

No. 63216-7-I

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

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**STATE OF WASHINGTON, Respondent,**

**v.**

**V.G.,**

**Appellant.**

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**BRIEF OF RESPONDENT**

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STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION ONE  
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A. ASSIGNMENTS OF ERROR

None.

ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

1. WHETHER THE TRIAL COURT ERRED IN IMPOSING A \$250.00 FINE FOR VIOLATING THE TERMS OF HER SUPERVISION?

B. STATEMENT OF THE CASE

1. Procedural facts

V.G. was charged with burglary in the second degree in Whatcom County Juvenile Court. CP 46-47. On August 8, 2007 V.G. pled to amended charges of theft in the third degree and trespass in the second degree. CP 37-42. The trial court imposed disposition, including 12 months of community supervision. CP 32-34.

On April 4, 2008 V.G failed to appear at probation violation hearing and a warrant was issued for her arrest. RP 4. V.G. remained on warrant status and the probation hearing was not heard until February 10, 2009. RP 4. On February 10, 2009 a probation violation hearing was held. RP 4. As a sanction for violating the terms of her probation V.G.

was ordered to 15 days confinement, a \$250.00 fine, and her probation was terminated.

C. ARGUMENT

1. THE TRIAL COURT DID NOT ERR BY IMPOSING JAIL TIME, A \$250.00 FINE, AND TERMINATING SUPERVISION OF V.G. FOR HER VIOLATIONS OF SUPERVISION.

The question before the Court is whether the trial court had

authority to impose both confinement, as well as additional modifications of supervision following a violation. RCW 13.40.200 must be analyzed to determine the extent of a juvenile court's authority to impose sanctions. Statutory construction is an issue of law, which is reviewed by a de novo standard. State v. J.P., 149 Wn.2d 444, 449, 69 P.3d 318 (2003).

Generally, a trial court can only modify a juvenile court disposition order to the extent authorized by RCW 13.40.190 and 13.40.200. JuCr 7.14. A juvenile disposition may be modified when a juvenile fails to comply with a condition of community supervision. RCW 13.40.200(1).

The relevant sections of RCW 13.40.200 read:

(1) When a respondent fails to comply with an order of restitution, community supervision, penalty assessments, or confinement of less than thirty days, the court upon motion of the prosecutor or its own motion, may modify the order after a hearing on the violation.

.....

(3) If the court finds that a respondent has willfully violated the terms of an order pursuant to subsections (1) and (2) of this section, it may impose a penalty of up to thirty days'

confinement. Penalties for multiple violations occurring prior to the hearing shall not be aggregated to exceed thirty days' confinement. Regardless of the number of times a respondent is brought to court for violations of the terms of a single disposition order, the combined total number of days spent by the respondent in detention shall never exceed the maximum term to which an adult could be sentenced for the underlying offense.

This Court has previously held that RCW 13.40.200(1) includes the authority of a sentencing court to impose an extension of probation as a modification of a juvenile disposition order. State v. B.D., 97 Wn. App. 401, 408, 985 P.2d 946 (1999).

The question before this court in B.D. was whether a trial court had authority to impose an extension of supervision following a juvenile's violation of community supervision, or whether the trial court was limited to imposing detention time under RCW 13.40.200(3). B.D., 97 Wn. App. 401, 403, 985 P.2d 946 (1999). B.D. had violated the terms of his disposition order and the trial court imposed a sanction of a three month extension of community supervision. B.D., 97 Wn. App. 401, 403, 985 P.2d 946 (1999). B.D. argued that RCW 13.40.200(3) should be read as narrowing the court's authority, authorizing only the sanction of detention time for a violation of community supervision. B.D., 97 Wn. App. 401,

403, 985 P.2d 946 (1999). Relying on State v. Martin<sup>1</sup>, the court rejected B.D.’s restrictive analysis of RCW 13.40.200(3), instead interpreting the Martin case, “to mean that subsection (3) is a guide, not a limitation on the juvenile court’s discretion in modifying disposition orders under this statute.” B.D., 97 Wn. App. 401, 405, 985 P.2d 946. Ultimately the B.D. Court held that RCW 13.40.200(3) is permissive, allowing for imposition of detention without limiting a trial court’s ability to modify disposition by extending probation. B.D., 97 Wn. App. 401, 405, 985 P.2d 946 (1999).

The reasoning of the B.D. was directly in line with that of the Supreme Court in Martin. In Martin, the petitioner was found to have violated the terms of his supervision after failing to complete a portion of his community service hours and pay restitution. Martin, 102 Wn.2d 300, 303, 684 P.2d 1290 (1984). Martin argued that when a trial court imposes a penalty of detention for failure to complete community service or restitution, that those days be in lieu of the original disposition of restitution and community service. Martin, 102 Wn.2d 300, 303, 684 P.2d 1290. Former RCW 13.40.200(3)(b) read:

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<sup>1</sup> State v. Martin, 97 Wn. App. 401, 985 P.2d 946 (1999).

“If the violation of the terms of the order under (a) of this section is a failure to pay fines, penalty assessments, complete community service, or make restitution, the term of confinement imposed under (a) of this subsection shall be assessed at a rate of one day confinement for each twenty-five dollars or eight hours owed.”

The Court held that section (3) was merely a guide for courts in imposing sanctions. Martin, 102 Wn.2d 300, 303, 684 P.2d 1290. Further, the Court found that RCW 13.40.200 was unambiguous and had the legislature intended that a detention sanction credit against previously imposed conditions it would have included that language in the statute. Martin, 102 Wn.2d 300, 304, 684 P.2d 1290.

