

74053-9

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Court of Appeals  
Division I  
State of Washington

74053-9

NO. 74053-9-I

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

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STATE OF WASHINGTON,

Respondent,

v.

D. D.-H.,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR WHATCOM COUNTY, JUVENILE  
DIVISION

The Honorable Raquel Montoya-Lewis, Judge  
The Honorable David Thorn, Judge

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REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

THE JUVENILE COURT LOST JURISDICTION WHEN IT FAILED TO TOLL SUPERVISION BEFORE THE END OF D.D.-H.'s 12-MONTH SUPERVISION PERIOD.

By its express terms, D.D.-H.'s 12-month term of community supervision expired on February 19, 2015. CP 13; CP 43 (finding of fact 2.8). As discussed in the opening brief, because the juvenile court's jurisdiction expired on February 19, 2015 without a pending violation proceeding, outstanding warrant, or court order tolling D.D.-H.'s community supervision beyond that set forth in the disposition order, the juvenile court lost jurisdiction. Brief of Appellant (BOA) at 8-14.

The State does not dispute that at the time the community supervision expired, D.D.-H. had no outstanding warrants and the State had not filed a notice of alleged violations of supervision. CP 43 (finding of fact 2.9). Nor does the State contend the juvenile court ever entered any orders addressing tolled time or extending community supervision beyond the 12 months stated in the February 19, 2014 disposition order. CP 43 (finding of fact 2.7).

Instead, the State contends the tolling of community supervision is self-executing. Brief of Respondent (BOR) at 5-9. The State also suggest that D.D.-H. is not entitled to notice of the tolled time when the juvenile

court finds a probation violation. BOR at 8, 10-11. Neither the record nor case law supports the State's arguments.

1. Tolling is not Self-Executing.

The State relies on City of Spokane v. Marquette<sup>1</sup>, to suggest "the court not need rule expressly that the supervision period is tolled." BOR at 7. This argument fails for several reasons.

Marquette concerned the tolling of an adult probationer while on warrant status. Marquette pled guilty in February 1996. The municipal court imposed 24 months of probation as part of a suspended sentence. A bench warrant was issued in March 1996 because Marquette failed to comply with his probation conditions. After the bench warrant was served, the court reinstated Marquette's suspended sentence. Marquette, 146 Wn.2d at 126.

A year later Marquette allegedly violated his probation again. The court set a show cause hearing for August 15, 1997. Marquette failed to appear, and the court issued a bench warrant on August 19, 1997. The warrant was served on October 23, 1997. Although the court set a new show cause hearing for November 1997, due to several continuances, the hearing was not held until April 15, 1998. This was more than two years

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<sup>1</sup> 146 Wn.2d 124, 43 P.3d 502 (2002).

after the February 1996 conviction. The court reinstated Marquette's suspended sentence and probation, and set a show cause hearing for July 8, 1998 so that the court could monitor his compliance. Marquette, 146 Wn.2d at 127.

Marquette failed to appear on the 8th and a bench warrant was issued on July 14. This warrant was served on July 22, 1998. The court held a show cause hearing on July 29, 1998 and imposed the remainder of Marquette's sentence. Marquette, 146 Wn.2d at 127.

On appeal, Marquette argued the municipal court did not have jurisdiction to impose further probation since the two year probationary period ended after the April 15, 1998 hearing. The city maintained the two-year period was tolled while Marquette was on warrant status. Marquette, 146 Wn.2d at 128-29.

The Supreme Court noted that a court's probationary jurisdiction is limited to that provided by statute. Marquette, 146 Wn.2d at 131. Citing former RCW 3.66.068 (1983), the Court concluded that municipal court has two years of actual supervision to rehabilitate the probationer. As the Court explained, "Courts must give full effect to legislative enactments, and that means in this situation preserving the municipal court's two years." Marquette, 146 Wn.2d at 130-31.

Contrary to the State's assertion, nothing in Marquette stands for the proposition that juvenile court tolling is automatic. The issue in Marquette was whether the municipal court had inherent authority to toll the probation of an adult probationer; not, as here, whether a juvenile court loses jurisdiction to toll community supervision when it fails to exercise its authority to do so before expiration of the supervisory period. In Marquette, the municipal court retained jurisdiction before expiration of the original two year probationary period ended by scheduling the subsequent show cause hearing in order to monitor Marquette's compliance. Marquette, 146 Wn.2d at 127. Unlike Marquette, here there was no mechanism by which the juvenile court retained jurisdiction over D.D.-H.'s supervision beyond the original 12 months of community supervision. BOA at 10-11.

The state's reliance on Marquette also ignores the "bright-line rule," that exists with juvenile court jurisdiction. State v. May, 80 Wn. App. 711, 717, 911 P.2d 399 (1996). As Marquette noted, "Courts must give full effect to legislative enactments[.]" 146 Wn.2d at 131. In May, the Court of Appeals recognized "the intent of the Legislature" was "to discourage administrative inertia in handling matters concerning juvenile offenders." 80 Wn. App. at 716-17. The State's attempt to distinguish May on the basis that it does not address tolling is without merit. BOR at

9. May's "bring-line rule," has been applied in a number of different juvenile jurisdiction contexts. See e.g., State v. J.O., 165 Wn. App. 570, 575-77, 265 P.3d 991 (2011) (concluding that pursuant to May a juvenile court loses authority to enforce DNA sample requirement set forth in order of deferred disposition when not raised by written motion before end of the deferral period); State v. Todd, 103 Wn. App. 783, 789-91, 14 P.3d 850 (2000) (applying bright-line rule in the context of deferred dispositions granted to juveniles under RCW 13.40.127); State v. Y.I., 94 Wn. App. 919, 923-24, 97 P.2d 503 (1999) (concluding May's reasoning applies to both the financial obligations and community supervision provisions of a disposition order).

