

NO. 34131-0-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
CLARK COUNTY CAUSE NO. 04-8-01064-6  
DIVISION II, COURT OF APPEALS NO. 34131-0-II

STATE OF WASHINGTON,

RESPONDENT,

vs.

GREGORY ALLEN HOWARD

APPELLANT.

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BRIEF OF RESPONDENT

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Prosecuting Attorney  
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DEPUTY

STATE OF WASHINGTON

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COURT OF APPEALS  
CLARK COUNTY

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*SM 3-21-06*

**TABLE OF CONTENTS**

I. STATEMENT OF THE CASE..... 1

II. RESPONSE TO ASSIGNMENTS OF ERROR..... 2

III. CONCLUSION..... 8

**TABLE OF CASES:**

In Re Hilyard, 39 Wn. App. 723, 695 P.2d 596 (1985)..... 3

In Re Vensel, 88 Wn. 2d 552, 564 P.2d 326 (1977)..... 3

State v. B.E. W., 65 Wn. App. 370, 828 P.2d 87 (1992)..... 5

State v. J.B., 102 Wn.App 583, \_\_\_\_\_ P.2d \_\_\_\_\_ 2000..... 7

State v. Jacobsen, 95 Wn. App. 967, 977 P.2d 1250 (1999)..... 8

State v. Langland, 42 Wn. App 287,711 P.2d 1039 (1985)..... 8

State v. M.L., 134 Wn. 2d 657 952 P.2d 187 (1998)..... 6

State v. Rhodes, 92 Wn. 2d 755, 600 P.2d 1264 (1979)..... 4

State v. Saas, 118 Wn. 2d 37, 820 P.2d 505 (1991)..... 5

State v. Strong, 23 Wn.App 789, 599 P.2d 20 (1979)..... 8

**STATUTES:**

RCW 13.40.160..... 6

RCW 13.40.165..... 4

RCW 13.40.230..... 4

I. **STATEMENT OF THE CASE**

A) **PROCEDURAL HISTORY**

Gregory Allen Howard, dob: 07-27-1988 appeals a sentence received after entry of a guilty plea to a charge of Malicious Mischief in the Third Degree over \$50. The State is not aware of any Motion to Withdraw the Guilty Plea entered in this matter, however Appellant alleges a violation of due process for the court's act of accepting the guilty plea. The State is not aware of any filed motion to revoke the Suspended Sentence entered herein. This matter has been set for accelerated review to which the State does not object.

B) **STATEMENT OF FACTS**

Gregory Howard was charged with a single Count of Malicious Mischief in the Third Degree. The information contained the standard language for a Malicious Mischief charge.

That he, Gregory Allen Howard, in the County Of Clark, State of Washington, on or about October 29, 2005, did knowingly and maliciously cause physical damage in excess of \$50.00 to the property of Timothy Howard, in violation of RCW 9A.481090(1)and(2), contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Washington.  
(C. P. 1)

In his written statement to the Court, Mr. Howard informed the

Court that he did maliciously cause damage in excess of \$50.00 but less than \$250.00 to the property of Tim Howard. (C. P. 2) Further, when asked how he damaged the wall, he said he was throwing knives at the wall and at a cardboard box and hit the wall, missed and hit the wall. (R. P. 1, 22 – 25). The court ordered a Predisposition Report and a related chemical dependence report and imposed a sentence of 27 to 36 weeks but suspended that sentence pursuant to RCW 13.40.165 to encourage and allow this youth to participate in a chemical dependency program.

**RESPONSE TO ASSIGNMENTS OF ERROR**

- A) THE ISSUE IS WHETHER THE COURT DID ERR IN ACCEPTING A GUILTY PLEA TO THE CHARGE OF MALICIOUS MISCHIEF IN THIS CASE.
  
- B) THE ISSUE IS WHETHER A SUSPENDED SENTENCE ENTERED PURSUANT TO THE CHEMICAL DEPENDENCY PROVISION OF RCW 13.40.165 IS RIPE FOR REVIEW WHEN NO

MOTION TO REVOKE THAT SENTENCE HAS BEEN  
ACCEPTED BY THE TRIAL COURT.

