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STATE OF WASHINGTON

NO. 81573-9

SUPREME COURT OF THE STATE OF WASHINGTON

In re the Interest of:

ESTEVAN SILVA, JR.,

A Minor Child.

BRIEF OF AMICUS CURIAE STATE OF WASHINGTON

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I. INTRODUCTION

On May 15, 2007, the Yakima County juvenile court held 15-year-old Estevan Silva in contempt of a court for violating an order entered for his protection, and at his mother's request, in an At Risk Youth proceeding. Using its inherent powers, rather than the contempt statute, the court imposed a sanction of 45 days detention, but suspended 43 days on the condition that Estevan obey the underlying court order. To justify the use of its inherent contempt power, the juvenile court determined: (1) The remedial contempt sanctions available under RCW 13.32A.250, the ARY statute, were not adequate to ensure Estevan's compliance with the court's order, and (2) under *State v. A.L.H.*, 116 Wn. App. 158, 64 P.3d 1262 (2003), statutory criminal contempt sanctions were not available for use in an ARY proceeding. Estevan appealed.

While the appeal was pending, this Court considered the scope of a juvenile court's inherent power to punish contemptuous conduct of a dependent child under a parallel statute, and held that a juvenile court must find both the civil and criminal statutory remedies inadequate before it may exercise its inherent power to punish a dependent youth's contempt. *In re Dependency of A.K.*, 162 Wn.2d 632, 652 ¶ 27, 174 P.3d 11 (2007).

The fundamental issue in the present case is whether the rule announced in *In re A.K.* applies in ARY proceedings. This appeal also provides an opportunity for the Court to clarify its holding in *A.K.*

II. IDENTITY AND INTEREST OF AMICUS CURIAE

The State of Washington submits this amicus brief at the request of the Court. Respondent, Jeanette Silva, Estevan's mother, has not filed a responsive brief or participated in this appeal. The State's interest in participating in this appeal is to assist the Court in fairly reviewing the issues raised.

III. ISSUES

1. Does *In re A.K.* require a juvenile court to expressly find that statutory criminal contempt sanctions are inadequate before it may exercise its inherent contempt power to punish a youth for violating an At Risk Youth order?
2. If so, must the juvenile court's finding be based on a previous referral to the criminal system and the failure of that system to meet the needs of the child, or may it be based on the juvenile court's consideration of the particular circumstances and needs of the ARY youth and his family?
3. Is a juvenile court required to follow the procedure set out in the criminal contempt statute, as well as the limits of the juvenile offender sentencing guidelines, when properly exercising its inherent power to punish an ARY youth for contempt?
4. Did the juvenile court violate the law when it ordered Estevan to cooperate with his parents' directives regarding drug/alcohol treatment?

IV. STATEMENT OF FACTS

On March 27, 2007, Estevan Silva's mother filed an At Risk Youth petition, alleging that Estevan had not attended school for most of the school year; that he was using illegal drugs and alcohol on a daily basis; that he was on runaway status and had been gone from home for nine days; that he refused to take medication prescribed for his Attention Deficit Disorder; and that he was very disrespectful towards his parents. CP at 35-36. Estevan admitted the allegations were true and that he met the definition of an at risk youth and he agreed to the entry of the ARY disposition order. 4/4/2007 RP at 1-2, 9; CP at 21-22.

The juvenile court explained to Estevan that the order required him to "not run away"; to follow his parents' rules; to be in school every day; and to not use drugs or alcohol. 4/4/2007 RP at 9-10. He also was required to participate in a drug/alcohol evaluation and Multi-Systemic Therapy (MST) services.¹ 4/4/2007 RP at 6-8. The court also clearly explained the possible consequences, including contempt sanctions, if Estevan did not follow the order. 4/4/2007 RP at 9-11.

Within two weeks of the ARY hearing, Estevan's mother asked the court to find the child in contempt. 4/17/2007 RP at 1. At the contempt

¹ MST services are provided through the Department of Social and Health Services and include assessments and therapy for individual family members and the family as a whole. 4/4/2007 RP at 7.

hearing, the mother testified that Estevan continued to skip school, to be away from home without permission, to use drugs and alcohol, and, contrary to her rules, to spend time with his uncle – a gang member who was dangerous and who provided drugs and alcohol to Estevan. 4/18/2007 RP at 3, 5-9, 19-20. She testified that Estevan “just doesn’t care” about contempt sanctions, and “says that he can ride out seven days . . . at the detention center.”² 4/18/2007 RP at 14. She also expressed that she was “very, very concerned about [Estevan’s] well-being.” 4/18/2007 RP at 18.

The juvenile court found Estevan in contempt and imposed a remedial sanction of five days in detention, with an opportunity to purge the contempt by writing an essay. 4/18/2007 RP at 22-24. He did not complete the essay and spent the entire five days in detention. 5/15/2007 RP at 31.

