

62934-4

62934-4

NO. 62934-4-I

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

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STATE OF WASHINGTON,

Respondent,

v.

N.S.T.

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Michael Hayden  
The Honorable Joan DuBuque

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APPELLANT'S OPENING BRIEF

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62934-4-I  
VANESSA M. LEE  
APPELLANT'S OPENING BRIEF  
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A. ASSIGNMENTS OF ERROR

1. The revocation of N.S.T.'s deferred disposition, based solely on her failure to satisfy financial obligations in full, violates the due process and equal protection clauses of the Fourteenth Amendment without a finding that the violation was willful.

2. Because the State did not timely move for revocation of the deferred disposition, N.S.T. did not receive meaningful notice, violating her right to due process.

3. The juvenile court erred in denying N.S.T.'s motion to dismiss the case for lack of jurisdiction.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The State may not punish a person for her poverty. Probation, and by extension a deferred disposition, may be revoked solely for failure to satisfy financial obligations *only if* the court finds the individual has made substantial bona fide efforts to pay but was unable to through no fault of her own. In order to make this finding, the court has a duty to inquire into the individual's ability to pay. Where the court did not conduct such an inquiry or make such a finding, but revoked N.S.T.'s deferred disposition apparently believing it had no other option, was N.S.T. deprived of her rights to

due process and equal protection under the Fourteenth Amendment? (Assignment of Error 1)

2. If an individual's deferred disposition is automatically revoked for failure to satisfy financial obligations without regard to willfulness, such a practice amounts to punishment for poverty, or discrimination against those without the means to pay. N.S.T.'s deferred disposition was revoked without regard to willfulness, but a more financial privileged juvenile with the same deferred disposition order would have been able to pay the entire restitution and thereby have her disposition vacated. Was N.S.T. discriminated against for her indigency, in violation of equal protection principles?

(Assignment of Error 1)

3. Under RCW 13.40.127, an eligible juvenile may receive a deferred disposition, where the disposition shall be vacated if the juvenile complies with all court-ordered conditions within the prescribed period. If the juvenile violates any condition, the prosecutor or probation counselor may make a written motion for the revocation of the deferred disposition. Here, the State never submitted such a motion, but the court nonetheless conducted revocation proceedings and revoked N.S.T.'s deferred disposition.

Was N.S.T. denied meaningful notice, in violation of due process principles? (Assignment of Error 2)

4. The juvenile court's jurisdiction expires when the deferred disposition period ends, unless a revocation proceeding has already been instituted at that time. Here, the State failed to institute revocation proceedings by written motion, as required by RCW 13.40.127, and the revocation hearing occurred after the termination of the disposition period. Did the juvenile court therefore lose jurisdiction over N.S.T. and err in denying her motion to dismiss? (Assignment of Error 3)

C. STATEMENT OF THE CASE.

On December 13, 2006, N.S.T. stipulated that she committed residential burglary in the second degree and malicious mischief in the first degree. CP 6-7. According to the certificate of probable cause, on June 20, 2006, N.S.T., who was then 14 years old, threw a rock at a window in the home of an acquaintance, breaking the window. CP 8. The juvenile court ordered a deferred disposition, continuing the matter for twelve months. CP 9-11. On July 7, 2009, the court ordered restitution in the amount of \$2,630.40. CP 12-13.

On November 29, 2007, the matter was continued for one year, as N.S.T. was in compliance with all conditions except payment of restitution. CP\_\_ (Sub No 36, Order of Continuance). The juvenile court's jurisdiction was extended to November 30, 2008, to provide N.S.T. more time to satisfy her financial obligations. Id.

At the next hearing on November 7, 2008, the State moved to revoke the deferred disposition solely because N.S.T. had not paid the restitution in full. CP\_\_ (Sub No. 41, Order Striking Review). The revocation hearing was continued to December 30, 2008. CP\_\_ (Sub No. 44, Order of Continuance). The defense moved to dismiss the matter because the State had failed to give notice of its intent to revoke before jurisdiction expired on November 30, 2008. CP 14-26. On January 6, 2009, the Honorable Michael Hayden denied the motion to dismiss. 1/6/09RP 62.