- C) THE ISSUE IS WHETHER THE COURT DID ERR IN  
IMPOSITION OF A MANIFEST INJUSTICE  
SENTENCE IN THIS CASE.

### **ARGUMENT ISSUE A**

The taking of a plea of an alleged juvenile offender is governed by C.R. 4.1 and JuCR 7.6, which requires the court to determine that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. This court rule is not the embodiment of a constitutionally valid plea and strict adherence to the rule is not a “constitutionally mandated procedure.” In Re Hilyard, 39 Wn. App. 723, 727, and In Re Vensel, 88 Wn.2d 552, 554. The Court rule is intended simply to enable the Judge to verify the accused’s understanding of the charge and to make a record thereof. In Re Hilyard, 39 Wn.App at 727.

The Court had sufficient information including an Affidavit of Probable Cause that the Court reviewed prior to entry of the Guilty Plea. R. P. 1, Page 9 and 10. In this case, the court adequately informed this youth of the nature of the charge and the acts performed. Mr. Howard's acts of throwing knives at a wall multiple times resulting in more than \$50.00 in damage indicates a willful disregard for the property rights of his parent. Mr. Howard knew what act he was doing, he just didn't care.

Our Supreme Court has set forth a guide to withdraw a plea of guilty if that plea is not voluntary. State v. Saas, 118 Wn.2d at 42. State is not aware of any request that this youth has made to withdraw his guilty plea to the charge of Malicious Mischief for his actions to damage his parent's home.

### **ARGUMENT ISSUE B**

The Legislature has set forth a chemical dependency disposition alternative to ensure that successful treatment options to reduce recidivism are available to eligible youth. RCW 13.40.165(1). Pursuant to that sentence alternative if the court concludes and enters reasons for it's conclusion, the court shall impose a

disposition above the standard range ... not exceeding a maximum of fifty two (52) weeks, suspend execution of the disposition and place the offender on community supervision for up to one year. RCW 13.40.165(5)(b). An appeal under this section is not appealable under 13.40.230. (RCW 13.14.165(10)).

A chemical dependency disposition is similar to other special disposition alternatives in the Juvenile system where the court is encouraged to provide treatment in the community through use of suspended sentence. Division One of the Court of Appeals looked at this issue pursuant to an appeal of a Special Sex Offender Disposition Alternative (SSODA) and concluded that as long as a juvenile is subject to a (SSODA) that the propriety of a suspended manifest injustice is a superfluous issue. State v. J.B., 102 Wn App 583. That court noted that until that disposition is revoked the appeal of the suspended disposition is not proper. (ID at 585)

While Division II of the Court of Appeals is not bound by Division I rulings, that Court drew upon a Division II case which set forth the basic principle that "revocation is only speculation at this time and does not present a ripe question for decision." State v. Langland, 42. Wn App 287. Therefore, the court should rule that this

appeal is not ripe for review and remand the matter to the trial court.

THE TRIAL COURT DID NOT ERR IN FINDING  
SUFFICIENT FACTORS TO IMPOSE A MANIFEST INJUSTICE  
SENTENCE ABOVE THE STANDARD RANGE.

**ARGUMENT ISSUE C:**

A Court may impose a disposition outside the standard range in the juvenile system if it determines that a disposition within the standard range would effectuate a manifest injustice. RCW 13.40.160(2). That term is defined as a disposition that would impose a serious and clear danger to society. State v. Rhodes, 92 Wn 2d 755.

The three part test employed to determine the necessity of a manifest injustice is set forth in State v. Rhodes, 92 Wn 2d 755, 760 (1979).

- ( ) The reasons given must be supported by the record.
- ( ) The reasons given my clearly support the disposition.
- ( ) The sentence cannot be too excessive or lenient.

