

NO. 64958-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Appellant,

v.

NUR JAMAL MOHAMOUD,

Respondent.

2010 JUL 14 PM 4:35

FILED
COURT OF APPEALS
STATE OF WASHINGTON

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CHRISTOPHER WASHINGTON

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

1. THE MOTION FOR A DEFERRED DISPOSITION MUST BE MADE AT LEAST FOURTEEN DAYS BEFORE TRIAL; THE MOTION MAY NOT COME POST-CONVICTION.

Mohamoud argues that his post-conviction deferred disposition was timely, even though the statute requires a motion “at least fourteen days before commencement at trial.” RCW 13.40.127(2). Because the deferred disposition process began after Mohamoud's conviction, the deferred disposition was untimely and is invalid.

As discussed in the opening brief, the deferred disposition statute provides a framework where a juvenile accepts responsibility early in the criminal justice process. A juvenile must agree to a deferred disposition by stipulating to police report facts, acknowledging that the police report will be used in the case, and waiving his right to speedy disposition. RCW 13.40.127(3). But these procedures must be followed before the juvenile is convicted for the offense. See RCW 13.40.127(2),(3),(4). Our Supreme Court has confirmed this statutory timeframe.

[B]efore the trial judge enters a finding or accepts a plea of “guilty,” an offender must “[s]tipulate to the admissibility of the facts contained in the written police report; [a]cknowledge that the report will be

entered and used to support a finding of guilt and to impose a disposition if the juvenile fails to comply with terms of supervision; and [w]aive” the juvenile’s right to speedy disposition and to call and confront witnesses.

The Supreme Court clarified that:

“Following the stipulation, acknowledgment, waiver, and entry of a finding or plea of guilt,” the court may then defer entry of an order of disposition of the juvenile for up to one year from the date the offender is found “guilty,” during which time the juvenile must comply with all court-ordered conditions of supervision.

State v. Watson, 146 Wn.2d 947, 953, 51 P.3d 66 (2002) (quoting RCW 13.40.127(3)) (emphasis added). This holding is consistent with other cases where a post-conviction deferred disposition was unlawful. State v. B.J.S., 140 Wn. App. 91, 100-02, 169 P.3d 34 (2007) (holding that it is ineffective assistance of counsel to advise a juvenile that he could seek a post-conviction deferred disposition after trial); State v. Lopez, 105 Wn. App. 688, 696-97, 20 P.3d 978 (2001) (“the trial court did not have express statutory authority to grant a post-conviction deferred disposition”). A deferred disposition process cannot initiate after conviction, because a juvenile must agree to the deferred disposition before conviction.

In our case, the juvenile court initiated the deferred disposition process after Mohamoud was convicted. Mohamoud

did not agree to the deferred disposition because he never provided the required stipulation, acknowledgment, and waiver. RCW 13.40.127(3). Any motion for a deferred disposition was thus untimely and is invalid.

Mohamoud admits that “it is true Jamal did not separately stipulate to the admissibility of the facts contained in the police report or acknowledge it would be used to support a finding of guilty if the deferred disposition was later revoked.” Respondent’s Brief at 17. He also admits that he failed to provide the other necessary waivers as well, but he argues that the State should have requested these items before the court imposed the deferred disposition and that his plea of guilty made these requirements “irrelevant.” Id. at 17, 19. Mohamoud’s claim is without legal authority and misses the point. These deferred disposition procedures are mandatory, not discretionary. Lopez, 105 Wn. App. at 697. The statute requires that Mohamoud follow all of these procedures before conviction. RCW 13.40.127(2),(3),(4). He followed none of them before his conviction.

The deferred disposition is particularly untimely because the motion was not made 14-days before trial. See RCW 13.40.127(2). Mohamoud argues that because the trial date was stricken after he

secured a plea deal, this statutory provision no longer applied to him. This argument again ignores the clear language of the statute:

All statutory language must be given effect and no portion can be rendered meaningless or superfluous. City of Seattle v. Dep't of Labor & Indus., 136 Wn.2d 693, 698, 965 P.2d 619 (1998).

Since a timely motion for a deferred disposition comes before conviction, there is always a trial date set on the calendar.¹ See supra; Watson, 146 Wn.2d at 953. The deferred disposition motion must come at least 14-days before the scheduled trial date. RCW 13.40.127(2). There was no such timely motion in this case.

The trial date was stricken only because Mohamoud negotiated a plea to reduced charges. If Mohamoud had wanted the matter reset for trial, he could have withdrawn from his plea agreement. Of course, had Mohamoud withdrawn from his plea deal, the State would no longer give Mohamoud the benefit of his reduced charges. Thus, Mohamoud would once again face trial on his original charge of Assault in the Second Degree – a violent

¹ Mohamoud argues that the trial date is irrelevant since the language of the statute refers only to a trial that begins, which never happened. This argument is unpersuasive since a trial will never technically “commence” if a timely deferred disposition is granted. The commencement of trial refers to the date that a trial is scheduled to begin. It is the only interpretation that gives the language meaning.

offense for which Mohamoud was statutorily ineligible for a deferred disposition. RCW 13.40.127(1).

