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AUG 23 2007

CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

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

STATE OF WASHINGTON,)	No. 36375-5-II
Respondent,)	
)	
v.)	MOTION FOR
)	ACCELERATED
A.R.W.)	REVIEW OF JUVENILE'S
(D.O.B. 8/2/1992),)	MANIFEST INJUSTICE
Appellant.)	DISPOSITION
_____)	

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DIVISION ONE
AUG 21 2007

I. IDENTITY OF MOVING PARTY

COMES NOW the appellant, A.R.W. (D.O.B. 8/2/1992), and upon all the files, records and proceedings herein, moves this Court for the relief requested below.

II. STATEMENT OF RELIEF SOUGHT

Appellant seeks accelerated review, pursuant to RCW 13.40.230 and RAP 18.13, of the manifest injustice disposition imposed on April 19, 2007, by Commissioner Jean Cotton, and the denial of the motion to revise on May 17, 2007, by Judge Gordon Godfrey in the Juvenile Division of the Grays Harbor County Superior Court. Upon review, appellant asks the Court to reverse and vacate the manifest injustice disposition and remand the case for a new disposition hearing before a different judge, at which A.R.W. may choose specific performance of the plea agreement or

Motion for Accelerated Review

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the opportunity to withdraw the guilty plea. Alternatively, the manifest injustice disposition must be reversed due to the lack of written findings of fact and the court's inadequate legal grounds for imposing a manifest injustice disposition.

III. FACTS RELEVANT TO MOTION

On February 22, 2007, A.R.W. pleaded guilty to one count of threat to bomb or injury property, based on allegations that she wrote on the wall of a bathroom stall at Elma High School that a bomb would go off at school. RP 4;¹ CP 9 (Plea Statement).

A.R.W. pleaded guilty with the understanding that the prosecution would recommend local sanctions as the disposition. CP 9. She also understood that the probation counselor would recommend local sanctions. CP 9. The local sanctions included a maximum of 30 days in detention. CP 6.

At the disposition hearing before Commissioner Cotton, the prosecutor and probation counselor recommended a manifest injustice disposition of 52-60 weeks in a juvenile detention facility. RP 12-15. The prosecutor and probation officer made the same manifest injustice recommendations at the hearing on the motion to revise before Judge Godfrey. RP 26-27. Defense counsel asked

¹ The verbatim report of proceedings ("RP"), consists of a single volume of consecutively paginated transcripts and will be referred to herein as "RP."

for local sanctions with strict probation monitoring by the juvenile court. RP 16-17, 29-30.

After A.R.W. filed a motion to revise the disposition, Judge Godfrey upheld the Commissioner's imposition of the manifest injustice disposition as requested by the State, ordering that A.R.W. serve 52-60 weeks in a juvenile institution. CP 12-18 (Order on Disposition, attached as Appendix A); CP 20 (Order denying revision without comment); RP 35. A.R.W. timely appeals. CP 21-22. The pertinent facts are discussed in further detail in the relevant argument sections below.

IV. GROUND FOR RELIEF SOUGHT

A. THIS COURT SHOULD GRANT ACCELERATED REVIEW BECAUSE A.R.W. RECEIVED A DISPOSITION OUTSIDE THE STANDARD RANGE

Both statute and court rule provide for accelerated review of juvenile dispositions outside the standard range. Manifest injustice dispositions are subject to accelerated review pursuant to RCW 13.40.230. RAP 18.13 provides for accelerated review of juvenile dispositions outside the standard range.

A.R.W. received a disposition outside the standard range. CP 13. A.R.W.'s standard range for a threat to bomb or injury property was local sanctions, including a maximum of 30 days

detention and one year of probation. RCW 13.40.0357. The court imposed a disposition of 52-60 weeks commitment. CP 15. As such, accelerated review of the disposition is appropriate.

B. THE STATE'S BREACH OF THE PLEA UNDERMINES THE LAWFULNESS OF THE SENTENCE AND REQUIRES REVERSAL.

a. A sentencing hearing is rendered fundamentally unfair when the prosecution breaches a plea agreement. When a criminal defendant pleads guilty with the understanding that the prosecution will recommend a particular sentence, the defendant has given up important constitutional rights based on the expectation that the prosecution will adhere to the terms of the agreement. State v. Carreno-Maldonado, 135 Wn.App. 77, 83, 143 P.3d 343 (2006). The defendant's purpose in entering into a plea agreement with the prosecution is based on the expectation that the prosecution will make a good faith recommendation at sentencing as promised. Id. at 88. The prosecution's breach of a plea is a structural error that is not subject to harmless error review. Id. at 87-88.

A breach of a plea agreement is a constitutional issue that may be raised for the first time on appeal. State v. E.A.J., 116 Wn.App. 777, 785, 67 P.3d 518 (2003), rev. denied, 150 Wn.2d

1028 (2004); RAP 2.5(a)(3). If the State has breached the plea agreement, the disposition cannot stand. Id.

