91758-2

Supreme Court No. (to be set)
Court of Appeals No. 46588-4-II
IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,
vs.
G.C.
Appellant/Petitioner

Clallam County Superior Court Cause No. 14-8-00083-3
The Honorable Judge Christopher Melly

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Petitioner G.C., the appellant below, asks the Court to review the decision of Division II of the Court of Appeals referred to in Section II.

II. COURT OF APPEALS DECISION

G.C. seeks review of the Commissioner's Ruling entered on February 24, 2015 (Appendix, pp. 1-16) and the Order Denying Motion to Modify entered May 5, 2015 (Appendix, p. 17). A copy of each decision is attached.

III. ISSUE PRESENTED FOR REVIEW

> In order to convict for minor exhibiting the effects of alcohol in public, the state must prove that the accused "... by speech, manner, appearance, behavior, lack of coordination, or otherwise, did exhibit that he or she was under the influence of liquor." Here, the only evidence the state presented in support of this element was testimony that G.C. had "glassy eyes." Was this ambiguous evidence insufficient for a rational trier of fact to find that G.C. demonstrated the effects of alcohol beyond a reasonable doubt?

IV. STATEMENT OF THE CASE

Brian Collins called the police to report that his son G.C. had been drinking. RP 9. He said that the 14-year-old smelled of alcohol and had glassy eyes. RP 5, 6.

A police officer talked to G.C. several hours later. RP 24. He didn't note any smell, or even bloodshot eyes. He did note glassy eyes.

RP 24. Both Mr. Collins and the officer asked G.C. if he'd been drinking. G.C. admitted that he had. RP 9, 17. Neither the father nor the officer asked G.C. when he drank, or where, or how much. RP 8-11, 16-20.

The state charged G.C. with Minor in Public Place Exhibiting Effects of Liquor. CP 36. The charge read that G.C.:

> Did exhibit the effects of having consumed liquor, to wit: that the Respondent had the odor of liquor on his breath and[1] ... by speech, manner, appearance, behavior, lack of coordination, or otherwise, did exhibit that he or she was under the influence of liquor... CP 36.

At trial, the prosecutor asked Mr. Collins if he saw any other evidence of alcohol consumption other than G.C.'s glassy eyes and a smell of alcohol. Mr. Collins said no. RP 11. The prosecutor asked the same question of the officer, who also said no. RP 24.

The defense moved to dismiss for insufficient evidence. G.C.'s counsel argued that the state had not presented proof of G.C.'s "speech, manner, appearance, behavior, lack of coordination, or otherwise" to establish that he was exhibiting the effects of alcohol consumption. RP 25-29. The judge denied the motion, and entered a finding of guilty as charged. RP 30-33; CP 30-33.

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[1] The other statutory prong was also listed in the Information, but at trial the state agreed (as did the court) that it was not at issue. RP 30; CP 36.

G.C. timely appealed. CP 5. He argued that insufficient evidence supported his guilty adjudication. A commissioner of the court of appeals upheld his disposition and sentence. (Appendix, p. 16). The commissioner found that, because "glassy eyes" *could* indicate that G.C. had consumed alcohol, the fact that it could also be the result of legal activity did not preclude a guilty finding. (Appendix, p. 9).

A panel of the court denied the Motion to Modify. (Appendix, p. 17).

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

> The Supreme Court should accept review and hold that no rational trier of fact could have found that "glassy eyes," alone, prove beyond a reasonable doubt that a person exhibits the effects of alcohol. This issue is of substantial public interest and should be determined by the Supreme Court. RAP 13.4 (b)(4).

To convict C.G., the state was required to prove beyond a reasonable doubt that he (1) had the odor of liquor on his breath, and (2) "by speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibit[ted] that he or she [was] under the influence of liquor." RCW 66.44.270(2)(b).

The only evidence to meet the second element was that G.C. had "glassy eyes." RP 11, 24; CP 30-32.

The Court of Appeals commissioner acknowledges that "glassy eyes" could indicate many different things. The could indicate use of some other drug, tiredness, nervousness, allergies or some other medical condition, playing video games or looking at a computer screen for too long, low blood sugar, or crying. (Appendix, p. 9).