Mohamoud attempts to receive a deferred disposition on an offense for which he would otherwise be ineligible if not for the plea reduction. The statutory timeframe, however, prevents this circuitous attempt to receive a deferred disposition in this case. The 14-day deadline also serves an important policy function in that it encourages the State to reduce charges pursuant to plea negotiations. As a result, the statute mandates that a deferred disposition motion must be made not after conviction, but 14 days before trial. Because Mohamoud's post-conviction deferred disposition was untimely, his deferred disposition is invalid.

2. THE DEFERRED DISPOSITION STATUTE CREATES A MANDATORY PROCEDURE THAT MUST BE FULLY FOLLOWED BY THE JUVENILE COURT BEFORE IT GRANTS A DEFERRED DISPOSITION; IT IS NOT A STATUTE TO BE "SUBSTANTIALLY COMPLIED WITH" AS MOHAMOUD ARGUES.

Not only was the deferred disposition motion untimely, many statutory requirements were never followed. Mohamoud argues that because these procedures were "substantially complied with" the deferred disposition should be valid. Respondent's Brief at 8.

Because mandatory statutory procedures were not followed, the deferred disposition is invalid.

A deferred disposition is void if a statutory procedure is not followed. Lopez, 105 Wn. App. at 697-98. "[T]he terms of the statutes that grant courts the authority to defer the imposition or execution of a sentence are mandatory." Id. at 697 (citing State v. Clark, 91 Wn. App. 581, 585, 958 P.2d 1028 (1998)). These mandatory procedures are required because without following the statutory directives, the court lacks the authority to suspend a disposition. Id. at 697. In our case, the post-hoc nature of the proceeding led to most procedures being ignored all together.

For example, Mohamoud admits that he never stipulated to the admissibility of the facts of the police report. Respondent's Brief at 17. However, Mohamoud claims that "the statute contemplates that a respondent may enter a plea of guilty instead of stipulating to the police record." Respondent's Brief at 16. But the statute already requires a finding of guilty or entry of plea. RCW 13.40.127(2). Therefore, Mohamoud's claim lacks legal authority and would make this provision superfluous. See Dep't of Labor & Indus., 136 Wn.2d at 698 (holding no statutory provision may be rendered meaningless or superfluous).

Mohamoud misconstrues dicta in State v. N.S.T. to support this claim. ___ Wn. App. ___, 2010 WL 2252530 at * 2 (No. 62934-4-I, June 7, 2010). N.S.T. did not hold that a plea of guilty can be used in lieu of stipulating to the police record. Id. Instead, N.S.T. addressed whether the juvenile court had a basis to revoke a lawfully imposed deferred disposition. Id. When this Court stated in N.S.T. that “The JJA authorizes the juvenile court to defer disposition of the juvenile's case for a period not to exceed one year after the juvenile is found or pleads guilty,” this Court simply referenced RCW 13.40.127(4). Id. RCW 13.40.127(4) states that “Following the stipulation, acknowledgment, waiver, and entry of a finding or plea of guilty, the court shall defer entry of an order of disposition of the juvenile.” RCW 13.40.127(4). Our Supreme Court has already held that these procedural requirements must come “before *the trial judge enters a finding or accepts a plea of ‘guilty’ . . .*” Watson, 146 Wn.2d at 953. Thus, it is settled that the stipulation must precede a guilty plea, not substitute for it.

Mohamoud also admits that he failed to acknowledge the police report or complete his waivers. Respondent's Brief at 17, 19. All of these procedures were mandatory. Because Mohamoud never satisfied the stipulation provision of RCW 13.40.127(3)(a),

the acknowledgment provision of RCW 13.40.127(3)(b), or the waiver requirements of RCW 13.40.127(3)(c), the deferred disposition is void.²

In fact, the juvenile court never fully satisfied any provision of the juvenile disposition statute. While the consent and community benefit portion of RCW 13.40.127(2) may have been discussed by the court after it ordered the deferred disposition, no other part of that provision was followed. See supra § A.1. A deferred disposition is not valid when statutory provisions are partially complied with; the statutory mandates must be fully followed. See Lopez, 105 Wn. App. at 697-98. Because the juvenile court failed to follow the statutory provisions, the deferred disposition is invalid.

3. THE JUVENILE COURT CANNOT INITIATE AND IMPOSE A DEFERRED DISPOSITION LIKE ANY OTHER DISPOSITION.

² Indeed, Mohamoud still has not stipulated or acknowledged the facts of the police report. As he did with the juvenile court, Mohamoud continues to insert facts not part of this written police report. See RCW 13.40.127(3),(4). For example, at trial Mohamoud's attorney claimed that Mohamoud attacked the fellow African-American student only after being called racially derogatory names. RP 9, 11-12. On appeal, Mohamoud relies on these attorney statements even though they are not contained in the police report. RCW 13.40.127(3)(a); CP 2-3; Respondent's Brief at 3, 20.

