74233-7

No. 74233-7-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Appellant,

v.

E.B. (DOB 3/3/2000),

Respondent.

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

The Honorable John P. Erlick

AMENDED BRIEF OF RESPONDENT

THOMAS M. KUMMEROW
Attorney for Respondent

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

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A. SUMMARY OF ARGUMENT

Fifteen year old E.B. pleaded guilty in juvenile court to one count of second degree robbery for grabbing a woman's purse. Over the State's objection, the juvenile court imposed a manifest injustice below the standard range, which consisted of imposition of a term of custody that was suspended. E.B. asks this Court to affirm the manifest injustice suspended disposition.

B. ISSUE PRESENTED

Whether the juvenile court had authority to impose a suspended sentence as a manifest injustice disposition below the standard range where decisions of the courts have plainly stated that once a decision is made to impose a manifest injustice disposition, the determinate sentencing scheme no longer applies and the court has discretion to craft the appropriate disposition?

C. STATEMENT OF THE CASE

E.B. pleaded guilty to one count of second degree robbery. CP 31-39. E.B. admitted he grabbed a woman's purse, and then struggled with the woman when she tried to keep it. CP 36; 10/14/2015RP 12-20.

At the disposition hearing, the probation counselor described E.B. for the court:

> [E.B.] is a great kid. He just is really, has struggled with his behavior. [E.B.] is smart. He's funny. He's engaging. He has the qualities to be successful. He just needs the tools. He attempted to get the tools from the community and that didn't work. When he went to JRA, even though it was for a short time, he got his minimum, which is another plus. He got his minimum, not his maximum. It just wasn't long enough to give him all the tools that he needs, as well as time to practice those tools.
>
> This is a young man who's 15 years old, that his behavioral habits have been going on for a long time. You're not going to fix them in 15 weeks; less than 15 weeks. But I did want you to know that I think he's a great kid and that he can do this. He was insightful when I first went down to talk to him in looking at the silver lining, if you will, regarding this, that he could go about, he could get his GED at JRA. He acknowledged that he did need more skills that are decision-making skills, the ability to say no to others, and some aggression, anger management. So he's fairly insightful about what his needs are.

10/14/2015RP 24.[1]

Counsel for E.B. noted that E.B. has started to learn and apply some of things he has been taught in the programs which had been put in place as a result of a prior disposition. 10/14/2015RP 25.

> [E.B.] has services set up in the community. He is involved in SeaMar Community Health Centers. He has an individual counselor, CJ Elsworth, who he sees regularly. Ms. Ellsworth also provides individual counseling to [E.B.'s mother], and family counseling to

[1] In her conclusion as to the appropriate disposition, the counselor did recommend a standard range which included a JRA commitment. 10/14/2015RP 24-25.

> both of them. He attends Boys and Girls Club after school and [his mother] has regular work hours so she is able to be home with [E.B.] when he is not in school or attending other activities.
>
> [E.B.] continues to work with David Humeryager of Team Child to address his specific school concerns. Last year the Bellevue School District agreed to do a comprehensive evaluation of [E.B.'s] needs. Based on this, [E.B.] has been placed at Bellevue High School to address his academic, emotional, and behavioral concerns. Until he was taken into custody for this charge, [E.B.] attended school and did not have any behavioral sanctions. This is a significant improvement over last year when [E.B.] reports he only attended 3 days.
> . . .
> [A]llowing [E.B.] to remain in the community will allow him to continue to implement the skills he has learned with the assistance of services that are already in place . . . Community supervision will provide structure to the court's conditions and will hold [E.B.] accountable.

CP 13-14.

Attached to E.B.'s sentencing memorandum was a report from Team Child addressing the issues facing E.B. and the community programs that had been put into place to address those issues. CP 17-21. Finally, E.B.'s mother strongly urged a manifest injustice disposition below the standard range, noting that her and E.B.'s relationship had improved significantly since the programs had been implemented. CP 79.

The State urged the court to impose a standard range disposition of 52-65 weeks of detention for E.B. CP 10; 10/14/2015RP 20-23.