A plea agreement is a contract in which ambiguities are construed against the drafter. United States v. Transfiguracion, 442 F.3d 1222, 1227028 (9th Cir. 2006); State v. Sledge, 133 Wn.2d 828, 838, 947 P.2d 1199 (1997). Unlike commercial contracts, plea agreements require a criminal defendant waive fundamental constitutional guarantees. Transfiguracion, 442 F.3d at 1227; State v. Harrison, 148 Wn.2d 550, 556, 61 P.3d 1104 (2003); U.S. Const. amends. 5, 6, 14; Wash. Const. Art. I, sections 3, 22. Therefore, due process considerations mandate especially rigorous compliance rules on behalf of the prosecution, and “require a prosecutor to adhere to the terms of the agreement.” Harrison, 148 Wn.2d at 556 (citing United States v. Harvey, 791 F.2d 294 (4th Cir, 1986)); see also Transfiguracion, 442 F.2d at 1228.

Issues concerning the interpretation of a plea agreement are questions of law reviewed *de novo* on appeal. State v. Bisson, 156 Wn.2d 507, 517, 130 P.3d 820 (2006). The prosecution is required to operate within “the literal terms of the plea it made.” Transfiguracion, 442 F.2d at 1228. Ambiguities are construed in favor of the defendant. Id.

b. The prosecution breached its promise to recommend local sanctions. When A.R.W. entered her guilty plea, she understood that the prosecution and the probation counselor would recommend a disposition of local sanctions. CP 9. The guilty plea statement expressly provided:

13. I understand that the prosecuting attorney will make the following recommendation to the judge:
local sanctions.

14. I understand that the probation counselor will make the following recommendation to the judge:
local sanctions.

CP 9. The guilty plea statement also said that the prosecuting attorney's sentencing recommendation may increase only "if any additional criminal history is discovered." CP 7. "Criminal history" is defined by statute as criminal complaints that arise before the commission of the current offense. RCW 13.40.020(7).² Therefore, the plain terms of the guilty plea statement provide that the State retained the authority to increase its sentencing recommendation

² RCW 13.04.020(7) defines criminal history as follows:

"Criminal history" includes all criminal complaints against the respondent for which, prior to the commission of a current offense:

(a) The allegations were found correct by a court. If a respondent is convicted of two or more charges arising out of the same course of conduct, only the highest charge from among these shall count as an offense for the purposes of this chapter; or

(b) The criminal complaint was diverted by a prosecutor pursuant to the provisions of this chapter on agreement of the respondent and after an advisement to the respondent that the criminal complaint would be considered as part of the respondent's criminal history. A successfully completed deferred adjudication that was entered before July 1, 1998, or a deferred disposition shall not be considered part of the respondent's criminal history;

only upon the discovery of earlier criminal adjudications. There are no allegations in the case at bar that previously undisclosed criminal history was the basis for the State's manifest injustice recommendation. RP 12-15, 27.

Before accepting A.R.W.'s guilty plea, the court asked A.R.W. several questions to ensure she understood the rights she was waiving. 2/22/07RP 3-4. Neither the court nor the State indicated that the prosecution or probation counselor would alter their promised sentencing recommendations. 2/22/07RP 3-6.

Despite the explicit promises in the guilty plea statement, both the prosecutor and probation counselor asked the disposition court to impose a manifest injustice disposition above the standard range. The probation counselor Kelly Sell told the court, "I am asking for manifest injustice up to 52 50 60 weeks in JRA." 4/19/07RP 12. Ms. Sell said that A.R.W. "is a threat to herself and the community" and she was convicted of forgery while on house arrest for the instant case. Id.³

A second probation counselor, Larry Sturgill concurred, saying "a review of the criminal history here kind of sets the stage for the reason for our manifest injustice on the recommendation."

³ A.R.W. pleaded guilty to one count of forgery on April 19, 2007. RP 7-8. The forgery was committed after A.R.W. pleaded guilty in the case at bar. RP 4.

Id. Mr. Sturgill explained that a psycho-social evaluation indicated A.R.W. had a conduct disorder and depressive issues; she had not taken responsibility for her actions; she had friends who were in trouble for serious offenses; and she needs to start accepting responsibility for her behaviors. RP 17-19.

Prosecutor Gordon Wright said, “the State concurs with probation in this matter. . . . The State believes that the recommended range, the JRA, the 52 to 60 weeks, is correct.” RP 14-15. When the court indicated it had not decided which sentence to impose, the prosecutor further advocated for a manifest injustice disposition, arguing that A.R.W. was “a danger to the community.” RP 21. He also stated, “I think she is a real threat. I think it would be best for society, and I think for A.R.W., to go to JRA.” RP 22.

After the defense filed a motion to revise, the prosecution and probation counselor voiced the same recommendation of a manifest injustice disposition and similarly advocated for such a sentence. RP 26-28.

c. The probation counselor breached the promise to recommend local sanctions. While probation officers are not bound by a prosecutor’s plea agreement, they are bound by their own promises or inducements. Sanchez, 146 Wn.2d 339, 348-49, 46

P.3d 774 (2002); see State v. Poupart, 54 Wn. App. 440, 445, 773 P.2d 893 (1989). The probation counselor has a statutory duty to make disposition recommendations to the sentencing court. RCW 13.04.040 (probation counselor's duty to prepare predisposition study when requested by court).