Although the court did not inquire into the reasons for N.S.T.'s failure to pay the full restitution, the record shows that on the date of the deferred disposition order, N.S.T. had just turned 15 years old and had only been able to legally work for about three weeks. Even then she obviously could only work part-time, since

she was in school (school attendance was another condition of the deferred disposition). CP 10. At the final disposition hearing, defense counsel told the court N.S.T. was currently employed and made payments while employed. RP 68. She had paid a total of \$235 (just shy of the \$240 she would have paid if satisfying the court's order of \$10 per month since December 2006).<sup>1</sup> CP\_\_ (Sub No. 52, Order on Motion to Revoke Deferred Disposition); RP 68. N.S.T.'s mother, a single parent, made payments on her behalf until N.S.T. found a job, but could not assist her any longer. RP 73. She told the court both her hours and N.S.T.'s hours at had been cut and "if I have anything extra it usually goes to gas... I'm barely feeding my kids." RP 73. The court was sympathetic, opining, "I wish there was some amendment to the legislation that... could recognize that juveniles are often not in a position to pay that, to give some other alternative." RP 73. But, believing she had no choice, the Honorable Joan DuBuque revoked the deferred disposition and ordered N.S.T. to pay the remaining \$2,395.40 at the rate of \$10 per month. RP 74, CP 31-37; CP\_\_ (Sub No. 52).

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<sup>1</sup> N.S.T.'s co-respondent had apparently paid \$225, bringing the balance of restitution to \$2,395.40. 1/27/09RP 65.

D. ARGUMENT

Under RCW 13.40.127, a non-violent juvenile offender with no felony history may receive a deferred disposition, suspending the disposition for up to one year with community supervision. Payment of restitution shall be a condition of community supervision. RCW 13.40.127(5). In order to revoke the deferred disposition, the State must prove, by a preponderance of the evidence, the juvenile's failure to comply with the terms of the order. RCW 13.40.127(6). The juvenile's lack of compliance "shall be determined by the judge upon written motion by the prosecutor or the juvenile's juvenile court community supervision counselor. If a juvenile fails to comply with terms of supervision, the court shall enter an order of disposition." RCW 13.40.127(7). But if the juvenile has satisfied all community supervision conditions at the end of that term, the court shall vacate the convictions and dismiss the matter with prejudice. RCW 13.40.127(9).

N.S.T. satisfied all conditions of her deferred disposition – including community service, counseling, curfew, school attendance and lack of new probable cause referrals or criminal violations – except for the full payment of restitution. CP 9-11, 31-37. The juvenile court, believing it had no other option, revoked the

deferred disposition based solely on the outstanding financial obligation. 1/27/09RP 73-74, CP 31-37.

1. REVOCATION OF N.S.T.'S DEFERRED DISPOSITION BASED SOLELY ON FAILURE TO PAY RESTITUTION, WITHOUT AN INQUIRY INTO HER ABILITY TO PAY AND A FINDING THAT THE VIOLATION WAS WILLFUL, VIOLATED THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT.

Almost 30 years ago, the United States Supreme Court held that an individual's probation may not be revoked simply because he could not satisfy financial obligations, without a determination that such failure was willful. Bearden v. Georgia, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983).<sup>2</sup> In a case similar to this one, the petitioner pled guilty to burglary and theft and received a

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<sup>2</sup> A hearing for violation of disposition conditions or for revocation of deferred disposition (as here) is analogous to an adult probation hearing. State v. Martin, 36 Wn.App. 1, 5-7, 670 P.2d 1082 (1983), reversed on other grounds in 102 Wn.2d 300, 684 P.2d 1290.

Where the purpose of adult criminal statutes is consistent with the purpose of the Juvenile Justice Act of 1977, RCW 13.40, court interpretations of adult criminal statutes may be applied in juvenile proceedings, in the absence of language to the contrary. See State v. Bird, 95 Wn.2d 83, 622 P.2d 1262 (1980) (statute authorizing suspended sentence not inconsistent with the purpose of RCW 13.40); State v. Norton, 25 Wn.App. 377, 606 P.2d 714 (1980) (dismissal following juvenile's restitution to victim consistent with statute authorizing compromise of misdemeanor).

Id. The cases cited herein dealing with revocation of adult probation or sentencing alternatives should be applied to the instant case.

deferred sentence with three years probation. Id. at 662. As a condition of his probation, he was required to pay \$750 (including \$250 restitution) within four months. Id. Bearden made a partial payment by borrowing money from his parents but was laid off from his job, unable to find another, and therefore could not pay the balance. Id. The court revoked probation, entered the convictions, and sentenced Bearden to serve the balance of his probationary period in prison. Id. at 663. The Supreme Court analyzed the case under both due process and equal protection principles, observing:

There is no doubt that the State has treated the petitioner differently from a person who did not fail to pay the imposed fine and therefore did not violate probation. To determine whether this differential treatment violates the Equal Protection Clause, one must determine whether, and under what circumstances, a defendant's indigent status may be considered in the decision whether to revoke probation. This is substantially similar to asking directly the due process question of whether and when it is fundamentally unfair or arbitrary for the State to revoke probation when an indigent is unable to pay the fine

Id. at 665-66.

