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COURT OF APPEALS DIV I
STATE OF WASHINGTON

2012 MAR 09 PM 2:06

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NO. 67150-2-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

RONNIE SEYMOUR,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MICHAEL J. TRICKEY

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

When a juvenile court orders a deferred disposition, RCW 13.40.127 grants the court discretion to determine what constitutes lack of compliance with the conditions of the deferred disposition. Here, Seymour committed new crimes while his deferred disposition was pending. Did the trial court reasonably exercise its discretion when it determined that Seymour had failed to comply with the terms of the deferred disposition?

B. STATEMENT OF THE CASE

On August 7, 2009, juvenile respondent Ronnie Seymour broke into Carl Bennett's home and stole jewelry and electronics, including a laptop, X Box, Blackberry cell phone, Apple iTouch, Nintendo Wii, and Canon camera. CP 2. When officers executed a search warrant at Seymour's home, they found 58 items of evidence. CP 3. Some of the items were stolen from Bennett's home, while the rest were associated with other burglaries. Id.

The State charged Seymour with residential burglary in juvenile court.¹ CP 1. On November 18, 2009, Seymour moved for

¹ Seymour's birthday is December 28, 1991. CP 1.

a deferred disposition. CP 4-5. Without inquiring as to the State's position, the court granted Seymour's motion and found him guilty of residential burglary. 1RP² 10; CP 10-12. The court continued disposition until July 18, 2012, and placed Seymour on eight months of community supervision. CP 11. The court imposed several conditions of community supervision, including an order not to have any "new probable cause referrals or criminal law violations." CP 11-12. The court set a review hearing for July 1, 2010, and extended juvenile court jurisdiction until November 18, 2010. CP 11-12.

Seattle police arrested Seymour on June 30, 2010, and the State charged him in adult court with attempted residential burglary on July 6, 2010. CP 65. Seymour was subsequently charged on August 4, 2010, with five counts of trafficking stolen property in the first degree and one count of possessing stolen property in the third degree. Id. All of these crimes occurred in June of 2010, while Seymour's deferred disposition was pending. Id.

Seymour did not appear for the review hearing that was set on July 1. CP 155. No hearing was held, but defense counsel

² The verbatim report of proceedings consists of two volumes, which will be referred to as 1RP (all hearings except 7/12/10) and 2RP (7/12/10).

moved to continue the review hearing until July 12, 2010.

CP 29-30. It does not appear that any of the parties were aware that Seymour had been arrested. CP 155.

On July 12, 2010, the juvenile probation counselor (“JPC”) submitted a report stating in part that “[o]n June 30, 2010, I received a call from Ronnie as well as a detective stating that Ronnie was in custody on another matter....” CP 155. The JPC recommended that the matter be dismissed as completed disposition.³ Id.

Seymour did not appear at the hearing, but the parties noted that he was currently held on a charge of attempted residential burglary. 2RP 3. Although the parties were aware that Seymour might be in custody, nobody gave any indication that they knew where Seymour was held. 2RP 3-5. Trial counsel referenced the JPC’s report, but agreed that “it would be probably most prudent to track it with the-the new charge and-just to have that resolved.” 2RP 3-4. The agreed order continued the deferred disposition to October 25, and extended juvenile court jurisdiction to January 31, 2011, to “[t]rack w/new charge.” CP 32-33. The court set a review

³ The JPC’s report is not in the record.

hearing for October 11, 2010. Id. The court did not enter an order requiring Seymour to be transported to the hearing. Id.

On October 11, 2010, Seymour again did not appear.

1RP 18. The parties determined that Seymour's adult charges were still pending and that he was in custody in the King County Jail. 1RP 23. Trial counsel agreed that the parties had set the matter out for several months in the hopes that Seymour's adult charges would "resolve or something." 1RP 19. Counsel asked the court not to issue a bench warrant and moved to continue the review. 1RP 19-20. When the court suggested continuing the deferred until mid-November, counsel replied, "That'd be great. Thank you." 1RP 20. The court set a review hearing for November 4, 2010. CP 35-36. The order continuing the deferred directed the Department of Adult and Juvenile Detention to "transport Respondent if still in custody." Id.

On October 27, 2010, Seymour pleaded guilty to attempted residential burglary in cause number 10-1-06058-4. In a separate cause number, 10-1-06466-1, Seymour pleaded guilty to three counts of trafficking in stolen property in the first degree and one count of possessing stolen property in the third degree. CP 65, 73-84, 106-13. The adult court sentenced Seymour to 16.5 months

total confinement as to all counts on November 12, 2010.