Here, A.R.W. detrimentally relied on both the probation counselor and prosecuting attorney's stated intent to recommend local sanctions when she pleaded guilty. CP 9. Because the probation counselor did not recommend local sanctions, but instead argued for a manifest injustice disposition of 52-60 weeks at JRA, the plea agreement was based upon a misrepresentation of the probation counselor's sentencing recommendation. The probation department is not free to disregard the good faith obligation to comply with the terms of a plea agreement when the probation counselor makes a specific promise at the time of the plea. See Sledge, 133 Wn.2d at 839; United States v. Jones, 58 F.3d 688, 692, 313 App. D.C. 128 (1995).

If the probation officer had no authority to enter into a binding agreement to secure a guilty plea, the probation officer's promise to recommend local sanctions at the time of the plea constitutes a mistake of fact. A guilty plea may be deemed

involuntary where there is a mutual mistake of fact or law and where this mistake forms part of the basis for the defendant's plea. State v. Walsh, 143 Wn.2d 1, 8-9, 17 P.3d 591 (2001); State v. Miller, 110 Wn.2d 528, 531, 756 P.2d 122 (1988) (“A defendant must understand the sentencing consequences for a guilty plea to be valid.”).

In Walsh, the court found a plea was involuntary based on a mistake about the standard range at the time of plea. 143 Wn.2d at 8. The court ruled that when a defendant does not understand the sentencing consequences of a plea, the plea is involuntary. Id. Similarly, in the case at bar, A.R.W. understood that the probation officer promised to recommend local sanctions as part of the guilty plea. CP 9. The probation officer's failure to honor that promise, even if based upon the probation counselor's lack of authority to bind the probation department to a particular disposition recommendation in the context of a guilty plea, undermines the validity of the plea and renders the plea involuntary.

Upon resentencing, A.R.W. may request specific performance of the plea agreement or have the opportunity to withdraw the guilty plea. E.A.J., 116 Wn.App. at 785-86.

d. The State's breach of the plea agreement requires reversal of the sentence. A State's breach of a plea agreement is structural error that is not subject to harmless error analysis. Carreno-Maldonado, 135 Wn.App. at 87-88.

Here, the prosecution and probation counselor promised to recommend local sanctions as a disposition upon A.R.W.'s guilty plea. CP 9. The only condition that could alter this recommendation was the discovery of "additional criminal history," which is defined as criminal adjudications that occurred prior to the commission of the current offense. CP 7; RCW 13.40.020(7). The State did not advocate a manifest injustice sentence based on the discovery of additional criminal history. Instead, the State argued that A.R.W. was a threat to the community and should be confined for a lengthy period of time. RP 13-16; 21, 27-28. While A.R.W. was convicted of a new offense after the current offense, the plea agreement did not permit the prosecution to breach its promised sentencing recommendation upon the commission of future criminal offenses. Because the State breached the plea agreement, the disposition must be reversed.

Upon remand, A.R.W. is entitled to specific performance of the plea agreement and resentencing before a different judge.

Miller, 110 Wn.2d at 531; E.A.J., 116 Wn.App. at 785-86. She is also allowed the opportunity to withdraw her guilty plea, if she chooses. Id.

C. THE JUVENILE COURT IMPOSED A MANIFEST INJUSTICE DISPOSITION BASED ON FACTORS NOT SUPPORTED BY THE RECORD AND CONTRARY TO THE APPLICABLE LAW, THUS THE DISPOSITION MUST BE REVERSED

1. Manifest injustice dispositions are subject to careful scrutiny on review. A juvenile court may impose a sentence outside the standard range if it determines that a sentence within the standard range would “effectuate a manifest injustice.” RCW 13.40.160(2); State v. P.B.T., 67 Wn. App. 292, 300, 834 P.2d 1051 (1992). The Juvenile Justice Act defines “manifest injustice” as “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 this chapter.” RCW 13.40.020(17). Those purposes include protection of the citizenry and provision of necessary treatment, supervision and custody for juvenile offenders. RCW 13.40.010(2)(a), (f).

The trial court’s finding of manifest injustice must be supported by clear and convincing evidence, and the resulting sentence must not be clearly excessive. RCW 13.40.160(2),

.230(2). In reviewing a trial court's finding of manifest injustice, the appellate court engages in a three-part test: (1) are the reasons given by the trial court supported by substantial evidence; (2) do those reasons support the determination of a manifest injustice disposition beyond a reasonable doubt; and (3) is the disposition either clearly excessive or clearly too lenient? RCW 13.40.230(2); State v. Rhodes, 92 Wn.2d 755, 760, 600 P.2d 1264 (1979). The "manifest injustice" threshold is substantial and requires exceptional circumstances; there may not be an upward departure from the standard range unless there is clear and convincing evidence that a standard range disposition presents a clear danger to society. Rhodes, 92 Wn.2d at 759; RCW 13.40.020(17).