The court wrestled with the appropriate disposition, noting that there were substantial risks to the community and to E.B. 10/14/2015RP 45. Ultimately, the court imposed a manifest injustice disposition below the standard range, finding that E.B. did not cause, nor contemplate that his actions would cause, serious bodily injury. CP 23, 79.

> One of the things that may be different is that school is now an anchor for [E.B.]. And I know that that can truly turn around youth. [E.B.] is bright. [E.B.] is charming. [E.B.] has some real skills. And [E.B.] is also a threat to the community. And we need to address it long term.
>
> I looked at the file and my concern was that [E.B.'s] just going to continue to do the same thing over and over unless we address it now. He did well at Echo Glen. On the other hand, I think our system has a preference, if possible, to keep youth in the community. He will still end up at Echo Glen if he messes up, but I will grant a manifest injustice.
>
> I'm imposing 52 to 65 weeks at JRA, and I am suspending that for a period of 12 months. And I will empower [E.B.] to stay out of JRA. Any criminal offense whatsoever will result in revocation. Even if it's an MIP or a theft 3, it's getting revoked. I need [E.B.] to attend at school. I need you to stay at home. You can't run. You can't be gone. So that is going to be the disposition of the court.

10/14/2015RP 45-46. Thus, the court concluded that "[s]uspending the time allows the respondent to utilize the community services that are currently in place." CP 80.

The State has appealed the manifest injustice disposition. CP 69.

D. ARGUMENT

The juvenile court had ample authority to impose a manifest justice disposition below the standard range, which included a suspended disposition.

1. *A court may impose a disposition below the standard range where it finds a standard range disposition would effectuate a manifest injustice.*

A court may impose a disposition outside the standard range for a juvenile offender if it determines that a disposition within the standard range would "effectuate a manifest injustice." RCW 13.40.160(2); *State v. Beaver*, 148 Wn.2d 338, 345, 60 P.3d 586 (2002). "'Manifest injustice' means 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 the [Juvenile Justice Act of 1977, ch. 13.40 RCW]." RCW 13.40.020(19); *State v. M.L.*, 134 Wn.2d 657, 660, 952 P.2d 187 (1998). The purposes of the Juvenile Justice Act (JJA) include protecting the citizenry from criminal behavior; making the juvenile accountable for his or her

criminal behavior; providing for punishment commensurate with the age, crime, and criminal history of the juvenile; and providing necessary treatment, supervision, and custody of juvenile offenders. RCW 13.40.010(2)(a)-(f).

To uphold a disposition outside the standard range, this Court need only find that (1) the reasons supplied by the disposition judge are supported by the record before the judge, (2) those reasons clearly and convincingly support the conclusion that a disposition within the standard range would constitute a manifest injustice, and (3) the sentence imposed was neither clearly excessive nor clearly too lenient. RCW 13.40.230(2); *M.L.*, 134 Wn.2d at 660. A disposition is clearly excessive "'only when it cannot be justified by any reasonable view which may be taken of the record.'" *State v. T.E.C.*, 122 Wn.App. 9, 17, 92 P.3d 263 (2004) (internal quotation marks omitted), *quoting State v. Tauala*, 54 Wn.App. 81, 87, 771 P.2d 1188, *review denied*, 113 Wn.2d 1007 (1989). In determining the appropriate disposition, a trial court may consider both statutory and nonstatutory aggravating factors. *State v. J.V.*, 132 Wn.App. 533, 540–41, 132 P.3d 1116 (2006).

2. *Once a court decides to impose a manifest injustice, the court may craft any disposition as the determinate sentencing scheme no longer applies.*

Once a juvenile court concludes that a disposition within the standard range would effectuate a manifest injustice, the determinate sentencing scheme no longer applies, and the juvenile court is vested with broad discretion in determining the appropriate disposition. *M.L.*, 134 Wn.2d at 660; *J.V.*, 132 Wn.App. at 545. The court abuses its discretion only if its decision cannot be justified by any reasonable view of the record. *Tauala*, 54 Wn.App. at 86-87 (stating the court has broad discretion to impose any sentence it chooses once it decides to depart from the standard range based on a manifest injustice finding). *See also State v. Strong*, 23 Wn.App. 789, 794, 599 P.2d 20 (1979) (once a juvenile court has concluded that a disposition within the standard range would effectuate a manifest injustice, the court is vested with broad discretion in crafting the appropriate sentence to impose).

