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SUPREME COURT  
STATE OF WASHINGTON

2009 AUG 21 P 4: 38

BY RONALD R. CARPENTENo. 81600-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In The Matter of the Personal Restraint of

MONTGOMERY MANRO,

Petitioner.

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- REPLY BRIEF OF PETITIONER

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A. ISSUE IN REPLY

1. What should be the remedy in the instant case?.

B. ARGUMENT IN REPLY

The State has, in its pleadings, questioned what remedy Mr. Manro seeks if the Court granted relief in this case, and has even questioned whether it could retry Mr. Manro for the original charged crime of assault in the first degree.<sup>1</sup> *See Supplemental Brief of Respondent State of Washington.*

Mr. Manro acknowledges that there is a lack of clarity in his prior pleadings about what remedy he seeks. This confusion is due to the fact that the Legislature did not clarify the law in this area until 2005. However, whatever lack of clarity there may have been in Mr. Manro's prior pleadings, it should be clear that the exclusive remedy that Mr. Manro seeks is the vacation of the adult conviction and a remand to juvenile court for imposition of a juvenile disposition for two counts of assault in the fourth degree. This is the remedy set out in RCW 13.04.030:

The juvenile court shall have exclusive jurisdiction

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<sup>1</sup> Mr. Manro respectfully submits that despite *State v. Daniels*, 160 Wn.2d 256, 156 P.3d 905 (2007), *reconsideration denied*, 165 Wn.2d 627, 200 P.3d 711 (2009), retrial on assault in the first degree would violate double jeopardy under U.S. Const. amend. 5 (& 14) and Wash. Const. art. 1, § 9. *See Brazzel v. Washington*, 491 F.3d 976 (9th Cir. 2007).

over the disposition of any remaining charges in any case in which the juvenile is found not guilty in the adult criminal court of the charge or charges for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense that is not also an offense listed in (e)(v) of this subsection. The juvenile court shall enter an order extending juvenile court jurisdiction if the juvenile has turned eighteen years of age during the adult criminal court proceedings pursuant to RCW 13.40.300. However, once the case is returned to juvenile court, the court may hold a decline hearing pursuant to RCW 13.40.110 to determine whether to retain the case in juvenile court for the purpose of disposition or return the case to adult criminal court for sentencing.

RCW 13.04.030(1)(e)(v)(II).

Under this statute, the juvenile court would impose a juvenile disposition for two counts of assault in the fourth degree on Mr. Manro. No further punishment or rehabilitation could be imposed not only because of Mr. Manro's age but because of the time he already served in adult jail. However, the case would be concluded with juvenile dispositions on his record.

Alternatively, under this statute, the court would have the option of holding a hearing to see if Mr. Manro should have been declined to adult court in 2003, at the time the jury convicted him of assault in the fourth degree. If the court determines that it would have declined the assault charges, then Mr. Manro could be sentenced as an adult (being given

credit for the time he has already served). However, under RCW 13.04.030, if the court concludes it would not have declined Mr. Manro, then a juvenile disposition should be entered, as noted above.

This remedy is the simplest and conforms with what the Legislature intended when adopting the amendments to RCW 13.04.030. This remedy would still benefit Mr. Manro by removing adult convictions from his record. Mr. Manro does not seek any other remedy.

**C. CONCLUSION**

Mr. Manro does not seek any other remedy than a remand to impose juvenile court dispositions in his two cases.

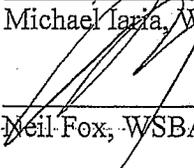
DATED this 21 day of August 2009.

Respectfully submitted,

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