The disposition court's reasons for imposing a manifest injustice sentence must be clear in the record and must convincingly support the conclusion. State v. Duncan, 90 Wn. App. 808, 813, 960 P.2d 941 (1998). The court's factual findings will be reversed on appeal if there is no substantial evidence in the record to support them. State v. J.N., 64 Wn. App. 112, 114, 823 P.2d 1128 (1992). Whether a court's reasons justify a departure from the standard range is a question of law. Duncan, 90 Wn. App. at 813.

2. The disposition must be reversed because the reasons given by the juvenile court do not clearly and convincingly support a finding of manifest injustice. The court's reasons for exceeding the standard range must "clearly and convincingly" support the extraordinary disposition. RCW 13.40.230(2). The "clear and convincing" standard is the civil equivalent to "beyond a reasonable doubt." Rhodes, 92 Wn.2d at 760. Therefore, the juvenile court's cited reasons must show beyond a reasonable doubt that the juvenile presents a clear danger to society if a standard disposition is imposed. Id. If the reasons do not satisfy this requirement, the case must be remanded for disposition within the standard range. RCW 13.40.230(3).

a. The court did not adequately explain the basis for the manifest injustice disposition. While written findings are not mandatory for a manifest injustice disposition, the court must explain the facts relied upon for the extraordinary disposition and the court must ensure the record allows for meaningful appellate review. State v. E.J.H., 65 Wn.App. 771, 775, 830 P.2d 375 (1992); RCW 13.40.160(2) (requiring court to "enter reasons" for its manifest injustice disposition); JuCr 7.12(e) (mandating court "set forth portions of record material to disposition").

Here, the Commissioner checked boxes in a boilerplate form to indicate the aggravating factors for the disposition. CP 13. The Commissioner checked the following boxes: (1) “the victim was particularly vulnerable;” (2) “the respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement;” (3) “there are other complaints which have resulted in diversion or a finding or plea of guilty which are not included in criminal history;” (4) “the standard range disposition is clearly too lenient considering the seriousness of the juvenile’s prior adjudications.” CP 13. The Commissioner also wrote, under the box marked “other,” “youth is a clear threat to the community” and “counseling is indicated.” CP 13. Since this boilerplate form is not tailored to A.R.W.’s circumstances, it offers little explanation for the reasons underlying the manifest injustice disposition.

b. The court’s aggravating factors do not support a manifest injustice disposition.

i.. The court improperly relied on “victim vulnerability.” The victim’s particular vulnerability is a statutory aggravating factor that may provide grounds for a manifest injustice disposition. RCW 13.40.150(3)(i) (iii). This aggravating factor

pertains to the person injured as a result of the incident at issue, not the victim of some other crime. See State v. A.M.R., 147 Wn.2d 91, 97, 51 P.3d 790 (2002).

The underlying offense of threatening to bomb a school did not involve any particular individual who was identified or named as a victim. The Information only stated that the threat involved, “a public/private high school building” CP 1 (Information). The court did not find the school building was as “particularly vulnerable” and there are no allegations that a certain person suffered as a result of a particular vulnerability. Victim vulnerability is simply inapplicable to the case at bar and may not serve as a factor supporting a manifest injustice disposition.

Most likely, this finding relates to a separate forgery offense for which A.R.W. was convicted and for which she received a sentence of 28 days detention. RP7-8, 12. The State complained during the disposition hearing in the case at bar that the victim in the forgery case was an elderly neighbor of whom A.R.W. took advantage. RP 21, 28. Even if that allegation is true, she is not the victim of the case at bar. The court’s finding that the victim in this case was particularly vulnerable is not supported by the evidence.

ii. The factors regarding other criminal history are duplicative. The court's remaining findings are predicated on A.R.W.'s criminal history. CP 13. These findings reflect the same basic concern that A.R.W. committed one offense while the current case was pending and had committed several other offenses within the year preceding the instant crime.

Courts have reasoned that a pattern of recent and escalating behaviors may show a high risk of reoffending and thus present a significantly increased danger to society not contemplated by the standard range. State v. T.E.H., 91 Wn.App. 908, 917-18, 960 P.2d 441 (1998); see State v. T.C., 99 Wn.App. 701, 707, 995 P.2d 98 (2000) (high risk reoffense based on other recent offending behavior admitted by defendant); State v. S.H., 75 Wn.App. 1, 887 P.2d 205 (1994) (high risk reoffending one of several valid factors where defendant previously failed outpatient treatment, expert predicts high risk regardless of treatment, and extraordinary prior history showing extreme dysfunction).

In the case at bar, the court did not enter a finding that A.R.W. presented a high risk of reoffending based on her recent conduct and did not explain what type of "threat to the community" she posed. Because the court did not specifically explain the

factual basis for these findings, it is impossible to determine whether they are reasonable grounds for a manifest injustice disposition or reflect a misapplication of the law. See e.g., State v. Haddock, 141 Wn.2d 103, 110, 3 P.3d 733 (2000) (when record fails to adequately explain court's reasoning, cannot assume court exercised appropriate discretion). It is impossible to judge whether these aggravating factors are supported by the record and are lawful grounds to exceed the standard range due to the court's lack of findings tailored to the case at bar.

iii. The court did not find that the need for treatment justified an exceptional sentence. Responding to a need for treatment can be an appropriate basis for a manifest injustice disposition. S.H., 75 Wn.App. at 12. Whether the need for treatment is an appropriate basis for a manifest injustice disposition is determined by the specific needs of the particular respondent. Id. The length of disposition must have "a reasonable, supportable relationship to [the juvenile's] need for treatment." Id. at 13.