The Court relied on its decisions in Williams v. Illinois, 399 U.S. 235, 90 S.Ct. 2018, 26 L.Ed.2d 586 (1970) and Tate v. Short, 401 U.S. 395, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971), together holding that a fine may not be automatically converted into a

sentence “solely because the defendant is indigent and cannot forthwith pay the fine in full.” Bearden, 461 U.S. at 667, quoting Tate, 401 U.S. at 398. The Court held that where the failure to satisfy financial obligations is not willful, revocation of probation is not only “inappropriate” but “fundamentally unfair.” Bearden, 461 U.S. at 668-69, quoting Gagnon v. Scarpelli, 411 U.S. 778, 790, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1972). The Court reasoned that the decision to grant probation (or, in the instant case, to defer disposition) “reflects a determination by the sentencing court that the State’s penalogical interests do not require imprisonment.” Bearden, 461 U.S. at 670. Therefore, a probationer who has made “sufficient bona fide efforts” to satisfy all conditions, including financial obligations, “has demonstrated a willingness to pay his debt to society and an ability conform his conduct to social norms.” Id. Revocation serves no purpose for this individual.

The Bearden Court rejected as illogical the argument that revocation furthers the State’s interest in ensuring payment of restitution to crime victims. Id. at 670. Although the practice might increase probationers’ motivation to pay,

[s]uch a goal is fully served, however, by revoking probation only for persons who have not made sufficient bona fide efforts to pay. Revoking the

probation of someone who through no fault of his own is unable to make restitution will not make restitution suddenly forthcoming. Indeed, such a policy may have the perverse effect of inducing the probationer to use illegal means to acquire funds to pay in order to avoid revocation.

Id. at 671. Indeed, in the instant case, it appears from the record that N.S.T. could only have paid the full restitution through illegal means. As noted above, she and her mother had made substantial efforts to pay despite their limited resources. Contrary to the State's unsupported assertion that N.S.T. had made "very little efforts" to satisfy her financial obligations, at the time of the revocation hearing she had paid \$235, only five dollars short of the \$10 per month ordered by the court.<sup>3</sup> RP 65. There is no indication that N.S.T. had any other resources at her disposal. Moreover, this Court has held, "restitution imposed as a part of an offender's sentencing is a condition of probation, a rehabilitative tool, not an award of civil damages. Martin, 36 Wn.App. at 5, citing RCW 13.40.020(17) and State v. Barr, 99 Wn.2d 75, 658 P.2d 1247 (1983).

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<sup>3</sup> In fact, N.S.T. was arguably only \$5 short of satisfying the financial probation condition. On the one hand, N.S.T. was ordered to pay restitution in the amount of \$2,6340.40, but on the other hand, she was ordered to make payments of \$10 per month. At \$10 per month, with a total deferral period of two years, N.S.T. would have paid \$240.

The Bearden Court also rejected the related argument that the State's interest in punishment and deterrence require revocation for failure to pay. 461 U.S. at 671. The Court observed that the sentencing court can tailor the fine to the defendant's situation, by extending the time to pay, reducing the amount of the fine, or ordering public service in lieu of the fine. Id. at 672.

The Court held, in no uncertain terms, that although nothing prevents the punishment of one who has the ability to pay his fines but refuses to do so, the automatic conversion of a fine into a sentence without regard to willfulness amounts to "little more than punishing a man for his poverty," which is "contrary to the fundamental fairness required by the Fourteenth Amendment." Id. at 671, 673. See also Smith v. Whatcom County Dist. Court, 147 Wn.2d 98, 111-12, 52 P.3d 485 (2002) (court has the duty to inquire into individual's ability to pay and find that failure to pay was actually willful before imposing remedial sanctions); State v. Woodward, 116 Wn.App. 697, 704, 67 P.3d 530 (2003) (applying same principle to financial obligations which included restitution); State v. Bower, 64 Wn.App. 227, 231-32, 823 P.2d 1171 (1992) (although it is "fundamentally unfair to revoke probation automatically" for failure to pay fines, probationer must make

sufficient bona fide efforts to pay, demonstrating a concern for paying his debt to society); In re Bruno R. 133 N.M. 566, 569, 66 P.3d 339 (2003) (applying Bearden to juvenile probation).