Within a month he was back before the juvenile court on new contempt charges, again filed by his mother. 5/10/2007 RP at 1. At the May 2007 contempt hearing, Estevan’s mother testified that the five-day detention under the April contempt order resulted in “[n]o improvement at all” in Estevan’s behaviors. 5/15/2007 RP at 12, 15-16. She asked the

² The April 2007 proceeding was the second ARY action involving Estevan that year. 4/4/2007 RP at 2. In the first proceeding, he refused to comply with the court’s order and was held in contempt and sanctioned with detention. Although the contempt order contained a purge option, Estevan did not take advantage of that option. 4/4/2007 RP at 3-4.

court to use its inherent contempt authority to detain Estevan for a longer time so that “at least I’ll know he’s in there, he’s at least clean and sober, and it will help me to get him into inpatient treatment.” 5/15/2007 RP at 10. She testified that after the April 2007 contempt hearing, she, her husband and one of her sons were assaulted by Estevan’s uncle. The parents asked Estevan to help them – “you know, to stop his uncle from beating up my husband, and he couldn’t even stand, couldn’t even get up Judge to help, to stop the fight . . . he was drunk.” 5/15/2007 RP at 9.

A Family Preservation Services social worker, Brenda Sipes, testified that she was assigned to provide services, including therapy, to the family. She had not yet met with Estevan by the time of the contempt hearing, because he was avoiding her. 5/15/2007 RP at 25. She stated that she was unable to get Estevan into treatment if he was not willing to participate. 5/15/2007 RP at 25. The mother testified that she was working with FPS to find an inpatient drug/alcohol treatment program for Estevan. 5/15/2007 RP at 37-39. At the hearing, Estevan agreed that he needed inpatient drug treatment and testified that he was now willing to participate in such a program. 5/15/2007 RP at 45-46.

At the end of the hearing, the juvenile court found Estevan in contempt. 5/15/2007 RP at 53. The court found the statutory contempt remedy contained in the ARY statute, RCW 13.32A.250, inadequate

because of Estevan's pattern of behavior over several months. The court stated:

Estevan is getting off to a terrible direction. He is headed down a road which . . . if he doesn't change his ways are likely to lead to really bad problems with substance abuse, with not following laws, with ending up with jail time, with not getting an education, with failing as an adult and trying to get a good job or support himself or a family, not getting along with other people. Those are really big things. And I'm concerned about the four younger siblings in the home who are adversely impacted by Estevan's choices. Even though Estevan is saying he will do better, I don't believe Estevan is really going to do better until he gets through with the substance abuse treatment.

5/15/2007 RP at 53-54. The court also noted that the

statutory criminal contempt powers, which used to be argued as one of the possibilities, those are not available anymore, after one of the court decisions from 2003. So I'm stuck. . . . And I do think that if we go a little bit further beyond the statutory remedies into the inherent contempt remedies that we have a chance of making a difference with Estevan.

5/15/2007 RP at 54-55.³

The court then imposed a 45-day sentence, suspending 43 days on the condition that Estevan follow the court's orders and comply with his parents' efforts to get him drug treatment. 5/15/2007 RP at 56; CP at 13.

On appeal, the court of appeals certified the case, pursuant to RAP 4.4, and this court accepted review.

³ The decision the court referred to is *State v. A.L.H.*, 116 Wn. App. 158, 64 P.3d 1262 (2003).

V. ARGUMENT

A. Although Technically Moot, The Court Should Decide This Appeal, As It Involves Issues Of Continuing And Substantial Public Interest

The terms of the contempt order challenged here have expired. It has been more than one year since the juvenile court imposed the 45-day conditional sentence. Under the terms of the sanction, Estevan would have served or purged the detention time within one year. CP at 13-14.⁴ The ARY proceeding was dismissed on January 2, 2008. There is no effective relief that can be afforded to Estevan and the case is, therefore, moot. *In re Cross*, 99 Wn.2d 373, 376-377, 662 P.2d 828 (1983).

As a general rule, this Court will dismiss an appeal if the issues presented are moot. *Hart v. Dep't of Soc. & Health Svcs.*, 111 Wn.2d 445, 447, 759 P.2d 1206 (1988). However, the Court may decide a moot case if it involves matters of continuing and substantial public interest. *In re A.K.*, 162 Wn.2d at 643 ¶ 12.

In deciding whether or not a substantial public interest is involved, the court looks at three criteria: (1) the public or private nature of the question presented; (2) the desirability of an authoritative determination which will provide future guidance to public officers; and (3) the

⁴ DSHS closed its case involving the family in November 2007. The agency's records indicate that the family is no longer requesting services and may have moved from the Yakima area. (July 28, 2008 telephone conversation between counsel and Christina Kwan, the DSHS social worker who had worked with the Silva family.)

likelihood the question will recur. *In re A.K.*, 162 Wn.2d at 643 ¶ 13; *In re Interests of M.B.*, 101 Wn. App. 425, 432-33, 3 P.3d 780 (2000). As in both *A.K.* and *M.B.* – each reviewing juvenile contempt orders – the three criteria are met in this case.

First, the public has a great interest in the rights of juveniles who are in need of protection, and the authority of the court in such cases is a public matter. *In re A.K.*, 162 Wn.2d at 643 ¶ 13. Second, a determination of how the court's inherent power interacts with the statutory contempt scheme in ARY proceedings will provide useful guidance to juvenile court judges. *See, e.g., In re A.K.*, 162 Wn.2d at 643 ¶ 13 (discussing the dependency courts). Third, the juvenile courts' exercise of inherent contempt authority to force compliance with ARY orders is likely to recur. *In re A.K.*, 162 Wn.2d at 643; *In re M.B.*, 101 Wn. App. at 433.