Here, the court did not find that the need for treatment was an aggravating factor justifying a manifest injustice disposition. The court merely stated ambiguously, "treatment is indicated." CP 13. There was no discussion of any particular treatment programs

available through the JRA that would serve A.R.W.'s particular needs. While some counseling, such as anger management, could be appropriate, the need for treatment was not the basis upon which the court imposed its extraordinary sentence and cannot be used as a permissible basis for that sentence without any evidence of the necessary treatment that would be available upon the imposition of a manifest injustice disposition.

3. The court improperly considered unearned early release time and jail credits in imposing the manifest injustice disposition. A trial court may not select the length of a manifest injustice disposition based on the expectation of early release. Sledge, 133 Wn.2d at 845. As the Sledge Court held, "to assume a juvenile will earn discretionary early release invites too much speculation by the sentencing court." Id.

Judge Godfrey affirmed the 52-60 weeks of confinement based in part on the fact that A.R.W. would serve less than one year because she would receive credit for time served. RP 35-36. Yet, the disposition order explicitly noted that A.R.W. would not receive any credit for time served. CP 15 (ordering "credit for 0 days served."). Therefore, Judge Godfrey relied on the improper

and incorrect expectation that A.R.W. would be serving less time at JRA than actually ordered at the disposition.

Similarly, Commissioner Cotton repeatedly relied upon an expectation that JRA would release A.R.W. after serving only half of the ordered disposition. Before imposing the manifest injustice disposition of 52-60 weeks, the Commissioner said, "You are probably going to get half time. So it means she is probably going to be out in 30 weeks. . . ." RP 19-20. The Commissioner further stated after ordering the manifest injustice sentence, "I mean, the reality is they are probably going to give her half time, but I am imposing 52 to 60." RP 23.

In the case at bar, Judge Godfrey expressly relied upon the incorrect theory that A.R.W. would receive credit for time served when affirming the Commissioner's disposition. In fact, the Commissioner ordered A.R.W. not receive any credit for time served. Moreover, Commissioner Cotton repeatedly referred to his expectation that A.R.W. would receive "half time" despite the 52 to 60 weeks disposition.

The sentencing judges in the case at bar relied on incorrect or improper expectations that A.R.W. would in fact serve less time than ordered by the juvenile court. The expectation of a lesser

sentence based upon discretionary determinations of sentencing authorities are not a proper basis for a manifest injustice disposition. Sledge, 133 Wn.2d at 485.

4. Reversal of the manifest injustice disposition is required. If one or more of the reasons cited by the court justifying a manifest injustice disposition are rendered invalid, the appellate court may uphold the sentence only if it can determine that the court would have imposed the same sentence based upon the remaining aggravating factors. S.H., 75 Wn. App. at 12. Where it is clear from the record that the juvenile court placed significant weight on inappropriate factors in departing from the standard range, the appropriate remedy is remand for resentencing. State v. Bourgeois, 72 Wn. App. 650, 664, 866 P.2d 43 (1994).

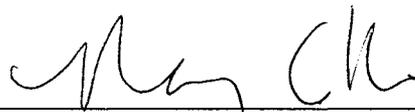
Here, there are significant questions as to the validity of each aggravating factor relied on by the court. Because the court gave such cursory explanation of the factual findings underlying the manifest injustice disposition, it is purely speculative to state whether the court would have imposed the same sentence had it considered only proper and legally permissible grounds for a manifest injustice disposition.

The court placed significant weight on invalid factors and did not state that any particular factor would justify a manifest injustice sentence of the length imposed. This Court must therefore reverse the manifest injustice disposition and remand for imposition of a disposition within the standard range.

V. CONCLUSION

This case must be heard on accelerated review because A.R.W. received a disposition outside the standard range and her release date is rapidly approaching. Upon review, the disposition must be reversed and the case remanded for either resentencing at which the prosecution must comply with the terms of the plea agreement or the opportunity to withdraw the plea. Additionally, the manifest injustice disposition must be reversed and remanded for imposition of a disposition within the standard range based on the failure to file written findings or base the sentence upon legally permissible aggravating factors.

Respectfully submitted this ^{21st}~~24th~~ day of August 2007.



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APPENDIX A

2007 APR 19 3:57

COUNTY CLERK

Superior Court of Washington
County of Grays Harbor
Juvenile Court

J 07-0329

State of Washington v.

Amber R. Whipple

No: 07-8-47-8

ORDER ON ADJUDICATION AND DISPOSITION
(ORD)

Respondent(s).

Clerk's Action Required.