In this case, Gregory Allen Howard does not argue that the reasons given by the court are not supported by the record and he apparently does not argue that the reasons the court used are an inappropriate basis for a manifest injustice sentence. Indeed, he cannot as the reasons given by the court are a highly appropriate basis for a Manifest Injustice sentence. The predisposition report indicates that this youth has engaged in nine (9) prior adjudicated criminal acts and continues to engage in those even after completion of a boot camp program. (PDR P. 7)

In this case the court found that his youth has a serious drug problem, was in need of treatment, and this youth admitted that to the court. (Manifest Finding 1) Because of that drug problem, this youth was eligible for the chemical dependency disposition alternative (Manifest finding 2)

This youth was enrolled in a 26 week out-patient drug and alcohol program in late 2004. (PDR P.5) He did not complete that after release from the juvenile institution. Instead, he has had multiple dirty UA's and makes open admissions to breaking into the homes of other drug users to steal drugs from them. (PDR P. 7.)

With this youth's track record it is not likely that he will complete a drug and alcohol program in the community. Even back

in 2004 that was projected to take 26 weeks and his situation has deteriorated since then. The Court's sentence of 27 – 36 weeks is more of a minimum term necessary to complete a treatment sequence rather than more than enough to correct this youth's drug problem.

The Legislature has recognized that correction of significant drug and alcohol problems may take a significant period of time. The ability of the court to impose and suspend up to 52 weeks is legislatively authorized for that reason. RCW 13.40.165.

Once the court has found factors to support a Manifest Injustice, the length of sentence is reviewed for a manifest abuse of discretion. State v. B.E.W., 65 Wn. App 370 (1992). The trial court disposition could only be reversed if there has been an abuse of discretion. State v. Jacobsen, 95. Wn App 967. A Manifest Injustice disposition is excessive only when it cannot be justified by a reasonable view, which may be taken of the record. State v. Strong, 23 Wn App 789, 795. The trial court is not bound by the limitation of recommendations given by the parties. State v. M. L., 134 Wn 2d 657, 661 and in this case chose a sentence to promote access to drug treatment. In this case with the multiple issues that this youth

has which must be addressed for a successful rehabilitation, the Court's sentence is generous.

**CONCLUSION**

The trial court did not err in accepting a guilty plea nor did it err when it imposed a sentence. Based upon the arguments and authorities cited above, the State respectfully requests the court affirm the disposition previously entered.

DATED this 20<sup>th</sup> day of March, 2006.

Respectfully Submitted,



**RICK W. OLSON**  
Deputy Prosecuting Attorney  
WSB# 14810

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STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

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

STATE OF WASHINGTON, )

NO. 34131-0-II

Respondent, )

vs. )

AFFIDAVIT OF MAILING

GREGORY ALLEN HOWARD, )

Appellant. )

STATE OF WASHINGTON )

: ss

COUNTY OF CLARK )

I, CATHY J. SLYTER, being first duly sworn on oath deposes and says:

That your affiant is a citizen of the United States of America and of the State of Washington, living and residing in Clark County, Washington, in said State; that your affiant is over the age of 21 years, not a party to the above-entitled action and competent to be a witness therein; that on the 20<sup>th</sup> day of March, 2006, affiant deposited in the mails of the United States of America property stamped and addressed envelopes directed to the following individuals, to-wit:

CLERK OF THE COURT OF APPEALS  
Division II  
Suite 300, 950 Broadway  
Tacoma, WA 98402-4454

LISA TABBUT  
Attorney at Law  
1402 Broadway  
Longview, WA 98632

Said envelopes containing a copy of this affidavit and the original and/or a copy of BRIEF OF RESPONDENT and AFFIDAVIT OF MAILING.

*[Handwritten signature]*

SUBSCRIBED AND SWORN to before me this 20<sup>th</sup> day of March, 2006.



*[Handwritten signature: K. H. Arias]*

NOTARY PUBLIC in and for the State of Washington residing at Vancouver, WA MY COMMISSION EXPIRES May 25 2008

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