Still, the commissioner upholds G.C.'s guilty adjudication because alcohol consumption can also provide an explanation for a person's glassy eyes. (Appendix, p. 9). The commissioner misapplies the standard for an insufficient evidence claim.

The question in this case is has broad implications regarding effect of purely ambiguous evidence on the analysis behind sufficiency of the evidence on appeal. This court should grant review. RAP 13.4 (b)(4).

Given only ambiguous evidence, no rational trier of fact could find that the state has proved an element beyond a reasonable doubt.[2] *State v. Vasquez*, 178 Wn.2d 1, 6, 309 P.3d 318 (2013). This is because "the existence of a fact cannot rest upon guess, speculation, or conjecture." *State v. Colquitt*, 133 Wn. App. 789, 796, 137 P.3d 892 (2006).

As such, the state cannot prove an element of an offense by presenting only evidence that could – but does not necessarily -- lead to

[2] A conviction must be reversed for insufficient evidence if no rational trier of fact could have found guilt beyond a reasonable doubt even when the evidence is taken in the light most favorable to the state. *Vasquez*, 178 Wn.2d at 6.

the required factual conclusion. *See e.g. State v. Smith*, 155 Wn.2d 496, 504, 120 P.3d 559 (2005) (evidence that accused driver's license was revoked "in the first degree" insufficient to prove that it had been revoked because he was a habitual traffic offender); *State v. DeVries*, 149 Wn.2d 842, 850, 72 P.3d 748 (2003) (juvenile's statement that pill "could mess you up" was insufficient to prove beyond a reasonable doubt that she knew the pill was a controlled substance); *Colquitt*, 133 Wn. App. at 794 (officer testimony that a substance appeared to be cocaine insufficient to prove beyond a reasonable doubt that accused possessed a controlled substance).

Here, the state was required to prove beyond a reasonable doubt that G.C. "by speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibit[ted] that he or she [was] under the influence of liquor." RCW 66.44.270(2)(b).

Because it is ambiguous, the state's evidence that G.C. had "glassy eyes" is insufficient to meet its burden on that element. *Colquitt*, 133 Wn. App. at 796. The commissioner's holding that the element was proved because "glassy eyes" *could* indicate alcohol consumption (in addition to

countless other things) misapplies the standard for a claim of insufficient evidence.[3]

An appellate court's directive to take the evidence in the light most favorable to the state does not permit the court to resort to speculation and conjecture. *Colquitt*, 133 Wn. App. at 796. The standard simply requires that a court consider the state's evidence as though it were true even if it is weak or contradicted by evidence from the defense. The court is not permitted to read the ambiguity out of inconclusive evidence. Rather, an element cannot be proven beyond a reasonable doubt based only on equivocal evidence. *Id.*

The state presented evidence insufficient for a rational trier of fact to find beyond a reasonable doubt that G.C. exhibited the effects of liquor. *Colquitt*, 133 Wn. App. at 796; *Smith*, 155 Wn.2d at 504; *DeVries*, 149 Wn.2d at 850. His guilty disposition must be reversed. *Id.*

This issue goes directly to the requirements of the insufficiency analysis in all criminal and juvenile cases. This case present an issue of

[3] The trial court attempted to cure this evidentiary shortcoming by pointing out that G.C. admitted to drinking. CP 32. But, in order to convict G.C., the state had to prove that he demonstrated the physical effects of alcohol consumption, not merely that he had been drinking. RCW 66.44.270(2)(b). Accordingly, G.C.'s admission was irrelevant to the elements of the offense. The commissioner appears to acknowledge that error by not relying on G.C.'s admission in the analysis of the sufficiency of the evidence. (Appendix, pp. 7-9).

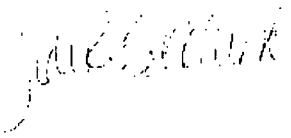
substantial public interest that should be determined by this court. RAP 13.4 (b)(4).

VI. CONCLUSION

The issue here is of substantial public interest because it could impact a large number of criminal and juvenile cases. The Supreme Court should accept review pursuant to RAP 13.4(b)(4).

Respectfully submitted May 21, 2015.