Mohamoud argues that the court could impose a post-conviction deferred disposition *sua sponte* because "The juvenile court has broad discretion to order a disposition in a juvenile case . . ." Respondent's Brief at 23. However, the juvenile court does not have inherent authority to defer a disposition.

"An order deferring disposition is not itself a disposition." State v. M.C., 148 Wn. App. 968, 971-72, 201 P.3d 413 (2009). It is instead a disposition postponement created by the Legislature with strict procedural mandates. Id. at 971-72; Lopez, 105 Wn. App. at 697. "[T]he trial court does not have inherent authority to suspend or defer a sentence; the Legislature must grant the court such power." Lopez, 105 Wn. App. at 697 (citing State v. Bird, 95 Wn.2d 83, 85, 622 P.2d 1262 (1980); State v. Clark, 91 Wn. App. 581, 585, 958 P.2d 1028 (1998)). The juvenile court is not granted the power to impose a post-conviction deferred disposition. Lopez, 105 Wn. App. at 698. A deferred disposition procedure must begin before conviction. See supra § A.1; Watson, 146 Wn.2d at 953; B.J.S., 140 Wn. App. at 100-02; Lopez, 105 Wn. App. 696-97; RCW 13.40.127(3). Thus, no court may grant a deferred disposition *sua sponte* after conviction.

Even if the juvenile court in this case had granted the deferred disposition timely, i.e., before conviction and 14-days before trial, Mohamoud needed to make the motion. Mohamoud argues that the juvenile court properly initiated the deferred disposition on its own motion, and the statute authorized the juvenile court to move for a deferred disposition.³ However, this interpretation is not the Legislature's intent, because it is inconsistent with the other statutory provisions and leads to absurd results.

The fundamental duty in interpreting statutes is to discern the Legislature's intent. State v. Madrid, 145 Wn. App. 106, 111, 192 P.3d 909 (2008). To do this, this Court considers the context and related provisions of the statute or act before the court and harmonize these provisions if possible. State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 281 (2005); In re Pers. Restraint of Albritton, 143 Wn. App. 584, 593, 180 P.3d 790 (2008). Any interpretation that leads to an unlikely or absurd result must be avoided, since the Legislature would not have intended something so unreasonable. State v. Ammons, 136 Wn.2d 453, 457, 963 P.2d 812 (1998).

³ Specifically, Mohamoud argues that the Legislature intended for the court to be a party who can initiate a deferred disposition "upon motion at least fourteen days before commencement of trial." RCW 13.40.127(2).

Mohamoud argues that the State's exclusion of the court as a moving party "read[s] language into the statute." Respondent's Brief at 11. To the contrary, Mohamoud is attempting to read language into this deferred disposition statute that was omitted, but which exists in other dispositional statutes in the Juvenile Justice Act. RCW 13.40.165(4) and RCW 13.40.160(3) ("the court, on its own motion or the motion of the state or respondent"). Importantly, those statutes where the juvenile court is expressly granted this authority involve actual disposition options with which the court has inherent discretion. See Id.; State v. H.E.J., 102 Wn. App. 84, 87, 9 P.3d 835 (2000). The deferred disposition statute specifically omits "the court" as a moving party, likely because a deferred disposition is not itself a disposition. See M.C., 148 Wn. App. at 971-72. The fact that the court is mentioned in other relevant statutes shows that the Legislature intentionally omitted the court as a moving party for a deferred disposition.

Not having the court as a moving party is also consistent with the full context of RCW 13.40.127. Nearly all of the statutory requirements are done by either the juvenile or his attorney. After a motion is made for a deferred disposition, it is the juvenile who agrees to deferral, stipulates to the admissibility of facts,

acknowledges the police report, waives his right to speedy disposition, waives his right to call and confront witnesses, and consents to the consequences of the deferral, including potential restitution and community supervision obligations. RCW 13.40.127(3). Only then does the court consult with the juvenile's parents and determine the community benefits before ruling on whether a deferred disposition is warranted. RCW 13.40.127(2). This focus on the juvenile, his early acceptance of responsibility, and his desire to begin the deferral process shows that the Legislature intended for the juvenile to make a motion, instead of the court.

Finally, having the court as a moving party leads to the absurd result that with limited knowledge of the case, case facts, or the parties' intentions, a judge would hail the State and juvenile to court at least two weeks before trial to initiate a deferred disposition process. This absurdity would strain judicial resources and not be intended by the Legislature.

Mohamoud's interpretation that the court can initiate the deferred disposition process reads language into the statute that is inconsistent with other sections of the act, is inharmonious with the rest of the statute, and leads to absurd results. The statute does

not authorize the court to move for a deferred disposition. As such, the juvenile court's *sua sponte* deferred disposition is without statutory authority.

B. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to reverse the trial court, find that the deferred disposition is void, and remand for disposition.

DATED this 14th day of July, 2010.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Elaine Winters, the attorney for Nur Jamal Mohamoud, Washington Appellate Project, 1511 3rd Ave, Suite 701, Seattle, WA 98101, containing a copy of the Reply Brief of Appellant, in STATE V. NUR JAMAL MOHAMOUD, Cause No. 64958-2, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



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Done in Seattle, Washington

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