D.O.B.: 8-2-92

I. Hearing

1.1 Respondent appeared for a disposition hearing on 4-19-07 [Date].

1.2 Persons appearing were:

- Respondent
- Prosecuting Attorney
- Probation Counselor
- Respondent Attorney
- Parent
- Parent
- Other
- Other

1.3 The court heard evidence and argument, reviewed the files, and now enters the following:

II. Findings of Fact

Respondent pled guilty to: Respondent was found guilty at an adjudicatory hearing of:

Count: <u>I</u>	Offense: <u>BOMBTH</u>	Committed on or about: <u>2-2-07</u>
Count: _____	Offense: _____	Committed on or about: _____
Count: _____	Offense: _____	Committed on or about: _____

The state failed to prove the following offense(s) and count(s) _____.

Same Course of Conduct. The conduct in count(s) _____ is the same course of conduct.

Respondent waived the right to counsel, arraignment on amended information, and/or speedy disposition.

Respondent has violated the terms of his/her **Deferred Disposition** entered on _____.

07-9-80074-5

22

- Respondent's offender score is 0, which is based upon his/her criminal history.
- The court considered the respondent's eligibility for the Chemical Dependency Disposition Alternative.
- Respondent has declined to enter a Diversion Agreement.
- Respondent may be ordered to pay restitution pertaining to matters not here adjudicated, and/or Count(s) _____, notwithstanding dismissal, because respondent, with counsel, so agreed and stipulated.
- A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).
- The following mitigating factors exist in this case:
 - The respondent's conduct neither caused nor threatened serious bodily injury, or the respondent did not contemplate that his/her conduct would cause or threaten serious bodily injury;
 - The respondent acted under strong and immediate provocation;
 - The respondent was suffering from a mental or physical condition that significantly reduced his/her culpability for the offense through failing to establish a defense;
 - Prior to his or her detection, the respondent compensated or made a good faith attempt to compensate the victim for the injury or loss sustained; and
 - There has been at least one year between the respondent's current offense and any prior criminal offense.
 - Other: _____

- The following aggravating factors exist in this case:
 - In the commission of the offense, or in flight therefrom, the respondent inflicted or attempted to inflict serious bodily injury to another;
 - The offense was committed in an especially heinous, cruel, or depraved manner;
 - The victim was particularly vulnerable;
 - The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement;
 - The current offense included a finding of sexual motivation pursuant to RCW 13.40.135;
 - The respondent was the leader of a criminal enterprise involving several persons;
 - There are other complaints which have resulted in diversion or a finding or plea of guilty which are not included as criminal history; and
 - The standard range disposition is clearly too lenient considering the seriousness of the juvenile's prior adjudications.
 - Other: youth is a clear threat to the community.
- Counseling is indicated.

III. Conclusions of Law

- Respondent is guilty of the offense(s) as stated in the findings.
- Respondent is not guilty of the offense(s) as stated in the findings.
- A sentence within the standard range would constitute a manifest injustice (RCW 13.40.020).

- Respondent is eligible for the Chemical Dependency Disposition Alternative on Count _____.
A standard range disposition for that Count would constitute a manifest injustice.
- Respondent's **Deferred Disposition** is revoked.

IV. Order

It is Ordered:

- 4.1 The state's motion respondent's motion to dismiss Count(s) _____
 Crime(s) _____ Statute(s) _____
 is granted, and said Count(s) shall be dismissed.

Range of Disposition:

- 4.2 Count _____: Disposition shall be within the standard range.
- 4.3 Count I: Disposition within the standard range for this offense would effectuate a manifest injustice.
- 4.4 Count _____: Disposition shall be within the Special Sex Offender Dispositional Alternative (RCW 13.40.160):
- Respondent is committed to the Department of Social and Health Services, Juvenile Rehabilitation Administration for a total of _____ weeks. Disposition is suspended. If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition.
- 4.5. Count _____: Chemical Dependency Disposition Alternative (RCW 13.40.165):
- Respondent is committed to the Department of Social and Health Services, Juvenile Rehabilitation Administration for a total of _____ weeks. Disposition is suspended. If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition.
- 4.6 Option B Suspended Disposition Alternatives (RCW 13.40.0357).
- Respondent is committed to the Department of Social and Health Services, Juvenile Rehabilitation Administration for a total _____ weeks. Disposition is suspended. If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition.
- 4.7 Mental Health Disposition Alternative (RCW 13.40.167).
- Respondent is committed to the Department of Social and Health Services, Juvenile Rehabilitation Administration for a total of _____ weeks. Disposition is suspended and the offender is required to participate in the recommended treatment interventions. If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

4.8 **Community Supervision:**

Count: _____	Months
Count: _____	Months
Count: _____	Months

Community Supervision is consecutive to existing Community Supervision.

4.9 **Community Restitution (Service) Work:**

Count: _____	Hours community restitution (service) _____	With _____ hours credited for _____ days served
Count: _____	Hours community restitution (service) _____	With _____ hours credited for _____ days served
Count: _____	Hours community restitution (service) _____	With _____ hours credited for _____ days served

4.10 **Confinement:**

Count: _____	Days _____	With credit for _____ days served
Count: _____	Days _____	With credit for _____ days served
Count: _____	Days _____	With credit for _____ days served

These days are to be served immediately, upon negative progress review.

Temporary releases from confinement for school, work, medical appointments, etc., are authorized at the discretion of the probation counselor.