V.G. has not argued the trial court’s authority under RCW 13.40.200(1) to impose the sanction of a fine after a finding of a willful violation. Rather, Appellant contends that once a court imposes a sanction less restrictive than confinement under RCW 13.40.200 it is barred from any additional penalties. This reading of the statute is neither consistent with prior case law nor the clear intent of the legislature.

Similar to B.D., this trial court modified V.G.’s disposition pursuant to RCW 13.40.200(1). A term of V.G.’s probation was modified terminating her from supervision earlier than was originally ordered. The trial court additionally imposed 15 days detention pursuant to RCW

13.40.200(3). Further, the trial court clearly contemplated a sanction of the full thirty days confinement authorized by RCW 13.40.200 yet opted for a combination of fifteen days confinement with the addition of a \$250.00 fine as recommended by probation. RP 5. This trial court did precisely what was instructed by the B.D. court by imposing a “less onerous” sanction of confinement and a fine rather than the full thirty days confinement. B.D., 97 Wn.App. 401, 405, 985 P.2d 946.

Contrary to Appellant’s argument, a combination of sanctions, including confinement, is both authorized by RCW 13.40.200 and consistent with the overall statutory scheme. V.G. asks this Court to read into RCW 13.40.200 restrictive language that simply does not exist. The language of RCW 13.40.200(3) is permissive, giving courts the ability to impose sanctions of confinement, but also allowing modifications of the disposition pursuant to section (1). B.D., 97 Wn.App. 401, 405, 985 P.2d 946.

Just as the Court found in Martin, this permissive language is without ambiguity and the overlay of more restrictive language would run contrary to the statute. In Martin the Court rejected a similar argument that the term “in lieu of” be read into former RCW 13.40.200. Martin, 102 Wn.2d 300, 304, 684 P.2d 1290. V.G. asks this Court to do the same.

RCW 13.40.200 contains no language which would limit a juvenile court's ability to impose a combination of detention time pursuant to subsection (3) with an alternative modification to disposition pursuant to subsection (1). See RCW 13.40.200. Absent in the statutory construction of subsection (1) and (3) are limiting terms such as "or" and "in lieu of", yet that very approach is used in subsection (4), allowing for fines to be "converted" to community restitution. RCW 13.40.200(4). The language of RCW 13.40.200 is clear, and when the plain language of a statute is unambiguous courts do not interpret the language differently. J.P., 149 Wn.2d 444, 450, 69 P.3d 318.

The B.D. Court held that 13.40.200(3) was a guide for courts in imposing sanctions, and refused to apply a narrow reading of the statute. B.D., 97 Wn. App. 401, 405, 985 P.2d 946. The language of 13.40.200 should not be read to limit a juvenile court's tools for addressing probation violations, when the very language of RCW 13.40.200(3) broadens the authority of juvenile courts. Without RCW 13.40.200(3), juvenile courts could modify virtually any condition of supervision yet would be severely limited in the amount of detention time that could be imposed as a sanction. Absent a finding of manifest injustice, the maximum term of confinement a juvenile court may impose on a local sanctions offense is

thirty days. RCW 13.40.0357. Consequently, without RCW 13.40.200(3), a court would have no ability to impose a sanction of confinement, despite the severity of the violations, once the juvenile had been confined for thirty days. Juvenile courts would be pinned on the horns of a dilemma, having to decide whether the juvenile should face immediate consequences for serious violations, in the form of confinement or addresses the underlying concerns and treatment needs of the juvenile by modifying the disposition in other ways. This dilemma is in direct conflict with the intents and purposes of the Juvenile Justice Act which are contained in RCW 13.40.010, which directs juvenile courts to weigh equally such purposes as providing treatment and services as well appropriate punishment. RCW 13.40.010.

Finally, extending Appellant's reasoning to the case at hand would create unintended consequences. V.G. argues that RCW 13.40.200 subsections (1) and (3) should be read as an either/or proposition. In fact, the language of subsection (3) which the Appellant failed to include in her quotation of RCW 13.40.200(3), specifically states that subsection (3) is pursuant to subsection (1), not in lieu of, stating "If the court finds that a respondent has willfully violated the terms of an order *pursuant to subsections (1) and (2) of this section*, it may impose a penalty of up to

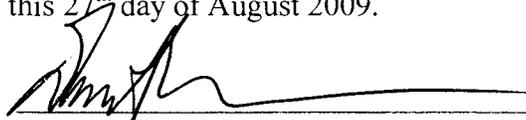
thirty days' confinement.” See RCW 13.40.200(3) (emphasis added).

Following a finding of violation, the trial court imposed three modifications, 15 days confinement, a \$250.00 fine, and early termination of supervision. Under Appellant’s reasoning, because the trial court imposed 15 days confinement pursuant to subsection (3), the court would then be stripped of its authority to modify disposition further by imposing the \$250.00 fine *and terminate probation early*. While the Appellant has asked this Court to strike the \$250.00 sanction, the Appellant has conspicuously failed to ask this Court to also strike the order terminating probation early.

#### CONCLUSION

For the reasons set forth above, the State respectfully requests that this court affirm the trial court’s imposition of sanctions for V.G.’s violation of community supervision.

Respectfully submitted this 27<sup>th</sup> day of August 2009.



David E. Freeman, WSBA #36861  
Deputy Prosecutor  
Attorney for Respondent

CERTIFICATE

I certify that on this date I placed in the mail with proper postage thereon, or caused to be delivered, a true and correct copy of the foregoing document to this Court, and appellant's counsel of record, addressed as follows:

Nielson, Broman, & Koch  
1908 E. Madison Street  
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*Marianne White*

Legal Assistant

*8-28-09*

Date