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Supreme Court No. \_\_\_\_\_  
COA No. 33193-4-II

STATE OF WASHINGTON

BY YN  
Clerk

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

JACOB L. T. MINOR,

Petitioner.

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Petition for Review

PETER B. TILLER  
Attorney for Petitioner

THE TILLER LAW FIRM  
Rock & Pine  
P. O. Box 58  
Centralia, Washington 98531  
(360) 736-9301

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**TABLE OF CONTENTS**

A. **IDENTITY OF MOVING PARTY** ..... 1

B. **COURT OF APPEALS DECISION**..... 1

C. **ISSUES PRESENTED FOR REVIEW**..... 1

D. **STATEMENT OF THE CASE** ..... 2

    1. **Procedural Facts**..... 2

    2. **Testimony of the Fact-Finding Hearing** ..... 3

    3. **Ruling** ..... 4

    4. **Disposition Hearing**..... 5

    5. **Proceedings on Appeal**..... 6

E. **ARGUMENT**..... 6

    I. **RCW 9.41.047 REQUIRES THAT WHEN A RESPONDENT IS ADJUDICATED GUILTY OF AN OFFENSE THAT MAKES HIM INELIGIBLE TO POSSESS A FIREARM AND THE PREDICATE-OFFENSE COURT FAILS TO PROVIDE WRITTEN NOTICE THAT UNLAWFUL POSSESSION OF FIREARM, THE SUBSEQUENT FIREARM CONVICTION MUST BE DISMISSED.**..... 6

    2. **THE EXCEPTIONAL DISPOSITION OF IS FAR OUTSIDE THE STANDARD RANGE, MAKING THIS A CASE OF SUBSTANTIAL PUBLIC INTEREST**..... 13

3.	<u>A DISPOSITION OF 238 WEEKS IS CLEARLY EXCESSIVE IN LIGHT OF THE MINIMAL AGGRAVATING FACTS PRESENTED AT THE DISPOSITION HEARING</u> .....	18
F.	<u>CONCLUSION</u> .....	20
G.	<u>APPENDIX</u> .....	A-1 to A-7

## TABLE OF AUTHORITIES

### **Washington Supreme Court Decisions**

<i>State v. M.L.</i> , 134 Wn.2d 657, 952 P.2d 187 (1998).....	19
<i>State v. Rhodes</i> , 92 Wn.2d 755, 600 P.2d 1264 (1979).....	15

### **Washington Court of Appeals Decisions**

<i>State v. B.E.W.</i> , 65 Wn. App. 370, 828 P.2d 87 (1992).....	14, 19
<i>State v. S.H.</i> , 75 Wn. App. 1, 877 P.2d 205 (1994 <i>rev. denied</i> , 125 Wn.2d 1016 (1995).....	16, 17
<i>State v. J.N.</i> , 64 Wn. App. 112, 823 P.2d 1128 (1992) .....	17
<i>State v. J.S.</i> , 70 Wn.App 659, 855 P.2d 230(1993).....	15.
<i>State v. Leavitt</i> , 107 Wn. App. 361, 27 P.3d 622 (2001)10, 11, 12, 13	
<i>State v. Moore</i> , 121 Wn.App. 889, 91 P.3d 133, review denied, 154 Wn.2d 1012 (2005) .....	11
<i>State v. Minor</i> , 2006, Wn. App. LEXIS at 9-10.. .....	7, 11
<i>State v. Payne</i> , 58 Wn.App. 215, 795 P.2d 134 (1990).....	15
<i>State v. Richie</i> , 126 Wn.2d 388, 894 P.2d 1308 (1995) .....	16
<i>State v. Scott</i> , 72 Wn. App. 207, 866 P.2d 1258 (1993) <i>aff'd sub nom.</i> ,.....	16
<i>State v. Semakula</i> , 88 Wn. App. 719, 946 P.2d 795 (1997), <i>review denied</i> 134 Wn.2d 1022, 958 P.2d 317 (1998).....	9
<i>State v. Sledge</i> , 83 Wn. App. 639, 922 P.2d 832 (1996).....	18
<i>State v. Strong</i> , 23 Wn. App. 789, 599 P.2d 20 (1979) .....	19
<i>State v. Taula</i> , 54 Wn.App. 81, 771 P.2d 1188, <i>review denied</i> , 113 Wn.2d 1007, 779 P.2d 727 (1989)). .....	14, 18
<i>State v. Taylor</i> , 83 Wn.2d 594, 521 P.2d 699 (1974) .....	146

**United States Cases**

*Blakely vs. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed. 403 (2004).....