The majority of the decisions finding that, once the juvenile court concludes a standard range sentence would effectuate a manifest injustice thus the standard range is inapplicable, arise out of manifest justice dispositions above the standard range where the argument was that the sentence was clearly too excessive. *See e.g., M.L.*, 134 Wn.2d

at 660-61 (manifest injustice above the standard range affirmed but 523 weeks clearly excessive where standard range was 30-40 weeks); *J.V.*, 132 Wn.App. at 545 (30-40 week manifest injustice disposition not clearly excessive where standard range was 30 days); *State v. Duncan*, 90 Wn.App. 808, 815, 960 P.2d 941 (1998) (manifest injustice disposition above the standard range affirmed but length of 535 weeks reversed where court improperly speculated about earned early release); *Tauala*, 54 Wn.App. at 86-88 (commitment for over four years until juvenile turned 21 years of age not clearly excessive where standard range was 103-129 weeks). In choosing the length of the disposition, the standard range by definition is inapplicable and the juvenile court is left to fashion its own disposition as long as that disposition is supported by the record.

But this doctrine has also been authorized where the manifest disposition was below the standard range as well. *See State v. Crabtree*, 116 Wn.App. 536, 545-46, 66 P.3d 695 (2003) (Chemical Dependency Disposition Alternative disposition affirmed where juvenile not eligible under the standard range but allowed where disposition was outside the standard range); *State v. K.E.*, 97 Wn.App. 273, 279-87, 982 P.2d 1212 (1999) (consolidated appeals of manifest injustice dispositions below

the standard range of 30 days and 12 months of community supervision where the standard range was 103-129 weeks. One disposition affirmed the other reversed where the court considered an improper mitigating factor and remanded for court to reconsider its disposition in light of the remaining mitigating factor).

Thus, it seems clear, and it makes logical sense, that once the court decides to impose a manifest injustice disposition, the standard range is inapplicable. The State's argument to the contrary would necessarily require the State to meet the rules regarding determinate sentencing when arguing for a manifest injustice disposition above the standard range. One would suspect this is not an outcome the State necessarily desires.

The court was not required to follow the determinate sentencing scheme in crafting the disposition regarding E.B. The court had authority to suspend the sentence it imposed.

The court noted why it chose to suspend E.B.'s sentence:

> The fact that those services are now set up in the community, That [E.B.] has had the benefit of some treatment and programming at JRA, and that he has the strong support of his mother, and that he has an extraordinarily long JRA sentence hanging over his head and will be highly motivated to engage in treatment because if he does not, he'll go to JRA. That's the purpose of the suspended sentence.

11/3/2015RP 96.

It is evident that the court's findings were amply supported by the record before it and that clear and convincing evidence supports the court's manifest injustice determination. *See T.E.C.*, 122 Wn.App. at 20-21. The manifest injustice disposition should be affirmed.

E. CONCLUSION

For the reasons stated, E.B. asks this Court to reject the State's arguments and affirm the manifest injustice suspended disposition below the standard range.

DATED this 21st day of October 2016.

Respectfully submitted,

s/Thomas M. Kummerow

THOMAS M. KUMMEROW (WSBA 21518)
tom@washapp.org
Washington Appellate Project – 91052
Attorneys for Respondent

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

STATE OF WASHINGTON,	)	
	)	
Appellant,	)	
	)	NO. 74233-7-I
v.	)	
	)	
E.B.,	)	
	)	
Juvenile Respondent.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 21ST DAY OF OCTOBER, 2016, I CAUSED THE ORIGINAL **AMENDED BRIEF OF RESPONDENT** 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:

[X] JAMES WHISMAN, DPA KING COUNTY PROSECUTING ATTORNEY [paoappellateunitmail@kingcounty.gov] [PAOJuvenileFiling@kingcounty.gov] [Jim.Whisman@kingcounty.gov] KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	( ) ( ) (X)	U.S. MAIL HAND DELIVERY AGREED E-SERVICE VIA COA PORTAL

SIGNED IN SEATTLE, WASHINGTON THIS 21ST DAY OF OCTOBER, 2016.

X_____

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
☎(206) 587-2711