Therefore, although the Court cannot grant effective relief to either Estevan or his mother, it should determine the issues presented for review and, additionally, clarify its holding in *A.K.*

B. The Court's Holding In *In re Dependency of A.K.* Applies To Contempt Rulings In At Risk Youth Proceedings

1. ***In re A.K.* Requires A Juvenile Court To Specifically Find All Statutory Contempt Remedies Inadequate Before Exercising Its Inherent Power To Impose A Punitive Contempt Sanction Against An ARY youth**

In *In re Dependency of A.K.*, this Court examined the proper use of a juvenile court's inherent power to punish a dependent child for willful disobedience of a court order. The Court concluded that the dependency statute's contempt provisions, set forth in RCW 13.34.165, were not intended to be the exclusive means of imposing statutory contempt sanctions on dependent youths. The Court held that criminal contempt sanctions under RCW 7.21.040(5) also are available for punishing a violation of a dependency order and that a juvenile court must find those sanctions, as well as the remedial statutory sanctions, inadequate before exercising its inherent contempt power.⁵ *In re A.K.*, 162 Wn.2d at 652.

In announcing this rule, the Court reviewed the legislative history of the contempt provisions of RCW 13.34, and the cases interpreting the juvenile contempt statutes. *A.K.* expressly disagreed with the holding in *State v. A.L.H.*, and, to the extent it applies to dependency proceedings, impliedly overruled it. *In re A.K.*, 162 Wn.2d at 648-51 ¶¶ 20-25.

⁵ The State recognizes that the contempt statute provides for either punitive or remedial sanctions – not criminal or civil sanctions. RCW 7.21.010(2)-(3). The criminal/civil designation reflects a distinction frequently made in case law to determine the due process protections required. See *In re M.B.*, 101 Wn. App. at 438-40. The designations are used here only for convenience of the discussion.

A.L.H. had interpreted the contempt provisions of the ARY statute at issue in this case, RCW 13.32A.250, to expressly limit the statutory contempt sanctions that may be sought in an ARY proceeding to the remedial sanctions set out in RCW 13.32A.250 and RCW 7.21.030(2)(c). *A.L.H.*, 116 Wn. App. at 164. *See also In re A.K.*, 162 Wn.2d at 648-49.

The contempt provisions of the dependency statute and the ARY statute are substantially identical. *In re A.K.*, 162 Wn.2d at 649 (noting that the “wording of the dependency contempt statute . . . is essentially identical to the ARY contempt statute”). In 1998 both statutes were amended by the same legislation. Laws of 1998, ch. 296 §§ 35-38. Each statute provides that “[f]ailure by a party to comply with an order entered under this chapter is civil contempt of court as provided in RCW 7.21.030(2).” RCW 13.32A.250(2); RCW 13.34.165(1).

Although the Court in *A.K.* recognized a “somewhat different” purpose between the dependency and ARY statutes, it applied standard rules of statutory construction to determine that the legislature did not intend the new remedial contempt provision to be an *exclusive* contempt remedy. *In re A.K.*, 162 Wn.2d at 651. In reaching this conclusion, the *A.K.* court relied, in part, on language in RCW 7.21.030(2), the general remedial contempt statute. This statute provides for a variety of remedial sanctions, including: “In cases under chapters 13.32A, 13.34, and 28A.225

RCW, commitment to juvenile detention for a period of time not to exceed seven days. This sanction may be imposed in addition to, or as an alternative to, any other remedial sanction authorized by this chapter.” RCW 7.21.030(2)(e).

In re A.K. concluded that the legislature did not intend to abrogate the availability of criminal contempt sanctions under RCW 7.21.040 in dependency cases. “Instead, as the legislature stated, it intended to merely create a new alternative sanction.” *In re A.K.*, 162 Wn.2d at 651. Accordingly, a juvenile court is required “to utilize all the tools the legislature has seen fit to provide”, including statutory criminal sanctions, before exercising its broader inherent powers. *In re A.K.*, 162 Wn.2d at 651-52.

In amending the ARY and dependency statutes to provide for remedial contempt, the legislature did not distinguish between youths who were the subjects of dependency and ARY proceedings.

The legislative intent is stated in the law as follows:

The legislature finds that an essential component of the children in need of services, dependency, and truancy laws is the use of juvenile detention. As chapter 7.21 RCW is currently written, courts may not order detention time without a criminal charge being filed. It is the intent of the legislature to avoid the bringing of criminal charges against youth who need the guidance of the court rather than its punishment. The legislature further finds that ordering a child placed in detention is a remedial action, not a punitive

one. Since the legislature finds that the state is required to provide instruction to children in detention, use of the courts' contempt powers is an effective means for furthering the education and protection of these children. Thus, it is the intent of the legislature to authorize a limited sanction of time in juvenile detention independent of chapter 7.21 RCW for failure to comply with court orders in truancy, child in need of services, at-risk youth, and dependency cases for the sole purpose of providing the courts with the tools necessary to enforce orders in these limited types of cases because other statutory contempt remedies are inadequate.

Laws of 1998, ch. 296 § 35 (uncodified legislative finding).

In light of the similarity of language and purpose of the contempt provisions in the ARY and dependency statutes, there is no basis for interpreting the ARY contempt statute in a manner that is different from identical language in the dependency statute.

The Court should hold that the reasoning of *A.K.* applies to ARY proceedings and requires a juvenile court to find that all statutory contempt remedies are inadequate before exercising its inherent power to impose a punitive contempt sanction.