BACKLUND AND MISTRY



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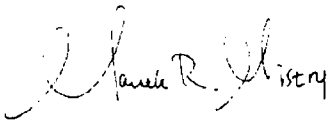

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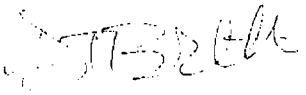

Skylar T. Brett, WSBA No. 45475
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CERTIFICATE OF SERVICE

I certify that I mailed a copy of the Petition for Review, postage pre-paid, to:

G.C.
123 Elwha Rd
Port Angeles, WA 98362

and I sent an electronic copy to

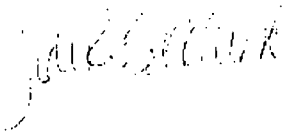
Clallam County Prosecuting Attorney
tlassus@co.clallam.wa.us

through the Court's online filing system, with the permission of the recipient(s).

In addition, I electronically filed the original with the Court of Appeals.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on May 21, 2015.



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APPENDIX:

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

THE STATE OF WASHINGTON, Respondent, v. G.C., Appellant.	No. 46588-4-II RULING AFFIRMING GUILTY ADJUDICATION AND MAINIFEST INJUSTICE DISPOSITION

G.C. appeals the juvenile court's adjudication and manifest injustice disposition. He argues that: (1) there was insufficient evidence to support his conviction of being a minor in a public place while exhibiting the effects of liquor, in violation of RCW 66.44.270(2)(b); (2) his right to due process was violated because he was not given notice of the State's intent to seek a manifest injustice disposition; and (3) the record does not support a manifest injustice disposition. This court affirms G.C.'s manifest injustice

disposition pursuant to RAP 18.13 and affirms the juvenile court's guilty adjudication pursuant to RAP 18.14.[1]

FACTS

On June 26, 2014, the State charged G.C. with the crime of being a minor in a public place while exhibiting the effects of liquor, in violation of RCW 66.44.270(2)(b). At trial, G.C.'s father B.C., testified that G.C. was supposed to attend a counseling appointment at Clallam Counseling on June 17, 2014, but failed to show for the appointment. B.C. testified that after learning G.C. did not make the appointment, he found G.C. at a skate park. Upon making contact with G.C., B.C. could smell alcohol on G.C.'s breath, and he believed G.C. was mildly intoxicated because his eyes were glassy. In addition, G.C. admitted to B.C. that he had been drinking.

Josh Powless, a patrol corporal for the Port Angeles Police Department, testified that he went to G.C.'s residence on June 17, 2014, following a 911 dispatch call and spoke with G.C. about his consumption of alcohol. G.C. admitted to Powless that he had been drinking and that he missed his counseling appointment that day. Powless also observed that G.C.'s eyes were glassy.

Following this testimony, the juvenile court found that when B.C. approached G.C. at the skate park, he smelled alcohol on G.C. It also found that B.C. noted G.C.'s eyes

[1] In his motion for accelerated review, G.C. included argument challenging his guilty adjudication. RAP 18.13, however, only permits a commissioner to hear accelerated reviews of dispositions in juvenile offense proceedings. But because the parties have briefed the merits of the adjudication, and were also notified that this matter was being set on a commissioner's calendar, this court uses its authority pursuant to RAP 18.14(a) and (d) to have a commissioner address the adjudication as a motion on the merits. This court affirms the juvenile court's guilty adjudication pursuant to RAP 18.14(e)(1).

were glassy and that G.C. admitted to B.C. he had been drinking alcohol. In its written order, the court concluded:

> The odor of alcohol, the respondent's glassy eyes and his admission that he had consumed alcohol is sufficient evidence for the Court to find beyond a reasonable doubt that the respondent committed the crime of Minor in a Public Place Exhibiting the Effects of Liquor.

Clerk's Papers (CP) at 32. As such, the court entered an order adjudicating G.C. guilty of violating RCW 66.44.270(2)(b).

At the disposition hearing on August 14, 2014, the State asked the juvenile court to impose a manifest injustice disposition above the standard range so that G.C. could receive treatment in a secured setting, such as Echo Glen. The State noted that G.C. had been removed from two prior treatment agencies, Clallam Counseling and True Star, and that he had exhausted community resources because no local treatment agency was willing to take him. It also stated that G.C. was not willing to make himself available for treatment and needed treatment to occur in a setting where he had no choice but to engage. The State requested that the juvenile court sentence G.C. to the 90-day maximum sentence.[2] And it argued that the following aggravating factors supported a manifest injustice disposition: (1) G.C.'s criminal point history did not include his diversions or other findings; (2) G.C. had significant substance abuse issues and had a high risk of re-offense unless he received treatment in a secure setting; and (3) G.C. repeatedly said he would not stop using drugs or alcohol.