CP 86-93, 130-37, 139-41.

Seymour was not transported to juvenile court for the November 4 hearing; counsel requested that the deferred disposition be dismissed.⁴ 1RP 25. This was the first time that counsel moved to dismiss the disposition. The State argued that it was inappropriate to dismiss given that Seymour had committed new crimes while his deferred was pending, and asked the term of the deferred be extended until the adult matters were resolved.

1RP 26. The court noted that abstaining from new criminal charges was one of the most basic requirements of a deferred, and given the similarities of the new charges to the residential burglary for which Seymour was granted a deferred, the court declined to vacate the adjudication. 1RP 28. Instead, the court extended the deferred until January 3, 2011, and set a review hearing for December 2, 2010. CP 38-39.

On December 2, 2010, Seymour was not present. 1RP 33.

The parties discussed that Seymour was in the custody of the

⁴ Although the parties repeatedly discussed whether the court should “dismiss” the deferred, this is clearly shorthand for a motion to vacate the adjudication and dismiss the charge.

Department of Corrections. 1RP 33. The court indicated that it was not comfortable taking any substantive action without Seymour present. 1RP 34.

On December 20, 2010, Seymour appeared and the State filed a motion to revoke his deferred. 1RP 42; CP 63-66. The court heard oral argument on December 22, 2010. 1RP 49. The State withdrew its motion to revoke, based on its belief that the court's prior extensions of the deferred were invalid because Seymour had not been present at the time of the extensions. 1RP 57. However, the State asked to be able to renew its motion to revoke in the event that the court ruled that the extensions were proper. Id.

On January 26, 2011, the court issued a written ruling, finding that the orders extending the deferred and juvenile court jurisdiction⁵ were invalid because Seymour was not present at the hearing. CP 153-62. Consequently, the court held that the deferred disposition ended on July 18, 2010. Id. Because no motion to revoke was filed prior to July 18, the court concluded that

⁵ Once the court found Seymour guilty, it is possible that juvenile court jurisdiction was automatically extended. See RCW 13.40.300(1)(b) (The juvenile court retains jurisdiction beyond a juvenile's eighteenth birthday if before the juvenile's birthday, "the juvenile has been found guilty after a fact finding or after a plea of guilty and an automatic extension is necessary to allow for the imposition of disposition."). Nonetheless, the Juvenile Justice Act does not provide for an automatic extension of a deferred disposition.

it lacked jurisdiction to revoke the deferred or vacate the adjudication. Id. The court entered an “order of dismissal without vacating the adjudication.” Id. The court denied Seymour’s motion for reconsideration. 1RP 134-35.

C. ARGUMENT

**THE TRIAL COURT EXERCISED SOUND DISCRETION
WHEN IT CHOSE NOT TO SUA SPONTE VACATE
SEYMOUR’S ADJUDICATION AND DISMISS THE CASE.**

Seymour argues that the trial court erred when it did not vacate his adjudication in July of 2010. Seymour's argument fails because trial counsel did not move to vacate his adjudication; rather, counsel moved to extend the deferred disposition while Seymour’s adult criminal charges were pending. Moreover, given that Seymour had incurred new criminal charges, the trial court did not abuse its discretion when it failed to sua sponte find that Seymour had complied with the terms of his deferred disposition.

Under the Juvenile Justice Act of 1977, a juvenile court has discretion under certain circumstances to defer disposition of an offender's conviction. RCW 13.40.127. The deferred disposition statute provides juvenile offenders with an opportunity to earn vacation and dismissal of a case with prejudice upon full

compliance with “conditions of supervision and payment of full restitution.” State v. Mohamoud, 159 Wn. App. 753, 758-59, 246 P.3d 849 (2011) (citing RCW 13.40.127(9)). This meets “the needs of the juvenile” and the “rehabilitative and accountability goals” of the Juvenile Justice Act. Id. at 759 (citing State v. J.H., 96 Wn. App. 167, 181, 978 P.2d 1121 (1999)).

RCW 13.40.127(7) grants a juvenile court discretion to determine what constitutes lack of compliance with the conditions of a deferred disposition order. State v. J.A., 105 Wn. App. 879, 887, 20 P.3d 487 (2001). A trial court abuses its discretion when its decision is manifestly unreasonable or based upon untenable grounds or reasons. State v. Magers, 164 Wn.2d 174, 181, 189 P.3d 126 (2008). "A decision is based on 'untenable grounds' or 'untenable reasons' if it rests on facts unsupported in the record or was reached by applying the wrong legal standard." State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003).