2. The Court Should Confirm That A Juvenile Court Acting Under RCW 13.32A Or RCW 13.34 Need Not Find Statutory Criminal Contempt Remedies Inadequate Before Exercising Its Inherent Power To Impose A "Civil" or Coercive Contempt Sanction

In re A.K. is a plurality decision in which the "majority" holding on at least one issue is not resolved in the lead and concurring opinions.

Instead, it is decided by the concurring and dissenting opinions. That issue is whether a juvenile court must find the statutory criminal contempt sanctions inadequate before using its inherent power to fashion a “civil” or coercive contempt sanction.

Five justices agreed that a juvenile court is not required to find the statutory criminal contempt sanctions inadequate before fashioning a remedial and coercive (“civil”) sanction in a dependency proceeding. *In re A.K.*, 162 Wn.2d at 653 (Madsen, J. concurring) (two justices agreeing that a juvenile court is required to find the statutory remedies for criminal contempt inadequate before using its inherent power to *punish* a juvenile for violating a court order, but stating this finding should not be required before exercising its inherent power to impose a remedial, coercive contempt sanction); *In re A.K.*, 162 Wn.2d at 657 (Owens, J. dissenting) (three justices “would hold that a juvenile court may exercise its inherent authority to order a coercive detention after finding the civil contempt statute inadequate without first exhausting the criminal statutory remedy”).

In order to provide appropriate guidance to juvenile courts, the Court should confirm that *A.K.* holds: A juvenile court is required to find only the statutory remedial contempt remedies inadequate before using the court’s inherent contempt power to hold a dependent or ARY youth in

contempt and to fashion a remedial coercive sanction; however, before exercising its inherent power to punish a youth for contemptuous conduct, the juvenile court should find both the criminal and remedial statutory contempt remedies inadequate.

C. The Juvenile Court Should Not Be Required To Refer An ARY Youth For Criminal Prosecution If, Based On The Circumstances, The Court Determines The Criminal Statutory Remedy Would Be Inadequate To Meet The Child's Needs

In re A.K. requires a juvenile court to find the statutory criminal contempt sanctions “inadequate” before the juvenile court may use its inherent power to punish the youth’s willful violation of the court’s orders. It is unclear, under *A.K.*, whether the juvenile court is able to consider the statutory options and then reject them as inadequate, based on the needs of the child, the circumstances case, and the impact of the statutory sanction on the child, or must wait to use its inherent contempt authority until after the statutory measures have been tried and proven to be inadequate.

The State agrees that the juvenile court’s exercise of its inherent contempt authority should be sparingly exercised – that is, it should be exercised only where statutory remedies are inadequate under the particular circumstances of the case. *In re A.K.*, 162 Wn.2d at 647.

However, the State submits that an ARY court, whose purpose is to assist parents in protecting their child from harm and which has entered

a specific order aimed at meeting the needs of the child, should have the ability to determine whether a statutory contempt sanction is appropriate to meet the needs of a particular child. A child who has multiple problems should not be forced into the juvenile justice system for the sole purpose of proving the criminal contempt sanction inadequate.

This is particularly true in light of the legislature's intent in amending RCW 13.32A.250 in 1998. At that time, the legislature expressly stated, "It is the intent of the legislature to avoid the bringing of criminal charges against youth who need the guidance of the court rather than its punishment." Laws of 1998, ch. 296 § 35. The intent of the legislature was to provide juvenile courts with the tools necessary to enforce their orders in ARY, dependency and truancy proceedings – not to force these youths into criminal proceedings which would result in a criminal record.

Moreover, a rule permitting the juvenile judge to determine that the criminal statutory remedy is inadequate, without first resorting to that remedy, is consistent with juvenile court improvement initiatives. For example, the National Council of Juvenile and Family Court Judges has determined that a juvenile judicial officer "who has remained involved with a family is more likely to make decisions consistent with the best interests of the child. . . . [T]he cumulative knowledge gained of family

circumstances and responses to court orders may increase the quality of response to family crises.” *Washington State Court Improvement Project Re-Assessment: Final Report*, June 2005 at 38-39 (citing the *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases* (1995), National Council of Juvenile and Family Court Judges). The judicial officer who imposed the contempt sanction in this case presided over two ARY proceedings involving Estevan and another involving one of his younger brothers. 4/4/2007 RP at 2; 4/18/2007 RP at 16; 5/15/2007 RP at 13-14. The juvenile court was thus uniquely qualified to understand the extent of the family’s crisis, the need for immediate action to protect the child, and the adequacy of various contempt options.

This Court should clarify that a juvenile court’s determination that statutory criminal contempt remedies are inadequate to meet the needs of the child does not require proof that such remedies have been tried and proven to be unsuccessful or inadequate, before the court is permitted to exercise its inherent power to sanction a youth for violating a court order entered in an ARY proceeding.

D. A Juvenile Court Properly Exercising Its Inherent Powers To Impose A Punitive Contempt Sanction Is Not Bound To The Process and Penalty Of the Criminal Contempt Statute

Estevan argues that imposition of a punitive contempt sanction must be accomplished according to the methods set out in the criminal

contempt statute in order to meet constitutional due process guarantees.⁶ Because the Court in *A.K.* vacated the contempt orders based on the juvenile court's failure to find the statutory criminal contempt sanctions inadequate, it did not determine what due process protections are required when the juvenile court uses its inherent power to punish a child for contempt of court. *In re A.K.*, 162 Wn. 2d at 652.