[2] The record is unclear as to the standard range disposition.

In support of a manifest injustice disposition, the State relied on a written psychological evaluation of G.C. by Michael McBride, Ph.D. Dr. McBride had prepared the evaluation on April 17, 2014—before G.C. committed the current offense—at the request of G.C.'s attorney so she could better understand G.C.'s psychological state and functioning. In the report, Dr. McBride noted that G.C. had prior criminal charges[3] and a number of probation violations. He also stated that G.C. had been expelled from a treatment program at Sundown Ranch after destroying his room.

G.C. reported to Dr. McBride during the evaluation that he drank alcohol, smoked marijuana, and abused pain medications. Dr. McBride diagnosed G.C. with cannabis related disorder, not otherwise specified, and stated that G.C.'s drug problems required attention if important life changes were to be made. He believed that G.C.'s relatively low awareness of or reluctance to acknowledge his substance abuse issues might impede any treatment efforts. Dr. McBride also noted that G.C. had co-occurring mental health issues, including depression, anger, anxiety, and behavioral problems.

Dr. McBride believed that G.C. needed a "successful multimodal intervention program" given his predisposition to chemical dependency, depression, abuse of prescription medications, cannabis use, violent behavior, multiple probation violations, and mental health issues. CP at 26. He recommended that G.C. receive co-occurring treatment for his cannabis and mental health issues. Specially, Dr. McBride stated:

> I understand there may be uncertainty regarding readmission to some inpatient programs previously attended, including Fairfax Hospital in

[3] These charges included: (1) minor intoxicated in public on March 2, 2013; (2) fourth degree assault on March 4, 2013; and (3) third degree malicious mischief on February 6, 2014.

> Kirkland, Washington, where I would normally be inclined to refer such patients. Any such facility he might attend should have a lock-down unit and staff to deal with violent angry episodes. If such an option were implemented, [G.C.]'s participation should be court ordered and he must understand the legal consequences of not cooperating or participating in treatment. However, before such severe measures are taken, I would recommend court ordered intensive outpatient therapy with concurrent mental health treatment (Clallam Counseling would be one such facility in Port Angeles, Washington) and intensive weekly outpatient psychotherapy. This would allow [G.C.] to stay in school and offer an incentive of living at home. Nevertheless, any probation violations for failure to comply with treatment or the conditions of psychotherapy must be, once again, managed by the court with the option of a lock-down inpatient treatment program. It must be perfectly clear to [G.C.] and his family that this is his last opportunity to take responsibility and cooperate with court orders and probationary requirements.

CP at 27. He also noted that G.C. had a history of being obstructive and resistant to treatment or intervention, such that treatment was likely be difficult. He stated that " [G.C.] is likely to be an unwilling participant in treatment" and may only submit to therapy "under the press of sevère family discord or legal problems." CP at 27.

B.C. also addressed the juvenile court during the August 14th disposition hearing, stating that it was too hard for G.C. to remain sober "on the outside." Report of Proceedings (RP) Aug. 14, 2014 at 44. He stated that G.C. would do well for a while and then go back to not coming home and not complying with school or probation. B.C. asked the juvenile court to impose a sentence hinged on G.C.'s completion of the treatment program at Echo Glen. He believed that G.C. could deal with his anger issues in Echo Glen's treatment program, which would then allow G.C. to get integrated back into the school system and comply with probation upon his release. B.C. also stated that he was unable to provide treatment for G.C., having exhausted the availability of any treatment facility in Port Angeles.

In response to the State's request for a manifest injustice disposition, G.C.'s attorney argued that G.C.'s diversions did not make his point history "any more applicable in this case." RP Aug. 14, 2014 at 46. She also argued that G.C. was not a danger to the community, as he was "here [in court] every time with either marijuana or alcohol." RP Aug. 14, 2014 at 46. She stated that although the State talked about G.C.'s high risk to reoffend, his only high risk was to keep using drugs and alcohol, which could not be dealt with at Echo Glen during a short stay. His attorney also asserted that G.C. was "probably going to be a part of our system for awhile and there may be other charges in the future that would be more appropriate to getting him some co-occurring treatment in a lockdown setting." RP Aug. 14, 2014 at 47. As such, she asked the court not to impose a manifest injustice disposition on the current offense.