4.11 **Commitment** to the custody of the Department of Social and Health Services, Juvenile Rehabilitation Administration for institutional placement:

Count: <u>I</u>	<u>52</u> Weeks to <u>60</u> weeks	With credit for <u>0</u> days served
Count: _____	Weeks to _____ weeks	With credit for _____ days served
Count: _____	Weeks to _____ weeks	With credit for _____ days served

Respondent shall be held in the detention facility pending transportation.

4.12 **Statutory Firearms Enhancements:**

- The court finds that respondent possessed a firearm in violation of RCW 9.41.040(1)(e). In addition to the sentence otherwise imposed herein, respondent is sentenced to _____ days confinement (10 days minimum). If the total period of confinement ordered herein exceeds 30 days, respondent is committed to the custody of JRA to serve the ordered confinement.
- The court finds that respondent or an accomplice was armed with a firearm while committing a felony, and thus hereby imposes:
 - 6 months (Class A felony) 4 months (Class B felony) 2 months (Class C felony)
 confinement in addition to any other sentence imposed herein and respondent is committed to the custody of JRA to serve said confinement.
- Any term of confinement ordered in this paragraph 4.12 shall run consecutively to any other term of confinement ordered.

4.13 **Conditions of Supervision:**

- A. The respondent is ordered to refrain from committing new offenses.
- B. Respondent is further ordered to comply with the **Mandatory School Attendance** provisions of RCW 28A.225, and to inform respondent's school of the existence of this requirement. I attend _____ School.
- C. Respondent shall report regularly, and on time, to the assigned probation counselor (or probation counselor's designee), as the probation counselor shall schedule or direct.

- D. Respondent shall keep probation counselor informed of respondent's current address and telephone number and shall notify probation counselor before moving to a different address.
- E. Respondent shall attend information classes and/or other educational programs, as directed by probation counselor.

(Items F through R apply only if the box is checked)

- F. **Curfew** to be set at the discretion of the probation counselor: _____ p.m. - _____ a.m.
- G. **Respondent shall Not Use or Possess Firearms, Ammunition or Other Dangerous Weapons** during this period of community supervision. Probation counselor is authorized to search respondent and items carried or controlled by respondent at scheduled appointments and other reasonable times, and may specify in writing further details of this prohibition.
- H. Respondent shall participate in counseling, outpatient substance abuse treatment programs, outpatient mental health programs, sex offender, and/or anger management classes, as probation officer directs. Respondent shall cooperate fully.
- I. Respondent shall be **Evaluated for Alcohol or Other Drug Dependency** at the direction of the probation counselor and shall comply with all treatment recommendations.
- J. Respondent shall refrain from using illegal drugs and alcohol and is subject to **Random Urinalysis** as directed by the probation counselor and shall fully cooperate.
- K. Respondent is ordered not to go upon the following premises or geographic areas:

- L. **Meeting:** The minor shall meet with a probation counselor when scheduled to do so, shall obtain permission prior to any change of residence or travel out of state, and shall attend any counseling and/or contact his/her probation counselor as deemed necessary by his/her probation counselor.
- M. Respondent shall not contact, except through counsel or a probation counselor, the following person(s):

- N. Respondent shall reside in a placement approved by the supervising probation counselor or approved by court order.
- O. Respondent shall not knowingly associate with any person, adult or juvenile, who is under the supervision of any court of this or any other state for any juvenile offense or crime.
- P. Respondent shall obtain a mental health evaluation and shall comply with treatment recommendations unless otherwise ordered by the court.
- Q. The respondent shall attend all mental health appointments and take medications as prescribed.
- R. Other conditions: _____

- S. The previously ordered conditions of release are dismissed.

The Department of Social and Health Services may consent to necessary medical, surgical, dental or psychiatric care for respondent, including immunization required for public school students.

The minor shall pay the following costs, fees, and restitution to the
Grays Harbor County Clerk
102 West Broadway, Room 203
Montesano, Washington 98563

4.14 Respondent is ordered to pay:

- A Fine of \$ _____, which respondent shall pay as scheduled by probation officer.
- Domestic Violence Assessment of \$ _____ (up to \$100 maximum).
- Court costs of \$5.00.
- Victims' Compensation Fund statutory **Assessment**: \$100 \$75
- Pursuant to RCW 43.43.690 Washington crime laboratory fees: \$100 Waived.
- Restitution** in the total sum of \$ TBD, Payable to: _____
Address: _____ City: _____
- A restitution hearing is set for _____.
- The respondent waives his/her right to be present at the restitution hearing.
- Restitution liability is joint and several with: (if and when convicted)
_____ Cause No.: _____
_____ Cause No.: _____
_____ Cause No.: _____

Monetary amounts ordered shall be paid at the rate of at least \$ _____ per month.
The probation officer may revise this schedule in writing.

Respondent shall remain under the court's jurisdiction for a maximum term of ten (10) years after respondent's 18th birthday (unless extended for an additional 10 years) for the collection of ordered restitution and penalty assessment, unless these amounts have been converted to a civil judgment pursuant to RCW 9.94A.145 and/or RCW 13.40.192 and/or RCW 13.40.198.