For similar reasons the Court need not decide the issue in this case. If the Court agrees to consider the issue, it should hold that the criminal contempt statute's process is not the sole method of protecting due process rights of persons subject to punitive contempt sanctions.

An inherent contempt proceeding in juvenile court is not a "criminal" proceeding. However, when the sanction is punitive in nature and results in a loss of liberty for a determinate period, the contemnor is entitled to the same due process protections generally afforded in criminal proceedings. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 826, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994); *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 798-99, 107 S.Ct. 2124, 95 L.Ed.2d 740 (1987); *In re M.B.*, 101 Wn. App. at 452-53.

⁶ Appellant Estevan's brief was filed before the *A.K.* decision was published and his counsel did not have the advantage of the Court's analysis in *A.K.* The appellant's brief discusses the separation of powers doctrine as it applies to inherent contempt. Because the inherent power of the court was affirmed and its scope described in *A.K.*, the separation of powers argument is not addressed in this amicus brief.

Juveniles, like adults, who are involved in criminal-like proceedings, are entitled to basic due process protections. These protections include the right to notice of charges; a reasonable opportunity to meet the charges by way of defense or explanation; the right to counsel; the privilege against self-incrimination; the right to confront and cross examination of witnesses; and proof of the charges beyond a reasonable doubt. *Schall v. Martin*, 467 U.S. 253, 263, 104 S.Ct. 2403, 81 L.Ed.2d 207 (1984); *In re Gault*, 387 U.S. 1, 31-57, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967).

Estevan does not claim that he was denied any of these basic due process rights. Instead, he essentially asks this Court to hold that due process requires that contempt actions be initiated by a prosecutor, as set out in RCW 7.21.040. App. Br. at 18-19. However, this statute does not apply in proceedings based on the court's inherent power to enforce its own orders. That power derives from the constitution and does not depend on a legislative grant of authority. *In re A.K.*, 162 Wn.2d at 646-47. Moreover, courts exercising their inherent powers "cannot be at the mercy of another branch [of government] in deciding whether such proceedings should be initiated." *Young*, 481 U.S. at 796.

Estevan also argues that a contempt proceeding must be before a "neutral" or different judicial officer than the one who imposed the order

that is the subject of the contempt proceeding. App. Br. at 20. As a general proposition, due process requires that an accused person be judged by an impartial judge. *United States v. Meyer*, 462 F.2d 827, 836 (D.C. Cir 1972). The law recognizes that due process can be threatened in contempt cases in (1) situations in which the alleged contempt is a personal attack on the judge and (2) situations in which the judge adopts an adversary posture with respect to the defendant. *Meyer*, 462 F.2d at 836. However, there is no presumption of bias against a particular judicial officer. The person claiming bias must show actual bias, not just a knowledge of the alleged contemnor or prior involvement in the proceedings. *Harrison v. McBride*, 428 F.3d 652, 688 (7th Cir. 2005). The fact that a judge has entered an ARY order does not prove the judge is actually biased.

Estevan argues that the juvenile court erred in imposing a disposition above the standard range and in denying him credit for time served.⁷ App. Br. at 21-22. The court's finding of contempt against an ARY youth, and the exercise of its inherent authority to impose a sanction do not result in a finding that the youth has committed a criminal offense.

⁷ Through his trial counsel, Estevan agreed that the juvenile court had discretion to grant or deny credit for time served. RP at 44 ("obviously the Court doesn't have to give credit for time served . . . that's within the Court's discretion"). This argument is therefore waived. RAP 2.5(a); *Doe v. Church of Jesus Christ of Latter Day Saints*, 122 Wn. App. 556, 568, 90 P.3d 1147 (2004).

Neither the sentencing act nor the manifest injustice provisions apply to contemptuous acts that are not “offenses” under the criminal code. RCW 13.40.160.

E. The Juvenile Court Did Not Violate The Constitutional Or Statutory Rights Of Estevan When It Ordered Him To Participate In Drug Treatment As Arranged By His Parents

Estevan argues the juvenile court erred when it “involuntarily committed” him to an inpatient drug treatment program. App. Br. at 23-28. The juvenile court did not make such an order.

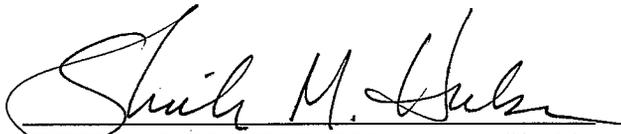
The court first heard from Estevan, who testified that he agreed he needed inpatient drug treatment, and that he would voluntarily participate in the treatment. 5/15/2007 RP at 45-48. The juvenile court then ordered him to participate in drug/alcohol treatment - as arranged by his parents. CP at 13-14. If Estevan decided not to voluntarily participate in inpatient treatment, his parent could still authorize the treatment. RCW 70.96A.245. However, he would then be afforded all of the protections available under RCW 70.96A.245. Nothing in the court’s order requires an involuntarily commitment to inpatient treatment. The record is not adequate to address Estevan’s arguments in this regard and, given the posture of the case, this court should decline to consider this issue.