In its oral ruling, the juvenile court stated that although G.C.'s charges were not the most serious offenses in criminal law, the court had seen him enough to know that he had significant substance abuse and mental health issues that needed to be addressed. The court stated it did not have to wait for G.C. to be back in court on a more serious offense and that it wanted to get G.C. the help he needed as soon as possible. As such, it found there was a basis to send G.C. to Echo Glen on a manifest injustice disposition. In its written Order Supporting Manifest Injustice, the juvenile court found the following aggravating factors supported a manifest injustice disposition:

1. Exhausted all local resources.
2. Requires treatment to be provided in a secured environment per expert's opinion agreement also.
3. Highly likelihood to reoffend if not provided secured treatment.

CP at 29. The court also found the following aggravating factors in its Order on Adjudication and Disposition:

> There are other complaints which have resulted in diversion or a finding or plea of guilty which are not included as criminal history; and
> Other: unless provided treatment in a secure environment then respondent will not be engaged and there is a high likelihood of re-offense. Per expert recommendations that until treatment is provided MH issues cannot be addressed.

CP at 8. The court sentenced G.C. to the maximum term of 90 days, with 20 days credit for time served. And it recommended placement at Echo Glen for him to receive substance abuse treatment. G.C. appeals.

ANALYSIS

I. Adjudication

G.C. first argues there was insufficient evidence to support his conviction of being a minor in a public place while exhibiting the effects of having consumed liquor under RCW 66.44.270(2)(b). He asserts that no fact finder could have found beyond a reasonable doubt that he exhibited the effects of alcohol given the ambiguous evidence presented at trial.

Sufficient evidence exists to support an adjudication of guilt in a juvenile proceeding if any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt when viewing the evidence in the light most favorable to the State. *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). A defendant claiming insufficiency of the evidence admits the truth of the State's evidence and all inferences

that reasonably can be drawn from the evidence. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). This court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. We consider circumstantial evidence as reliable as direct evidence and defer to the trier of fact on issues of credibility, conflicting evidence, and the persuasiveness of the evidence. *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997); *State v. E.J.Y.*, 113 Wn. App. 940, 952, 55 P.3d 673 (2002).

RCW 66.44.270(2)(b) provides:

> It is unlawful for a person under the age of twenty-one years to be in a public place, or to be in a motor vehicle in a public place, while exhibiting the effects of having consumed liquor. For purposes of this subsection, exhibiting the effects of having consumed liquor means that a person has the odor of liquor on his or her breath and either: (i) Is in possession of or close proximity to a container that has or recently had liquor in it; or (ii) by speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor.

"[E]xhibiting the effects of having consumed liquor" has two conjunctive evidentiary requirements. RCW 66.44.270(2)(b). First, the person must have the odor of liquor on his or her breath. Second, the person must also either: (1) be in possession of or close proximity to an alcohol container; or (2) exhibit signs of having consumed liquor by speech, manner, appearance, behavior, lack of coordination, or otherwise.

Here, G.C.'s father testified at trial that G.C. admitted to consuming alcohol. He also testified that while G.C. was at the skate park, G.C.'s breath smelled like alcohol and that he believed G.C. was "mildly intoxicated" because his eyes were glassy. RP Aug. 7, 2014 at 6. As such, B.C. opined that G.C. was under the influence of alcohol.

G.C. argues on appeal that the State failed to prove he exhibited physical signs of alcohol consumption because his "glassy eyes" could have been caused by something else. He asserts:

> "[G]lassy eyes" could be evidence that G.C. had used some other drug, was tired, was nervous, suffered from allergies or another medical condition, had been playing video games or looking at a computer screen for a long time, had low blood sugar, or had been crying. The court's conclusion that G.C.'s "glassy eyes" demonstrated he was under the influence of alcohol was based on "guess speculation, or conjecture."

