range sentence for those crimes. RCW 9.94A.030; RCW 13.40.0357. The standard range sentence that was imposed for each offense was specifically set by the legislature. Because A.C. chose to commit serious and serious violent offenses and was sentenced to the standard range the needs of the offender were taken into consideration as required by the Juvenile Justice Act (JJA). The Washington State Constitution is not violated when a juvenile offender is tried without a jury for serious and serious violent offenses.

When a juvenile commits serious and serious violent crimes a logical conclusion is that rehabilitation for that juvenile would take more time and intense rehabilitation than someone charged with a less serious offense.

When comparing rehabilitative measures for someone who is adjudicated of an assault in the fourth degree versus a juvenile adjudicated of three counts of attempted murder, it logically follows that the time to rehabilitate the juvenile offender is going to be significantly different.

A.C. was evaluated by two separate experts with regards to the State's motion to decline jurisdiction. Both expert's opinioned that A.C. would be better served by remaining in the juvenile justice system. The rehabilitation available to A.C. through JRA, would not be available if treated as an adult defendant. V.R.P. (4/15/05) 23-24. Both experts opined for A.C. to be rehabilitated he would need the maximum sentence allowed at JRA for this to be achieved. V.R.P. (4/15/05) pg 7-8, 22-25.

To suggest that a juvenile convicted of serious and serious violent offenses held in a JRA facility are not offered the same services of rehabilitation as juveniles left in the community is actually correct. When a juvenile is sent to JRA they have either exhausted the rehabilitation efforts offered in their community or their offenses are so

severe that it is believed that JRA is the only agency available to provide the rehabilitation that is needed for that juvenile. The services offered are more intensive, extensive and thorough through JRA than would be available through the local community.

The following is a non exhaustive list of the rehabilitation services offered through JRA:

JRA provides a continuum of care when a youth is incarcerated until release through and Integrated Treatment Model which is a research based treatment approach that utilizes cognitive behavioral and family therapy principles.

While incarcerated JRA focuses on eliminating problem behaviors using behavioral analysis for targeted behavior change. Focus on behavior change through shaping, reinforcement, extinction, and contingency management to develop new skills. Families are included in these programs so the behavior change can continue once the youth is released.

Once a juvenile is released parole counselors work to engage and motivate all family members by creating a balanced alliance with each, and creating a family focus for treatment. RCW 13.40.460(7); RCW 72.05.010; DSHS Juvenile Rehabilitation Administration, <http://www1.dshs.wa.gov/jra/>.

1. Educational Services: basic and special education, diploma and GED opportunities, juvenile vocational industries program, on-campus work experience training program (fish hatchery, culinary arts, waste water management, small engine repair, and others), extensive vocational training programs, student intern program, community placement in vocational areas, DNR forest and fire fighting training and crews, dog training for service animals and basic training camp staging. RCW 13.40.460; RCW

28A.190.010; DSHS Juvenile Rehabilitation Administration, <<http://www1.dshs.wa.gov/jra/>>.

2. Treatment Options: alcohol and drug treatment including residential treatment, off campus recovery houses, relapse prevention programs, acute and extended mental health facility, psychiatric services, psychotherapy services, psychological services, pharmacological management, basic health care, anger management, dental services, sex offender treatment. RCW 13.40.310; RCW 13.40.460 (5); WAC 388-730-0015; DSHS Juvenile Rehabilitation Administration, <<http://www1.dshs.wa.gov/jra/>>.
3. Specialized Programs: Victim awareness program, Aggression Replacement Therapy, cognitive behavior therapy, dialectical behavior therapy, high and low ropes activities, moral reconnection therapy, and criminal thinking errors, seven habits of highly successful teens, recreational services, and family outreach. RCW 13.40.310; RCW 13.40.320; DSHS Juvenile Rehabilitation Administration, <<http://www1.dshs.wa.gov/jra/>>.
4. Chaplaincy Program/spiritual program. DSHS Juvenile Rehabilitation Administration, <<http://www1.dshs.wa.gov/jra/>>.
5. Cultural Programs. RCW 13.40.310 (1)(a)

A.C. has been afforded the benefits of specific programs designed for and by JRA to assist with his rehabilitation. A.C. was not eligible for community based programs because the legislature set a specific sentence for serious and serious violent offenses. RCW 13.40.0357. A juvenile proceeding, even though it “may result in deprivation of liberty,

is nonetheless not a ‘criminal proceeding’ within the meaning of the sixth amendment. McKeiver v. Pennsylvania, 403 U.S. 528, 29 L.Ed.2d 647, 91 S.Ct. 1976 (1971).