Previously, the Court had upheld an Oregon statute for the recoupment of the expenses of public defense. Fuller v. Oregon, 417 U.S. 40, 41, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974). Under the statute, a person convicted of a crime was required to repay the State for the costs of his defense, if he was indigent at the time of proceedings but able to pay at the time of collection. Id. Under the express terms of the statute, the person could not be held in contempt for failure to pay if he showed the failure was not willful (“not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment”). Id. at 46, quoting Ore. Rev. Stat. § 161.685(2). Because the statute accorded the convicted person the same exemptions provided to all other judgment debtors, as well as the ability to petition the court at any time to remit costs by showing payment would be a “manifest hardship,” there was no equal protection violation compared to other debtors. Fuller, 417 U.S. at

46-48.<sup>4</sup> The Court concluded, “Oregon’s legislation is tailored to impose an obligation only upon those with a foreseeable ability to meet it, and to enforce that obligation only against those who actually become able to meet it without hardship.” Id. at 46. In contrast, here the obligation was imposed upon a 15 year old girl with no foreseeable ability to meet it, and then enforced against her, with the penalty of a criminal disposition, despite her unsurprising inability to pay it.

The Washington Supreme Court subsequently held, considering our statute for recoupment of appellate defense costs, that constitutional principles are implicated not when the financial obligation is imposed, but only at “the point of collection and when sanctions are sought for nonpayment.” State v. Blank, 131 Wn.2d 230, 242, 930 P.2d 1213 (1997), citing State v. Curry, 118 Wn.2d 911, 918, 829 P.2d 166 (1992). However, the Court held “that before enforced collection or any sanction is imposed for nonpayment, there must be an inquiry into ability to pay.” Blank, 131 Wn.2d at 242.

Here, the revocation hearing was the point of collection and the time when sanctions were sought for nonpayment. The due

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<sup>4</sup> The Court also rejected the argument that the statute infringed the right to counsel, an issue not relevant here. Id. at 51.

process and equal protection clauses of the Fourteenth Amendment were clearly implicated, prohibiting revocation of the deferred disposition based solely on non-willful failure to satisfy financial obligations. Yet the court never inquired into N.S.T.'s ability to pay. Although impressed by N.S.T.'s compliance with all other probation conditions and sympathetic to her indigency, the court appeared to believe that it could not take those circumstances into consideration:

I do struggle with the... economic reality of... where these kids are and... what we really expect them to be able to do and their families' needs. But, I am bound by the confines of the legislature. So, congratulations to you with doing so well on everything else. Really you should be very proud of yourself for that. But, I have no option but to revoke the deferred, okay? Somebody should go down and lobby Olympia about this.

RP 74.

In fact, lobbying is unnecessary, as the question has already been settled. As Bearden and its progeny make clear, the court was not just empowered but actually *required* to take into account N.S.T.'s ability to pay. See e.g. Smith, 147 Wn.2d at 111, quoting Bearden, 461 U.S. at 672-73 (“in revocation proceedings for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for the failure to pay”).

Finally, if a juvenile court can revoke a deferred disposition without inquiry into the respondent's ability to pay, or regardless of the willfulness of the violation, that would present a clear case of discrimination against indigent juveniles, in violation of the Equal Protection Clause. The United States Supreme Court found such a violation in James v. Strange, 407 U.S. 128, 92 S.Ct. 2027, 32 L.Ed.2d 600 (1972). There, a recoupment statute discriminated against indigent defendants, who were not afforded the same protective exemptions as those available to other civil judgment debtors. Similarly, here, without a strict willfulness requirement the State discriminates against indigent juvenile respondents like N.S.T., who cannot avoid the revocation of the deferred disposition and its grave consequences, while more financially privileged juveniles face no impediment to revocation.

The court's failure to both find the essential component of willfulness and make this critical inquiry was "contrary to the fundamental fairness required by the Fourteenth Amendment," and the revocation – resulting in the first offense on her criminal record – essentially punishes N.S.T. for her poverty. Bearden, at 671, 673.