VI. CONCLUSION

The State asks the Court to hold that in *In re A.K.* applies to ARY proceedings, and then to clarify *A.K.* and hold (1) a finding that statutory criminal contempt remedies are inadequate is not a prerequisite to the exercise of the juvenile court's inherent authority to create a coercive and remedial contempt sanction, and (2) a finding that the statutory criminal contempt remedy is inadequate may be based on the juvenile court's reasoned assessment of the circumstances, rather than on proof that such a remedy has failed in the past. affirm the court of appeals.

RESPECTFULLY SUBMITTED this 30th day of July, 2008.

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APPENDIX –
APPLICABLE STATUTES

APPLICABLE STATUTES

RCW 7.21.010 Contempt Definitions.

The definitions in this section apply throughout this chapter:

- (1) "Contempt of court" means intentional:
 - (a) Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;
 - (b) Disobedience of any lawful judgment, decree, order, or process of the court;
 - (c) Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or
 - (d) Refusal, without lawful authority, to produce a record, document, or other object.
- (2) "Punitive sanction" means a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court.
- (3) "Remedial sanction" means a sanction imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform.

RCW 7.21.030 Remedial sanctions — Payment for losses.

- (1) The court may initiate a proceeding to impose a remedial sanction on its own motion or on the motion of a person aggrieved by a contempt of court in the proceeding to which the contempt is related. Except as provided in RCW 7.21.050, the court, after notice and hearing, may impose a remedial sanction authorized by this chapter.
- (2) If the court finds that the person has failed or refused to perform an act that is yet within the person's power to perform, the court may find the person in contempt of court and impose one or more of the following remedial sanctions:
 - (a) Imprisonment if the contempt of court is of a type defined in RCW 7.21.010(1) (b) through (d). The imprisonment may extend only so long as it serves a coercive purpose.
 - (b) A forfeiture not to exceed two thousand dollars for each day the contempt of court continues.
 - (c) An order designed to ensure compliance with a prior order of the court.
 - (d) Any other remedial sanction other than the sanctions specified in (a) through (c) of this subsection if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.
 - (e) In cases under chapters 13.32A, 13.34, and 28A.225 RCW, commitment to juvenile detention for a period of time not to exceed seven days. This sanction may be imposed in addition to, or as an alternative to, any other remedial sanction authorized by this chapter. This remedy is specifically determined to be a remedial sanction.
- (3) The court may, in addition to the remedial sanctions set forth in subsection (2) of this section, order a person found in contempt of court to pay a party for any losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees.
- (4) If the court finds that a person under the age of eighteen years has willfully disobeyed the terms of an order issued under chapter 10.14 RCW, the court may find the person in contempt of court and may, as a sole sanction for such contempt, commit the person to juvenile detention for a period of time not to exceed seven days.

RCW 7.21.040 Punitive sanctions — Fines.

(1) Except as otherwise provided in RCW 7.21.050, a punitive sanction for contempt of court may be imposed only pursuant to this section.

(2)(a) An action to impose a punitive sanction for contempt of court shall be commenced by a complaint or information filed by the prosecuting attorney or city attorney charging a person with contempt of court and reciting the punitive sanction sought to be imposed.

(b) If there is probable cause to believe that a contempt has been committed, the prosecuting attorney or city attorney may file the information or complaint on his or her own initiative or at the request of a person aggrieved by the contempt.

(c) A request that the prosecuting attorney or the city attorney commence an action under this section may be made by a judge presiding in an action or proceeding to which a contempt relates. If required for the administration of justice, the judge making the request may appoint a special counsel to prosecute an action to impose a punitive sanction for contempt of court.

A judge making a request pursuant to this subsection shall be disqualified from presiding at the trial.

(d) If the alleged contempt involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial of the contempt unless the person charged consents to the judge presiding at the trial.

(3) The court may hold a hearing on a motion for a remedial sanction jointly with a trial on an information or complaint seeking a punitive sanction.

(4) A punitive sanction may be imposed for past conduct that was a contempt of court even though similar present conduct is a continuing contempt of court.

(5) If the defendant is found guilty of contempt of court under this section, the court may impose for each separate contempt of court a fine of not more than five thousand dollars or imprisonment in the county jail for not more than one year, or both.

RCW 13.32A.250 Failure to comply with order as civil contempt — Motion — Penalties.

(1) In all child in need of services proceedings and at-risk youth proceedings, the court shall verbally notify the parents and the child of the possibility of a finding of contempt for failure to comply with the terms of a court order entered pursuant to this chapter. Except as otherwise provided in this section, the court shall treat the parents and the child equally for the purposes of applying contempt of court processes and penalties under this section.

(2) Failure by a party to comply with an order entered under this chapter is a civil contempt of court as provided in RCW 7.21.030(2)(e), subject to the limitations of subsection (3) of this section.

(3) The court may impose remedial sanctions including a fine of up to one hundred dollars and confinement for up to seven days, or both for contempt of court under this section.

(4) A child placed in confinement for contempt under this section shall be placed in confinement only in a secure juvenile detention facility operated by or pursuant to a contract with a county.

(5) A motion for contempt may be made by a parent, a child, juvenile court personnel, or by any public agency, organization, or person having custody of the child under a court order adopted pursuant to this chapter.

(6) Whenever the court finds probable cause to believe, based upon consideration of a motion for contempt and the information set forth in a supporting declaration, that a child has violated a placement order entered under this chapter, the court may issue an order directing law enforcement to pick up and take the child to detention. The order may be entered ex parte without prior notice to the child or other parties. Following the child's admission to detention, a detention review hearing must be held in accordance with RCW 13.32A.065.