Adults convicted of similar or even lesser level crimes are sentenced punitively. The adult system’s foundation is not built on the needs of the offender for rehabilitation. Juvenile system is rehabilitative in nature, whereas the criminal system is punitive. State v. Schaaf, 109 Wn.2d 1, 4, 743 P.2d 240 (1987). “No where in the adult criminal system is there a policy of responding to the needs of the offenders or of rehabilitating them. Rather punishment is the paramount purpose of the adult sentencing system.” State v. Rice, 98 Wn.2d 384, 391, 655 P.2d 1145 (1982). The adult system, thus, has a fundamentally different purpose than that of the juvenile justice system. Compare RCW 9.94A.010 with RCW 13.40.010(2).

In 1987, the Court upheld RCW 13.04.021, denying juvenile offenders the right to a jury trial, it found that while the JJA shares with the adult system the purposes of rendering a child accountable for his acts, punishing him and exacting retribution from him, such purposes are tempered by....responding to the needs of the child. Schaaf, 109 Wn.2d 1, 743 P.2d 240, quoting Rice at 393.

In Schaaf, the Court in that case addressed the argument that juvenile treatment in the juvenile justice system was so closely akin to the treatment of adults that juveniles should be entitled to jury trials because the purposes of the JJA no longer provided a sufficient division between the adult system and the juvenile system.

A.C. provided the following examples to the Court of how the juvenile system is now similar to the adult system: juvenile offender history is used by the SRA in adult convictions, compromise of misdemeanors apply to juveniles as well as adults, juveniles are expected to be accountable for their criminal behavior, the ability of the juvenile to use the infancy defense, juveniles are required to make payment in the crime victim funds and the ability of the juvenile offender to be transferred to Department of Corrections for adult incarceration.

The Court found in Schaaf, that these changes did not make the juvenile justice system akin to the adult system. Schaaf already addressed these issues and found that they do not give rise to a juvenile's right to a jury trial.

While the use of juvenile adjudications in adult sentencing has broadened over time, the use of juvenile adjudications predates the Sentencing Reform Act, see State v. Dainard, 85 Wn.2d 624, 626-28,

537 P.2d 760 (1975), and has always existed under the Sentencing Reform Act. Schaaf at 11-12.

The use of juvenile adjudications in adult sentencing is not a novel situation. However, juvenile adjudications do not count as “strikes” under the persistent offender accountability act. See RCW 9.94A.030 (33); State v. Carpenter, 117 Wn.App. 673, 72 P.3d 784 (2003).

In Monroe v. Soliz, when a juvenile was transferred to the Department of Corrections, the basic claim was that the administrative transfer of a juvenile from a detention facility to an adult prison alters the focus of the juvenile's incarceration, changing it from rehabilitative to punitive. Thus, Monroe argued, he was being punished if housed in the adult prison, therefore the law afforded him a right to a jury trial. Monroe v. Soliz, 132 Wn.2d 414, 419, 939 P.2d 205 (1997).

The Court responded that the issue is whether the place of a person's confinement defines the nature of the proceeding. RCW 13.40.280 does not, and cannot, substantively convert a juvenile proceeding to a criminal one. The basis for the juvenile's custody had not changed. The statute merely permits the State to change the place of confinement based upon an administrative determination. Monroe at 419.

A.C. asks the Court to look at the issue of the right to own or possess firearms as a reason he is entitled to a jury trial. A.C.'s right having been forfeited due to the fact he has a felony adjudication. This is not a reason to find that A.C. is required a right to a jury trial. The prohibition is not a punishment for his conduct, but merely a collateral consequence to his actions. In re Personal Restraint of Ness, 70 Wn.App. 817, 823-24, 855 P.2d 1191 (1993), reviewed denied, 123 Wn.2d 1009 (1994).