Mot. for Acc. Rev. at 5 (quoting *State v. Colquitt*, 133 Wn. App. 789,796, 137 P.3d 892 (2006)). But G.C. does not and did not challenge that alcohol consumption can cause a person to have glassy eyes. *See* RP Aug. 7, 2014 at 25 (counsel acknowledging that one explanation for glassy eyes "may be consuming alcohol"). Thus, viewed in the light most favorable to the State, the evidence taken as a whole supports that G.C. exhibited the effects of having consumed alcohol. Therefore, the trial court's guilty adjudication is supported by sufficient evidence.

II. Disposition

The Juvenile Justice Act (JJA) provides sentencing standards for juvenile offenders. *See* RCW 13.40.0357. Where a court finds that disposition within the standard range would effectuate a manifest injustice, however, the court may impose a sentence outside the standard range. RCW 13.40.160(2). The JJA defines "[m]anifest injustice" as "a disposition that would either impose an excessive penalty on the juvenile or would impose a serious and clear danger to society in light of the purposes of this chapter." RCW 13.40.020(19).

A. Notice of Intent to Seek Manifest Injustice

Relying on *State v. Siers*, 174 Wn.2d 269, 277, 274 P.3d 358 (2012), G.C. argues that he had a due process right to be sufficiently notified of the State's intent to seek a manifest injustice disposition and the factual foundation for such a disposition. He asserts that his due process rights were violated because he never received notice that the State would seek a manifest injustice disposition in this case, nor did he receive notice of the aggravating circumstances on which the State planned to rely. G.C. argues that because of this deficient notice, he did not have the opportunity to consult with counsel about the factual allegations against him and was not given time to prepare a defense, warranting reversal of the manifest injustice disposition.

In *State v. J.V.*, this court held that the language in chapters 13.04 and 13.40 RCW of the JJA provide adequate notice to a juvenile defendant regarding the imposition of a manifest injustice disposition because the statute clearly indicates that such disposition is a possibility in all juvenile sentences. 132 Wn. App. 533, 539, 132 P.3d 1116 (2006) ("[N]otice of a potential punishment is adequate for due process purposes where the punishment is authorized in a relevant statute."). *See also State v. Moro*, 117 Wn. App. 913, 923, 73 P.3d 1029 (2003) (noting that a manifest injustice disposition is a possibility in all juvenile sentences and statute does not require express notice to a defendant that the court is considering imposing a manifest injustice sentence).[4] Here, G.C. received adequate notice for due process purposes because RCW 13.40.160(2) provides:

[4] G.C. argues that "*Moro* was effectively overruled *sub silento*" by *Siers*, 174 Wn.2d at 277. Mot. for Acc. Rev. 13 n.8. However, *Siers* dealt with whether an adult defendant's due process rights were violated where the State failed to allege an aggravating factor for purposes of pursuing an exceptional sentence under RCW 9.94A.537 in the charging

> If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option D of RCW 13.40.0357.

G.C. also fails to demonstrate how his ability to mount an adequate defense was impacted by the lack of notice. RCW 13.40.150(3)(i) provides a list of aggravating factors supporting a manifest injustice disposition As such, G.C. had the opportunity to prepare responses regarding the factors applicable to him should the issue of manifest injustice arise. The record also indicates that G.C. made arguments during the disposition hearing on August 14th as to why the juvenile court should not impose a manifest injustice disposition. G.C. fails to establish how his response at the disposition hearing would have been different had he received notice of the State's intent to seek a manifest injustice disposition or advance notice of the factual predicates for such a sentence. As such, G.C. does not show he was denied due process.

B. Evidentiary Support for Findings

G.C. next argues that the record did not support a manifest injustice disposition. He asserts that any facts supporting a manifest injustice finding must be proven beyond a reasonable doubt, which the State failed to do. G.C. also argues the juvenile court's findings that he required treatment in a secure facility, had been the subject of other

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document. *Siers*, 174 Wn.2d at 273. The Washington State Supreme Court held in *Siers* that although adequate notice of an exceptional sentence of an aggravating factor is required, "an aggravating factor is not the functional equivalent of an essential element and need not be charged in the information." *Siers*, 174 Wn.2d at 282. This holding does not effectively overrule *Moro*.

complaints resulting in diversion or a plea of guilty, and exhausted all local resources were not supported by substantial evidence.