- 4.15 **HIV Testing.** The Department of Health or designee shall test and counsel the respondent for HIV as soon as possible and the respondent shall fully cooperate in the testing. RCW 70.24.340.
- 4.16 **DNA Testing.** The respondent shall have a biological sample collected for purposes of DNA identification analysis and the respondent shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the respondent's release from confinement. RCW 43.43.754.
- 4.17 **Jurisdiction is Transferred to** _____ County for supervision and enforcement of this order. This court retains venue over restitution. When a restitution order is entered, venue will be transferred to the above named county. **It is Further Ordered** that the clerk of this court shall transfer the case file in this matter to the clerk of _____ County Superior Court.
- 4.18 **Extended Jurisdiction.** Jurisdiction is extended beyond the minor's eighteenth birthday until _____ to accommodate the terms of this order pursuant to RCW 13.40.300.
- 4.19 **Driver's License Revocation:** The court finds that Count _____ is a felony in the commission of which a motor vehicle was used; or the unlawful possession of a firearm in a motor vehicle; or unlawful possession of a firearm 2nd; or _____.
The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.265, RCW 9.41.040(5), RCW 46.20.285, RCW 13.40.265.

4.20 **Felony Firearm Prohibition:** Respondent shall not use or possess a firearm, ammunition or other dangerous weapon until his or her right to do so is restored by a court of record. The court clerk is directed to immediately forward a copy of the respondent's driver's license or identicaid, or comparable information, along with the date of conviction, to the Department of Licensing. RCW 9.41.047.

4.21 **Other Orders:** 50% of all monies earned in IRA
be sent to Grays Harbor County clerk
for dispersal.

DATED: 4/19/07 [Signature]
JUDGE/COMMISSIONER

Presented by:
[Signature]
DEPUTY PROSECUTING ATTORNEY
WSBA #

Administrative Memorandum

Does conviction require license or permit markup?
 Yes No

License or permit marked in manner authorized by Department of Licensing?
 Yes No

RCW 46.20.270

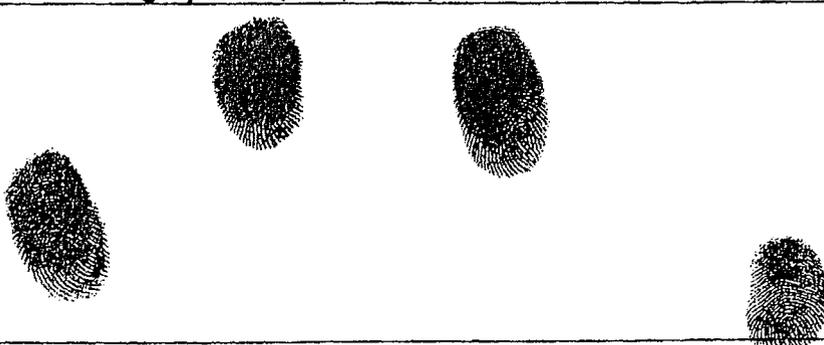
Copy Received; Approved for Entry; Notice of Presentation Waived:
[Signature]
ATTORNEY FOR RESPONDENT
WSBA #

[Signature]
RESPONDENT

Collateral Attack on Judgment. Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100, RCW 10.73.090.

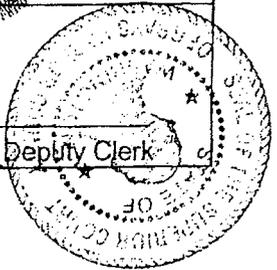
Certificate: I, _____, Clerk of this Court, certify that the above is a true copy of the Order of Disposition in this action on record in my office.

Fingerprints (If required by RCW 10.64.110)



I further attest that the fingerprint(s) appearing on this Order are those of Amber Whipple the subject of this Order.

Dated: 4/19/2007 Clerk: Cheryl Brown
By: [Signature] Deputy Clerk



**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	
v.)	COA NO. 36375-5-II
)	
A.R.W.,)	
)	
JUVENILE APPELLANT.)	

DECLARATION OF SERVICE

I, MARIA RILEY, CERTIFY THAT ON THE 21ST DAY OF AUGUST, 2007, I CAUSED A TRUE AND CORRECT COPY OF THIS **MOTION FOR ACCELERATED REVIEW** TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- | | | |
|--|-------------------|-------------------------------------|
| [X] GERALD FULLER, DPA
GRAYS HARBOR CO. PROSECUTOR'S OFFICE
102 W. BROADWAY AVENUE, ROOM 102
MONTESANO, WA 98563-3621 | (X)
()
() | U.S. MAIL
HAND DELIVERY
_____ |
| [X] A.R.W.
ECHO GLENN CHILDREN'S CENTER
33010 SE 99 TH ST.
SNOQUALMIE, WA 98065 | (X)
()
() | U.S. MAIL
HAND DELIVERY
_____ |

SIGNED IN SEATTLE, WASHINGTON THIS 21ST DAY OF AUGUST, 2007.

x _____
MR

RECEIVED
AUG 23 2007
CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

CLERK OF COURT OF APPEALS
DIVISION ONE
AUG 21 2007