A court may revoke or suspend a person's right to own firearms without the benefit of a jury. Such as when a person is the subject to an order authorized under RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590. There is no requirement that a jury make a finding to revoke a person's right to possess firearms. RCW 9.41.800.

A court may also revoke a person's right to ownership of firearms when a person has been involuntarily committed for mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77 RCW. There is no requirement that a jury find his firearm rights are revoked in these cases. A jury is not a requirement when forfeiting someone's right to possess firearms.

A.C. argues that similarities in the juvenile justice system and adult system now make jury trials constitutionally mandated for juveniles. The state submits that the differences between juvenile and adult proceedings are so significant they continue to support the position that RCW 13.04.021 does not violate Washington State Constitution Article 1, Section 21 and Article I, Section 22 .

Juvenile offenders are treated considerably different than adult offenders with regards to voting rights and qualifying as a juror. A.C.'s disposition for serious and serious violent offenses does not affect his right to vote and the right to sit as a juror. RCW 10.64.140, prohibits adults "convicted" of felony level crimes from voting. The definition of conviction does not include the term adjudication/disposition so therefore a juvenile retains the right to vote if he is adjudicated of a felony level offense.

RCW 2.36.070, disqualifies adults who have been convicted of felonies from sitting as jurors. The definition of conviction does not include the term adjudication/disposition so therefore a juvenile retains the right to sit as a juror if he is adjudicated of a felony level offense.

Adults are held in jails pending charging, pre sentence, and post conviction, but RCW 13.04.116, make it clear that juveniles are treated differently than adults, we do not want juveniles to be held in adult

facilities. If there is a need to hold juveniles in an adult facility it is clear that the legislature wants very strict requirements in place so as not to expose juveniles to adult defendants.

RCW 13.40.180 provides instruction when a juvenile offender is adjudicated of two or more offenses, the terms of the disposition run consecutively. There is a caveat, in that legislature puts a limitation on the disposition when they run consecutive. This limitation is unique to juvenile disposition. It emphasizes that the JJA's intent is rehabilitation not punishment. JJA needs sufficient time to rehabilitate a juvenile offender but not punish.

Another significant distinction between adult and juvenile offenders is the sex offender registration requirement. Sex offender registration requirement is not punishment for his conduct, but merely a collateral consequence to his actions. State v. Ward, 123 Wn.2d 488, 494, 869 P.2d 1062 (1994). Juveniles are allowed to request termination from registration requirements based on their age, if they provide clear and convincing evidence to the court that registration is no longer needed. RCW 9A.44.140(4)(a).

If the juvenile offender was under the age of fifteen at the time of the offense, a petition to remove registration requirements can be filed as soon as two years following disposition. RCW 9A.44.140(4)(b).

Juveniles also have the ability to have their records sealed starting two years after entry of disposition, depending on the level of offense. RCW 13.50.050(12)(a).

The above examples provide proof of significant differences between the juvenile system and the adult system. These differences support the purpose of the JJA, that the focus of the JJA is the needs of the offender. This focus is on the needs of the offender regardless the level of offense committed by the juvenile.

Trial by jury in juvenile court is not a constitutional requirement. Mandating jury trials in juvenile proceedings as a constitutional matter will destroy the entire purpose of the JJA. The juvenile proceeding will become a fully adversary process and will effectively end the focus of the JJA. Injecting a jury trial into juvenile proceedings as a matter of right would bring into the juvenile system delay, formality, an adversarial system that in the end would equate juvenile adjudications with criminal trials.

**B. The judicial definition of assault does not violate the separation of powers because the Legislature has historically left it to the judiciary to define assault with common law principles.**

The State has nothing further to add to the argument presented in the Response to Petition for Review.

V. CONCLUSION

Juveniles charged with violent offenses or serious violent offenses are not entitled a jury trial. Even though these juveniles may face longer rehabilitation time than other juveniles charged with minor offenses, or punishment for adults charged with petty offenses, it does not defeat the intent or the purpose of the JJA. There may be collateral consequences that mirror treatment of adults but these consequences do not dissolve the most important focus of the JJA, the needs of juvenile offenders.

DATED this 7 day of September, 2007.

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