Under RCW 13.40.160(2), if the juvenile court concludes that a disposition within the standard range would effect a manifest injustice, the court must impose a disposition outside the standard range. The court's finding of manifest injustice must be supported by clear and convincing evidence. RCW 13.40.160(2). In *State v. Tai N.*, 127 Wn. App. 733, 741, 113 P.3d 19 (2005), *review denied sub nom. State v. Nguyen*, 156 Wn.2d 1019 (2006), the court stated that the "clear and convincing" standard as applied to a manifest injustice disposition has long been equated with "beyond a reasonable doubt." *Tai N.*, 127 Wn. App. at 741. As such, "the juvenile court must find beyond a reasonable doubt that 'the defendant and the standard range for the offense presents a clear danger to society.'" *Tai N.*, 127 Wn. App. at 741 (quoting *State v. Murphy*, 35 Wn. App. 658, 669, 669 P.2d 891 (1983), *review denied*, 100 Wn.2d 1034 (1984)).

> In reviewing a manifest injustice disposition, this court engages in a three-part test:
>
> (1) Are the reasons given by the trial court supported by substantial evidence; (2) do those reasons support the determination of a manifest injustice disposition beyond a reasonable doubt; and (3) is the disposition either clearly too excessive or too lenient?

Tai N., 127 Wn. App. at 743 (quoting *State v. Duncan*, 90 Wn. App. 808, 812, 960 P.2d 941, *review denied*, 136 Wn.2d 1015 (1998)); RCW 13.40.230(2). This court reviews the juvenile court's findings of fact under a clearly erroneous standard and will only reverse if they are not supported by substantial evidence. *Moro*, 117 Wn. App. at 918.

1. Treatment in Secure Facility

G.C. first argues that the juvenile court's findings that he required treatment in a secure environment "per expert's opinion" and had a high likelihood of re-offense unless treated in a secure facility were not supported by substantial evidence or any evidence at all. Mot. for Acc. Rev. at 9 (quoting CP at 29). He asserts that Dr. McBride's psychological evaluation recommended that he engage in outpatient substance abuse and mental health treatment in the community and that the State did not present any evidence or expert opinion to rebut such recommendation.

The juvenile court entered multiple findings regarding G.C.'s need for treatment. This court concludes that substantial evidence supports the findings. Dr. McBride's psychological evaluation established that G.C. needed co-occurring treatment to address his substance abuse and mental health issues and that he would likely be an unwilling participant in treatment given his low awareness or reluctance to acknowledge his problems. He also stated that G.C. would "only submit to therapy under the press of severe family discord or legal problems." CP at 27. Dr. McBride recommended in his April 17, 2014 report that G.C. engage in intensive outpatient treatment and outpatient psychotherapy in the community, such as at Clallam Counseling in Port Angeles, Washington. But he also noted that any facility where G.C. might attend should have a lock-down unit and staff to deal with his angry episodes. In addition, Dr. McBride stated that "any probation violations or failure to comply with treatment or the conditions of psychotherapy must be, once again, managed by the court with the option of a lock-down inpatient treatment program." CP at 27.

After Dr. McBride issued this report, G.C. failed to attend his counseling appointment at Clallam Counseling, in violation of his probation, and consumed alcohol. Consistent with Dr. McBride's recommendation that a lock-down inpatient treatment program might be necessary if G.C. had probation violations or failed to comply with treatment, the State recommended a manifest injustice disposition at Echo Glen so G.C. could receive treatment in a secure setting because treatment in the community was clearly not working. At the disposition hearing, B.C. also testified that G.C. was unable to stay sober while in the community and that requiring his participation in treatment at Echo Glen was necessary. In addition, G.C.'s attorney told the juvenile court that G.C. had a high risk for re-offense regarding his use of substances. Thus, Dr. McBride's evaluation, together with the new evidence received at the disposition hearing, supported the juvenile court's findings with respect to G.C.'s need for treatment in a secure facility and high likelihood of re-offense.

2. Diversions and Exhaustion of Local Resources

G.C. also argues that substantial evidence did not support the juvenile court's findings with respect to his diversions and exhaustion of local resources because these findings were based on the State's "bare allegations" to the court, which "are not evidence 'whether asserted orally or in a written document.'" Mot. for Acc. Rev. at 10 (quoting *State v. Hunley*, 175 Wn.2d 901, 915, 287 P.3d 584 (2012)). This court concludes that substantial evidence supports the juvenile court's findings.