Seymour argues that the trial court abused its discretion when it failed to vacate his adjudication "on July 1, 2010, or on July 12, 2010, at the latest." App. Br. at 7. This argument fails because the court was not asked to find, and could not have found, that

Seymour had complied with the terms of his community supervision.

On July 1, 2010, Seymour failed to appear for his review hearing. Trial counsel moved to continue the hearing, presumably to avoid having a bench warrant issued.⁶ Under these circumstances, where Seymour failed to appear and the court had no explanation for his absence or information about Seymour's performance,⁷ it would have been unusual for the court to find that he had complied with the terms of his deferred disposition.⁸ Consequently, it was reasonable for the court to grant counsel's motion for a continuance and the court did not abuse its discretion when it failed to sua sponte vacate the adjudication.

Seymour also claims that the trial court should have vacated his adjudication on July 12, 2010. Again, Seymour fails to

⁶ At subsequent hearings, trial counsel acknowledged this motion to continue was reasonable and that defense attorneys frequently argue for bench warrants not to be issued when clients fail to appear. 1RP 58, 71.

⁷ Seymour claims that "on July 1st, the JPC moved for dismissal of the deferred disposition." App. Br. at 7. To support this claim, Seymour cites to the declaration of facts in trial counsel's motion to dismiss. The declaration of facts was written by an attorney who did not represent Seymour on July 1, 2010, and is not supported by any authority. According to Judge Trickey's written ruling, the JPC's report was not delivered until July 12, 2010. CP 155.

⁸ See 1RP 74-76 (Court summarizes its general practice when a juvenile fails to appear for a review hearing, and states that unless everyone is in agreement that the adjudication should be vacated, the court would not vacate the conviction).

acknowledge that trial counsel did not request vacation of the adjudication, but instead joined in a motion to continue. Seymour claims that it was error not to vacate because it was "undisputed [Seymour] had complied with the conditions of community supervision...." App. Br. at 12. This claim is not supported by the record. Although the JPC was recommending dismissal on July 12, all of the parties were aware that Seymour had new criminal charges pending that arose from conduct that occurred while the juvenile disposition was deferred. Trial counsel did not ask the trial court to find that Seymour was in compliance and it is clear that the trial court would not have found compliance had such a request been made. As Judge Trickey held, "Since all parties knew of a pending adult criminal matter since at least July 12, 2010, the court was not then and is not now required to make any findings of substantial compliance, regardless of any motion to revoke the deferred disposition."⁹ CP 161. Therefore, the trial court was

⁹ The record indicates that Judge Trickey's ruling is consistent with other Juvenile Court judge's approach. See 1RP 27-28 (Commissioner Garratt noting that "One of the basic premises of a deferred disposition is not committing any new offenses. This is a laundry list of rather serious charges which are similar to the matter he's on deferred disposition on...I think it would be against Juvenile Court policy and commonsense to dismiss a matter when there are serious felonies pending that were committed during the time of the deferral period."). Consequently, trial counsel reasonably believed that extending the deferred disposition was in the best interest of his client.

justified in granting the continuance, and did not abuse its discretion when it failed to sua sponte vacate Seymour's conviction.

Seymour states, "Had [Seymour] been transported to juvenile court to appear even one of the four times his case had been on the calendar, his case could have been dismissed...." App. Br. at 10. Although the failure to transport Seymour was unfortunate, Seymour overlooks that the trial court could have vacated the adjudication only after a finding that he had complied with the terms of his deferred disposition. As explained above, the trial court would not have made such a finding even if Seymour had been there. Had Seymour been present, trial counsel would have done exactly what he did in Seymour's absence: move to extend the deferred in the hopes that the new criminal charges were dismissed or resulted in an acquittal.¹⁰

Seymour assigns error to the trial court's denial of his motion to vacate the adjudication, as well as the court's denial of the motion for reconsideration. The denial of the defense motions

¹⁰ In fact, even during the motion to dismiss, trial counsel did not argue that Seymour had complied with the terms of his deferred disposition. She argued that he had "done everything that he was supposed to do on the deferred but for the pending charges," and that the court should dismiss for "efficiency's sake." 1RP 27. In her written motion, counsel simply argued that there was no allegation of noncompliance. CP 20-22.

occurred in January and April of 2011. However, Seymour's argument focuses entirely on the trial court's failure to dismiss in July of 2010. Moreover, both rulings were based in part on the court's holding that it could not extend the deferred disposition without Seymour present.¹¹ Seymour offers no argument or authority challenging the trial court's ruling on the motion dismiss or the denial of reconsideration. This Court should not address assignments of error not supported by authority or argument. RAP 10.3.