RCW 13.34.165 Civil contempt — Grounds — Motion — Penalty — Detention review hearing.

(1) Failure by a party to comply with an order entered under this chapter is civil contempt of court as provided in RCW 7.21.030(2)(e).

(2) The maximum term of confinement that may be imposed as a remedial sanction for contempt of court under this section is confinement for up to seven days.

(3) A child held for contempt under this section shall be confined only in a secure juvenile detention facility operated by or pursuant to a contract with a county.

(4) A motion for contempt may be made by a parent, juvenile court personnel, or by any public agency, organization, or person having custody of the child under a court order entered pursuant to this chapter.

(5) Whenever the court finds probable cause to believe, based upon consideration of a motion for contempt and the information set forth in a supporting declaration, that a child has violated a placement order entered under this chapter, the court may issue an order directing law enforcement to pick up and take the child to detention. The order may be entered ex parte without prior notice to the child or other parties. Following the child's admission to detention, a detention review hearing must be held in accordance with RCW 13.32A.065.

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 6208

Chapter 296, Laws of 1998

(partial veto)

55th Legislature
1998 Regular Session

AT-RISK YOUTH

EFFECTIVE DATE: 6/11/98

Passed by the Senate March 9, 1998
YEAS 34 NAYS 9

BRAD OWEN

President of the Senate

Passed by the House March 6, 1998
YEAS 98 NAYS 0

CLYDE BALLARD

Speaker of the
House of Representatives

Approved April 2, 1998, with the
exception of sections 2, 3, 5, 10, 41
and 42, which are vetoed.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the
Senate of the State of Washington, do
hereby certify that the attached is
SUBSTITUTE SENATE BILL 6208 as passed
by the Senate and the House of
Representatives on the dates hereon
set forth.

MIKE O'CONNELL

Secretary

FILED

April 2, 1998 - 2:37 p.m.

Secretary of State
State of Washington

1 compassionate care and control of their minor children when there is a
2 medical necessity for treatment and without the requirement of filing
3 a petition under chapter 70.96A RCW.

4 NEW SECTION. **Sec. 34.** The department of social and health
5 services shall adopt rules defining "appropriately trained professional
6 person" for the purposes of conducting mental health and chemical
7 dependency evaluations under sections 17(3), 18(1), 27(3), and 29(1) of
8 this act.

9 **PART III - MISCELLANEOUS**

10 NEW SECTION. **Sec. 35.** The legislature finds that an essential
11 component of the children in need of services, dependency, and truancy
12 laws is the use of juvenile detention. As chapter 7.21 RCW is
13 currently written, courts may not order detention time without a
14 criminal charge being filed. It is the intent of the legislature to
15 avoid the bringing of criminal charges against youth who need the
16 guidance of the court rather than its punishment. The legislature
17 further finds that ordering a child placed in detention is a remedial
18 action, not a punitive one. Since the legislature finds that the state
19 is required to provide instruction to children in detention, use of the
20 courts' contempt powers is an effective means for furthering the
21 education and protection of these children. Thus, it is the intent of
22 the legislature to authorize a limited sanction of time in juvenile
23 detention independent of chapter 7.21 RCW for failure to comply with
24 court orders in truancy, child in need of services, at-risk youth, and
25 dependency cases for the sole purpose of providing the courts with the
26 tools necessary to enforce orders in these limited types of cases
27 because other statutory contempt remedies are inadequate.

28 **Sec. 36.** RCW 7.21.030 and 1989 c 373 s 3 are each amended to read
29 as follows:

30 (1) The court may initiate a proceeding to impose a remedial
31 sanction on its own motion or on the motion of a person aggrieved by a
32 contempt of court in the proceeding to which the contempt is related.
33 Except as provided in RCW 7.21.050, the court, after notice and
34 hearing, may impose a remedial sanction authorized by this chapter.

1 (2) If the court finds that the person has failed or refused to
2 perform an act that is yet within the person's power to perform, the
3 court may find the person in contempt of court and impose one or more
4 of the following remedial sanctions:

5 (a) Imprisonment if the contempt of court is of a type defined in
6 RCW 7.21.010(1) (b) through (d). The imprisonment may extend only so
7 long as it serves a coercive purpose.

8 (b) A forfeiture not to exceed two thousand dollars for each day
9 the contempt of court continues.

10 (c) An order designed to ensure compliance with a prior order of
11 the court.

12 (d) Any other remedial sanction other than the sanctions specified
13 in (a) through (c) of this subsection if the court expressly finds that
14 those sanctions would be ineffectual to terminate a continuing contempt
15 of court.

16 (e) In cases under chapters 13.32A, 13.34, and 28A.225 RCW,
17 commitment to juvenile detention for a period of time not to exceed
18 seven days. This sanction may be imposed in addition to, or as an
19 alternative to, any other remedial sanction authorized by this chapter.
20 This remedy is specifically determined to be a remedial sanction.

21 (3) The court may, in addition to the remedial sanctions set forth
22 in subsection (2) of this section, order a person found in contempt of
23 court to pay a party for any losses suffered by the party as a result
24 of the contempt and any costs incurred in connection with the contempt
25 proceeding, including reasonable attorney's fees.