In sentencing a juvenile, the court may rely on all relevant and material evidence, including oral and written reports. RCW 13.40.150(1) specifically provides:

> In disposition hearings all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though such evidence may not be admissible in a hearing on the information. . . .

RCW 13.40.150(1). *See also* ER 1101(c)(3) (exempting juvenile disposition hearings from the rules of evidence). The juvenile court must also: (1) consider information and arguments offered by parties and their counsel; (2) consult with the respondent's parent on the appropriateness of dispositional options under consideration and afford the respondent's parent an opportunity to speak in the respondent's behalf; and (3) consider whether or not aggravating factors exist. RCW 13.40.150(3)(b), (d), and (i).

Here, both the State and G.C.'s attorney discussed G.C.'s diversions from other charges, and the State specifically argued that G.C.'s diversions were not calculated into G.C.'s criminal history. Because the juvenile court may consider information and argument by the parties under RCW 13.40.150(3)(b), its finding is supported by the evidence.[5] In addition, both the State and B.C. discussed G.C.'s inability to receive treatment in the community. For example, the State informed the court that G.C. had been removed from two treatment agencies because of his behavior and that no agency

[5] G.C.'s reliance on *Hunley* to argue that the State's bare assertions are not sufficient is misplaced, as that case dealt with determining a defendant's offender score under the Sentencing Reform Act (SRA), chapter 9.94A RCW. 175 Wn.2d at 906. Under the SRA, a defendant's offender score affects the sentencing range and is generally calculated by adding together the defendant's current offenses and prior convictions. *Hunley*, 75 Wn.2d at 908-09. Because it is important to determine the proper offender score, the State has the burden to prove prior convictions by a preponderance of the evidence and must introduce evidence of some kind to support the alleged prior convictions. *Hunley*, 75 Wn.2d at 908-10. G.C. cites no authority that the State has a similar burden of proof at a juvenile disposition hearing in order to support the court's finding of the aggravating factor that the juvenile has other complaints that have resulted in diversion that are not included in his or her criminal history.

in the state would take him. It also asserted that G.C. was not amenable to treatment in the community, which was supported by Dr. McBride's evaluation. Finally, B.C. told the juvenile court that he had "exhausted any kind of treatment facility" for G.C. in Port Angeles. RP Aug. 14, 2014 at 49. As such, the juvenile court's findings regarding G.C.'s diversions and exhaustion of local resources are supported by substantial evidence.[6]

CONCLUSION

G.C. fails to establish there was insufficient evidence to support the guilty adjudication. RAP 18.14(e)(1). He also fails to establish that he was denied due process or that his manifest injustice disposition was not supported by the record. RAP 18.13. Accordingly, it is hereby

ORDERED that the juvenile court's August 14, 2014 Order on Adjudication and Disposition is affirmed.

DATED this 24th day of February, 2015.

Aurora R. Bearse
Court Commissioner

cc: Jodi R. Backlund
Manek R. Mistry
Skylar T. Brett
Tracey L. Lassus
Hon. Christopher Melly

[6] G.C. also argues in a footnote that the juvenile court failed to specify the parts of the record upon which its findings were based, in violation of JuCR 7.12(e). But, as evidenced by this court's prior discussion, the record is sufficient to allow meaningful review as to whether the juvenile court's findings are supported by the record. As such, reversal is not warranted. *See State v. S.H.*, 75 Wn. App. 1, 9, 877 P.2d 205 (1994), *review denied*, 125 Wn.2d 1016 (1995), *overruled on other grounds by State v. Sledge*, 83 Wn. App. 639, 647, 922 P.2d 832 (1996).

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

G.C.,

Appellant.

No. 46588-4-II

ORDER DENYING MOTION TO MODIFY

APPELLANT filed a motion to modify a Commissioner's ruling dated February 24, 2015, in the above-entitled matter. Following consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

DATED this 5th day of May, 2015.

PANEL: Jj. Bjorgen, Melnick, Sutton

FOR THE COURT:

Bjorgen, A.C.J.
ACTING CHIEF JUDGE

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DIVISION II
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