Finally, Seymour attempts to distinguish his case from the facts of State v. Tucker, 171 Wn.2d 50, 246 P.3d 1275, as corrected on denial of reconsideration (Apr. 1, 2011). In Tucker, the State did not file its own motion to revoke, but relied on the probation report, which indicated that the JPC would move for revocation if Tucker was not able to pay restitution by the next review hearing. Id. at 52. After multiple hearings on the issue, the trial court revoked Tucker's deferred disposition on January 27,

¹¹ It is clear that once the trial court was aware of Seymour's new charges, the court would not have found Seymour in compliance and would not have considered vacating the adjudication. Therefore, the main effect of the trial court's ruling voiding the prior extensions of the deferred was that it prevented the court from considering a motion to revoke filed after July 18, 2010. Although not before this Court, it is not clear that the trial court's ruling was correct, particularly given trial counsel's argument that any motion to extend the deferred was in Seymour's interest. CP 204.

2009, and imposed disposition. State v. N.S.T., 156 Wn. App. 444, 448, 232 P.3d 584 (2010).

The Supreme Court held that the JPC's report did not qualify as a motion. 171 Wn.2d at 53. Consequently, "the juvenile court therefore lost jurisdiction when the period of supervision expired without the State filing a motion to revoke Tucker's deferred disposition." Id. In its original opinion, the Court remanded the case to the trial court "to vacate Tucker's convictions and dismiss the case with prejudice," noting that "RCW 13.40.127(9) provides that at the conclusion of a deferred disposition, and upon a finding of full compliance, the court will vacate the conviction and dismiss the case with prejudice." Tucker, at 4 (Original Slip Opinion No. 84952-8, filed February 10, 2011). However, the Court amended its original opinion to read, "We reverse the Court of Appeals and vacate the January 27, 2009, orders." Tucker, at 54, as corrected (Apr. 1, 2011).

The original opinion in Tucker was issued shortly after Judge Trickey issued his order on January 26, 2011. The trial court interpreted the original Tucker opinion to hold that when a motion to revoke is not timely filed, the court must vacate the adjudication, even when a juvenile was non-compliant. In light of the original

Tucker opinion, the trial court reversed its January 26 order and vacated the adjudication. 1RP 110-11. However, after the Supreme Court amended Tucker, the trial court held that its January 26 ruling would stand. 1RP 134-35.

As the Supreme Court acknowledged by amending their opinion in Tucker, vacating an adjudication in the absence of a finding of compliance violates the plain language of RCW 13.40.127(9). The statute provides that:

At the conclusion of the period set forth in the order of deferral and upon a finding by the court of full compliance with conditions of supervision and payment of full restitution, the respondent's conviction shall be vacated and the court shall dismiss the case with prejudice, except that a conviction under RCW 16.52.205 shall not be vacated.

RCW 13.40.127(9). In other words, the juvenile court may vacate the adjudication only if the juvenile has been found to be in "full compliance" with the conditions of supervision.

It is undisputed that Seymour committed new crimes while he was on the deferred disposition. It is also undisputed that the conditions of supervision included the order to have no new probable cause referrals or criminal law violations. The trial court never found that Seymour had complied with the terms of his

deferred disposition and the record is clear that the court was not willing to find that Seymour had complied. Thus, regardless of the juvenile court's inability to *revoke* the deferred disposition and enter an order of disposition, the court had no statutory authority to *vacate* the conviction. The trial court lacks inherent authority to suspend or defer a sentence. Mohamoud, 159 Wn. App. at 762. Because the legislature grants the court such power, any court action that fails to comply with statutory terms is void. Id.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Seymour's conviction.

DATED this 30 day of March, 2012.

Respectfully submitted,

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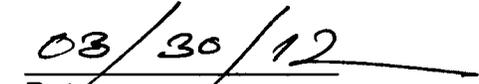
Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jan Trasen, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. RONNIE SEYMOUR, Cause No. 67150-2-I, 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.



Name
Done in Seattle, Washington



Date

03/30/12