26 **Sec. 37.** RCW 13.32A.250 and 1996 c 133 s 28 are each amended to
27 read as follows:

28 (1) In all child in need of services proceedings and at-risk youth
29 proceedings, the court shall verbally notify the parents and the child
30 of the possibility of a finding of contempt for failure to comply with
31 the terms of a court order entered pursuant to this chapter. Except as
32 otherwise provided in this section, the court shall treat the parents
33 and the child equally for the purposes of applying contempt of court
34 processes and penalties under this section.

35 (2) Failure by a party to comply with an order entered under this
36 chapter is a civil contempt of court as provided in (~~chapter 7.21~~)
37 RCW 7.21.030(2)(e), subject to the limitations of subsection (3) of
38 this section.

1 (3) The court may impose remedial sanctions including a fine of up
2 to one hundred dollars and confinement for up to seven days, or both
3 for contempt of court under this section.

4 (4) A child placed in confinement for contempt under this section
5 shall be placed in confinement only in a secure juvenile detention
6 facility operated by or pursuant to a contract with a county.

7 (5) A motion for contempt may be made by a parent, a child,
8 juvenile court personnel, or by any public agency, organization, or
9 person having custody of the child under a court order adopted pursuant
10 to this chapter.

11 (6) Whenever the court finds probable cause to believe, based upon
12 consideration of a motion for contempt and the information set forth in
13 a supporting declaration, that a child has violated a placement order
14 entered under this chapter, the court may issue an order directing law
15 enforcement to pick up and take the child to detention. The order may
16 be entered ex parte without prior notice to the child or other parties.
17 Following the child's admission to detention, a detention review
18 hearing must be held in accordance with RCW 13.32A.065.

19 **Sec. 38.** RCW 13.34.165 and 1996 c 133 s 29 are each amended to
20 read as follows:

21 (1) Failure by a party to comply with an order entered under this
22 chapter is civil contempt of court as provided in (~~chapter 7.21~~) RCW
23 7.21.030(2)(e).

24 (2) The maximum term of imprisonment that may be imposed as a
25 (~~punitive~~) remedial sanction for contempt of court under this section
26 is confinement for up to seven days.

27 (3) A child imprisoned for contempt under this section shall be
28 confined only in a secure juvenile detention facility operated by or
29 pursuant to a contract with a county.

30 (4) A motion for contempt may be made by a parent, juvenile court
31 personnel, or by any public agency, organization, or person having
32 custody of the child under a court order entered pursuant to this
33 chapter.

34 (5) Whenever the court finds probable cause to believe, based upon
35 consideration of a motion for contempt and the information set forth in
36 a supporting declaration, that a child has violated a placement order
37 entered under this chapter, the court may issue an order directing law
38 enforcement to pick up and take the child to detention. The order may

1 be entered ex parte without prior notice to the child or other parties.
2 Following the child's admission to detention, a detention review
3 hearing must be held in accordance with RCW 13.32A.065.

4 **Sec. 39.** RCW 28A.225.090 and 1997 c 68 s 2 are each amended to
5 read as follows:

6 (1) A court may order a child subject to a petition under RCW
7 28A.225.035 to:

8 (a) Attend the child's current school;

9 (b) If there is space available and the program can provide
10 educational services appropriate for the child, order the child to
11 attend another public school, an alternative education program, center,
12 a skill center, dropout prevention program, or another public
13 educational program;

14 (c) Attend a private nonsectarian school or program including an
15 education center. Before ordering a child to attend an approved or
16 certified private nonsectarian school or program, the court shall: (i)
17 Consider the public and private programs available; (ii) find that
18 placement is in the best interest of the child; and (iii) find that the
19 private school or program is willing to accept the child and will not
20 charge any fees in addition to those established by contract with the
21 student's school district. If the court orders the child to enroll in
22 a private school or program, the child's school district shall contract
23 with the school or program to provide educational services for the
24 child. The school district shall not be required to contract for a
25 weekly rate that exceeds the state general apportionment dollars
26 calculated on a weekly basis generated by the child and received by the
27 district. A school district shall not be required to enter into a
28 contract that is longer than the remainder of the school year. A
29 school district shall not be required to enter into or continue a
30 contract if the child is no longer enrolled in the district;

31 (d) Be referred to a community truancy board, if available; or

32 (e) Submit to testing for the use of controlled substances or
33 alcohol based on a determination that such testing is appropriate to
34 the circumstances and behavior of the child and will facilitate the
35 child's compliance with the mandatory attendance law.

36 (2) If the child fails to comply with the court order, the court
37 may order the child to be punished by detention, as provided in RCW
38 7.21.030(2)(e), or may impose alternatives to detention such as

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

LILA JANE SILVERSTEIN Washington Appellate Project 1511 Third Ave, Suite 701 Seattle, WA 98101	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> ABC/Legal Messenger <input type="checkbox"/> Hand delivered by <input type="checkbox"/> Facsimile: (206) 586-2710 <input checked="" type="checkbox"/> Email
JEANETTE M. SILVA 101 South "G" Street Toppenish, WA 98948	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> ABC/Legal Messenger <input type="checkbox"/> Hand delivered by: <input type="checkbox"/> By facsimile

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 30th day of July, 2008, at Olympia, Washington.

Cheryl Chafin
Cheryl Chafin, Legal Assistant