2. THE STATE'S FAILURE TO FILE A WRITTEN MOTION TO REVOKE DEPRIVED N.S.T. OF NOTICE AND RESULTED IN THE JUVENILE COURT'S LOSS OF JURISDICTION, REQUIRING DISMISSAL.

a. The State's failure to provide meaningful notice violated principles of due process. RCW 13.40.127(7) requires that a juvenile's lack of compliance with the terms of deferred disposition "shall be determined by the judge *upon written motion* by the prosecutor or the juvenile's juvenile court community supervision counselor." (Emphasis added). If a juvenile fails to comply with terms of supervision, the court shall enter an order of disposition, but if the juvenile has complied, the order shall be vacated. RCW 13.40.127(9). As the statute and the cases interpreting it demonstrate, notice is an essential component of the deferred disposition process.

RCW 13.40.200, which addresses violations of restitution and community supervision orders,<sup>5</sup> requires that a hearing on such a violation "must afford the respondent the same due process of law that would be afforded an adult probationer." As the United States and Washington Supreme Courts have held,

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<sup>5</sup> May clarified that this statute also applies to the juvenile court's authority to enforce its own disposition orders, and therefore to the revocation of deferred disposition orders. 80 Wn.App. at 714, citing State v. Martin, 102 Wn.2d 300, 303, 684 P.2d 1290 (1984).

in the context of parole violations, minimal due process entails: (a) written notice of the claimed violations; (b) disclosure to the parolee of the evidence against him; (c) the opportunity to be heard; (d) the right to confront and cross-examine witnesses (unless there is good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a statement by the court as to the evidence relied upon and the reasons for the revocation. These requirements exist to ensure that the finding of a violation of a term of a suspended sentence will be based upon verified facts.

State v. Dahl, 139 Wn.2d 678, 683, 990 P.2d 396 (1999), citing Morrissey v. Brewer, 408 U.S. 471, 484, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). In Dahl, the appellant argued the revocation of his Special Sex Offender Sentencing Alternative (SSOSA) violated due process because he was not given proper notice of the specific incidents which constituted the allegations that he violated conditions. 139 Wn.2d at 683-84. The Supreme Court noted, however, that the State had provided written notice of its allegation that Dahl had failed to make reasonable progress in treatment, one of his SSOSA conditions, and also supplied with treatment provider reports supporting the allegation. Id. at 685. The Court held, “due process requires that the State inform the offender of the specific violations alleged and the facts that the State will rely on to prove those violations.” Id. The notice in Dahl met those standards, but

the notice in this case did not. Nothing in the record informed N.S.T. of the allegations against her or the underlying facts.

In State v. May, the Court rejected a due process claim where the respondent was served with the prosecutor's written motion to revoke two weeks after the expiration of the deferral period. 80 Wn.App. 711, 713, 911 P.2d 399 (1996). The motion was not timely for the purposes of jurisdiction, but it was sufficient to provide the respondent with adequate notice. Thus, the Court found he "received the same due process of law as would be afforded an adult probationer and to which he was entitled." Id. at 714.

State v. Todd was an even clearer case, as the prosecutor there filed a motion to revoke three weeks before the end of the deferral period. 103 Wn.App. 783, 785. 14 P.3d 850 (2000). The Court found the motion sufficient to provide Todd with notice, as it laid out the allegation of a community supervision violation and the intent to move for revocation of the deferred disposition. Id. at 788. The Court observed, "RCW 13.40.127(7) merely requires the State to submit a motion to revoke. It does not require a detailed description of the facts supporting the violation." Id.

But here, the State never filed the motion required by statute. The juvenile court's ruling that "formal written notice" is not required contradicts the statute as well as fundamental principles of due process. RP 62. As defense counsel pointed out, setting over for a court date is not the same as providing notice. The State failed to indicate the basis for its motion to revoke or what the juvenile probation counselor's recommendations would be. RP 54. Defense counsel also pointed out that juvenile probation counselors often set a date for revocation with the intention of wrapping up outstanding obligations before that date, and then striking the motion at the hearing. RP 54.

The plain language of RCW 13.40.127 – based on longstanding, fundamental principles of due process – requires written notice in the deferred disposition process. Without such notice, the disposition must be vacated and the case dismissed.

b. The juvenile court erred in failing to dismiss the case for lack of jurisdiction. Under RCW 13.40.127(9), if the juvenile has complied, the deferred disposition shall be vacated and the court no longer has jurisdiction over the juvenile. Here, the juvenile court's jurisdiction expired when the State failed to move for revocation before the end of the probationary period.