Under May's "bright-line rule," a juvenile court cannot exercise its authority to toll community supervision for the first time after the supervisory period has already ended.

## 2. Notice of Tolled Time is Required.

No person may be deprived of life, liberty, or property without due process of law. U.S. CONST. amends. V, XIV; CONST. art. I, § 3. A liberty interest may arise from an expectation created by state laws or policies. In re Pers. Restraint of McCarthy, 161 Wn.2d 234, 240, 164 P.3d 1283 (2007). "[P]rocedural due process requires that an individual receive notice of the deprivation and an opportunity to be heard to guard against

erroneous deprivation.” Amunrud v. Bd. of Appeals, 158 Wn.2d 208, 216, 143 P.3d 571 (2006). “Substantive due process protects against arbitrary and capricious government action even when the decision to take action is pursuant to constitutionally adequate procedures.” Id. at 218-19.

When a court exercises its inherent authority to toll community supervision over a probationer, the court is required “to provide notice to probationers not only of proposed revocations, but also extensions, and advise them that they have a right to a hearing.” State v. Campbell, 95 Wn.2d 954, 958-59, 632 P.2d 517 (1981); See also RCW 13.40.200(2) (juvenile entitled to “same due process of law as would be afforded an adult probationer.”). “Such a rule is needed because of the potential for prejudice in ex parte extensions of probation.” Campbell, 95 Wn.2d at 958.

The State first suggests that D.D.-H. was given “notice of the additional supervision time long before the 122 tolled days expired.” BOR at 8. The State points to nothing in the record that supports this argument. The record shows, and the juvenile and superior courts found, that D.D.-H. was never given notice that his community supervision would be tolled. CP 36 (findings of fact 12, 17); CP 41 (finding of fact 2.7). The trial court’s findings will be upheld if supported by substantial evidence. State v. Radcliffe, 139 Wn. App 214, 219, 159 P.3d 486 (2007),

affirmed, 164 Wn.2d 900, (citing State v. Broadaway, 133 Wn.2d 118, 131, 942 P.2d 363 (1997)). Here, the State has not assigned error to any of the trial court's written findings of fact and conclusions of law. The unchallenged findings and conclusions are therefore verities on appeal. Radcliffe, 139 Wn. App. at 219.

The State next argues that D.D.-H. was not entitled to notice of tolling of his community supervision. BOR at 10-11. This argument fails for two reasons. First, by relying on Marquette, the State attempts to analogize this case to the automatic tolling of adult probationers. BOR at 7-8. The unintended consequence of the State's position is that it creates a liberty interest. If tolling of juvenile community supervision is to be analogized to adult probationer tolling, then D.D.-H. is entitled to prior notice of the court's tolling authority under Campbell, 95 Wn.2d at 958-59.

Second, under RCW 13.40.200(2), juveniles such as D.D.-H. are entitled to the same notice as adult probationers when the juvenile court seeks to modify a community supervision order. The State does not distinguish RCW 13.40.200 on this basis, and in fact does not even discuss the statute. By failing to discuss the statute, the State appears to concede that RCW 13.40.200(2) requires prior notice of tolling of community supervision. See In re Det. of Cross, 99 Wn.2d 373, 379, 662 P.2d 828

(1983) (“Indeed, by failing to argue this point, respondents appear to concede it.”).

As discussed in the opening brief, D.D.-H.’s due process rights were violated when the juvenile court decided, without prior notice, to toll his community supervision after his supervisory period has already ended.

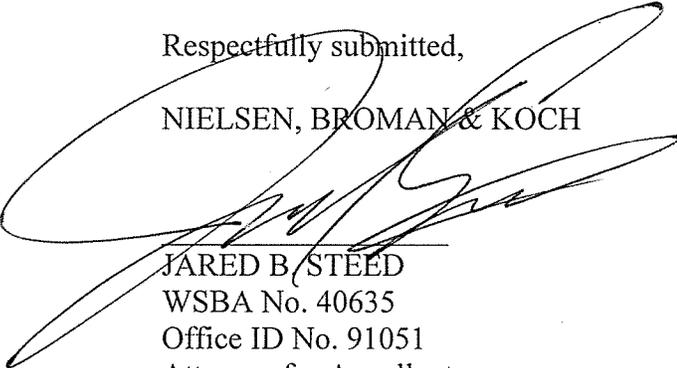
B. CONCLUSION

For the reasons discussed above, and in the opening brief, this Court should reverse the juvenile court orders modifying community supervision, dismiss the alleged violations, and terminate D.D.-H.’s probation.

DATED this 22<sup>nd</sup> day of June, 2016.

Respectfully submitted,

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