In May, the Court of Appeals ruled the juvenile court lacked jurisdiction in a similar scenario. 80 Wn.App. 711. There, the juvenile's deferred disposition community supervision period was due to expire on January 12, 1994. On January 10, 1994, the juvenile probation counselor submitted a report alleging the juvenile had failed to comply with the terms of the order. Id. at 713. On January 20, one week after the expiration of the community supervision period, the prosecutor instituted a show cause proceeding for those portions, and set the hearing for the following month. Id. The attorney was immediately notified; the written motion to revoke was served on the juvenile respondent on January 25. Id. On February 10, almost a month past expiration, the juvenile court commissioner ruled he had jurisdiction and revoked the deferred disposition. Id.

Noting the statute was silent on the duration of jurisdiction in these circumstances, the Court compared the juvenile court's authority over disposition orders to the superior court's authority over probation and violations of sentence conditions and found "one significant difference:"

terminating supervision: an adult may obtain either an order terminating probation or a certificate of discharge. A juvenile offender, on the other hand, is at

the mercy of the State's administrative bureaucracy. Under the State's interpretation of RCW 13.40.200, if a 12-year-old offender fails before the expiration of his community supervision period to file written proof that he has complied with the provisions of his disposition order, the State may institute a violation proceeding any time before he turns 18 and in some cases until he is 21 or older. RCW 13.40.300. We do not believe this was the intent of the Legislature.

Id. at 716. Therefore the Court reversed the disposition, holding:

the court's jurisdiction to enforce its disposition order terminates when the community supervision period expires, unless a violation proceeding is then pending before the court.

Id.

This Court affirmed May in State v. Y.I., 94 Wn.App. 919, 973 P.2d 503 (1999) . There, the juvenile respondent was ordered to pay four separate victim penalty assessments under four different disposition orders. Id. at 921. After the community supervision period for all four cases had expired, the probation officer sought to review the conditions. Id. The commissioner, ruling he still had jurisdiction, ordered Y.I. to serve three days confinement for each case, suspended for three months during which time Y.I. could either pay the VPAs or perform community service. Id. at 921-22. This Court held that May applies to financial obligations, and therefore the juvenile court's jurisdiction to

enforce those obligations ends when the community supervision ends. Id. at 924.

In Todd, Division Two of the Court of Appeals interpreted May and Y.I. to mean that jurisdiction ends “only if the State fails to *institute* violation proceedings before the expiration of the deferral period.” 103 Wn.App. at 790. Three weeks before expiration of the deferral period, the State had filed a written motion to revoke the deferred disposition, based on information that the respondent had been charged with a new criminal violation. Id. at 785. Because the motion did institute the violation proceeding in time, the court retained jurisdiction. Id. at 790.

Here, the State never filed a written motion regarding N.S.T.’s lack of compliance and thus did not institute proceedings in that manner. On November 29, 2007, when the juvenile court extended jurisdiction for one year, the next hearing was noted for November 7, 2008. There was no further communication from the State until the hearing of November 7, 2008, when the State first indicated its intent to revoke N.S.T.’s deferred disposition – but not in writing – and noted a revocation hearing for December 15, 2008. Although this act set a date for the proceeding, the statute is specific in that the proceeding shall be instituted by written motion.

RCW 13.40.127(7). This was the procedure approved of in Todd but clearly not followed in this case.

The May Court wisely announced a “bright-line rule that clearly defines the juvenile court’s jurisdiction.” 80 Wn.App. at 716. Without the motion required by statute, the court’s jurisdiction crossed that line and expired on November 30, 2008. The court lacked the authority to enter a disposition after that date. Amd .

E. CONCLUSION

For the foregoing reasons, N.S.T. respectfully requests this Court vacate her disposition and dismiss the case with prejudice.

DATED this 31<sup>st</sup> day of August, 2009.

Respectfully submitted,



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Washington Appellate Project  
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 62934-4-I
v.	)	
	)	
N.S.T.,	)	
	)	
Juvenile Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 31<sup>ST</sup> DAY OF AUGUST, 2009, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> KING COUNTY PROSECUTOR'S OFFICE APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
<input checked="" type="checkbox"/> N.S.T. 11819 SE 171 <sup>ST</sup> LN #R-302 RENTON, WA 98058	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

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2009 AUG 31 PM 4:58

**SIGNED** IN SEATTLE, WASHINGTON THIS 31<sup>ST</sup> DAY OF AUGUST, 2009.

X \_\_\_\_\_  
*gril*

**Washington Appellate Project**  
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