**Statutes**

RCW 9.41.010(12) ..... 7  
RCW 9.41.040..... 7  
RCW 9.41.040(1) (a)..... 8  
RCW 9.41.040(1)(b)(i)..... 8  
RCW 9.41.047..... 2, 6, 7, 9, 13  
RCW 9.41.047(1) ..... 7, 8  
RCW 13.40.020(16) ..... 15  
RCW 13.40.020(17) ..... 13, 14  
RCW 13.40.230..... 17  
RCW 13.40.230(2) ..... 14  
RCW 13.40.230(3) ..... 15

**Rules**

RAP 13.4(b)(3)..... 1. 2  
RAP 13.4(b)(4)..... 1. 2

**OTHER AUTHORITIES**

Laws of 1994, 1st Sp. Sess., ch. 7, § 402 ..... 7  
Laws of 1994, 1st Sp. Sess., ch. 7, § 404 ..... 7

**Rules**

RAP 13.4(b)(3)..... 2, 3  
RAP 13.4(b)(4)..... 2, 3

A. IDENTITY OF MOVING PARTY

Petitioner Jacob Minor, the appellant below, asks this Court to review the decision of the Court of Appeals referred to in section B.

B. COURT OF APPEALS DECISION

Minor seeks review of Division Two's published opinion in *State v. Minor*, No. 33193-4-II (Slip Op. filed June 27, 2006), available at 2006 Wash. App. LEXIS 1323. A copy of the opinion is attached as Appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. Can a respondent be convicted of first degree unlawful possession of a firearm where a 2003 Order on Adjudication and Disposition finding the Petitioner committed residential burglary, in which a section of the order gave notice that it was unlawful for the Petitioner to own or possess firearms following the guilty adjudication was not marked or checked? RAP 13.4(b)(3), 13.4(b)(4).

2. Was the Petitioner denied due process of law where he was adjudicated guilty of residential burglary in 2003, and where the Order on Adjudication and Disposition entered the predicate-offense court contained "check" marks by those sentences or

clauses that the Court imposed, and where the section pertains to the ineligibility of the Petitioner to possess or own firearms was not marked? RAP 13.4(b)(3); RAP 13.4(b)(4).

3. Was the Petitioner prejudiced by the failure of the predicate-offense court to notify him in writing, as required by RCW 9.41.047, of his ineligibility to own or possess firearms? RAP 13.4(b)(3); RAP 13.4(b)(4).

4. Did the lower court judge err in finding that the Petitioner is a threat to himself and the community, and that he needed substance abuse counseling in support of its imposition of a manifest injustice disposition? RAP 13.4(b)(3); RAP 13.4(b)(4).

5. Was a disposition of 190 to 238 weeks clearly excessive in light of the minimal aggravating factors presented at the disposition hearing and the availability of an adequate remedy of 15 to 36 weeks' commitment? RAP 13.4(b)(3); RAP 13.4(b)(4)

#### D. STATEMENT OF THE CASE

##### 1. Procedural Facts:

Jacob Minor, who was born October 13, 1988, was charged by Information filed in the Juvenile Division of the Mason County Superior Court on January 24, 2005, with two counts of unlawful possession of a firearm in the first degree. Clerk's Paper's [CP] at

1-3. The State alleged in Count 2 that during the spring or summer of 2004, Minor, having previously been convicted of residential burglary, knowingly owned or had in his possession a .38 caliber revolver, and that this occurred at a trailer located on Rain Street in Ocean Shores, Washington. CP at 1-2. The State alleged in Count 1 that Jacob had a black revolver in his possession at a residence in Ocean Shores in the period between September 1, 2004 to October 31, 2004. CP at 1. Count I was severed through continuance on March 24, 2005, and ultimately dismissed without prejudice by the State. Report of Proceedings [RP] at 3, 21-22.

**2. Testimony from the Fact-Finding Hearing:**

Ocean Shores police officer Christian Iversen received a complaint from a citizen that a pistol had been stolen from him. RP at 4. Officer Iversen testified that he subsequently obtained a statement from Katie Robinson that she saw Jacob Minor in possession of a handgun. RP at 5.

Robinson, who was under arrest for an unrelated matter, told Officer Iversen while at the Ocean Shores Police Department that she had seen Minor in possession of a handgun sometime between spring and fall, 2004. RP at 6, 11. Robinson, age 21, testified that she saw Minor with a .38 pistol, which she stated was “fully loaded,”

during a party at a trailer in Ocean Shores. RP at 7, 8, 9. She testified that this incident occurred “between spring and fall” in 2004. RP at 7. She testified that the gun was “definitely real” and not a toy, had a “spin thing in the middle,” and “every hole had a bullet in it.” RP at 8. She stated, without objection, that Minor told her not to talk about the alleged incident involving the gun. RP at 9, 10.

The State entered as Exhibit 1 a certified copy of Order on Adjudication and Disposition dated November 6, 2003, in which Minor was adjudicated guilty of residential burglary. CP at 16;

Minor denied possessing a gun and denied showing a gun to Robinson. RP at 14-15, 16. He also denied telling Robinson to lie or not to testify. RP at 15.

Minor acknowledged in response to questioning by the trial court that he was previously convicted of multiple offenses. RP at 17. He said that he had not been told that as a convicted felon he could not possess a firearm. RP at 17-18.

**3. Ruling:**

The juvenile court ruled that Minor committed first degree unlawful possession of a firearm. RP at 19-20.

**4. Disposition hearing:**

The matter came on for disposition on April 5, 2005. Based on his criminal history, Minor faced a standard range of 15 to 36 weeks in the custody of the Juvenile Rehabilitation Administration [JRA]. RP at 25. The State agreed to dismiss without prejudice the previously-continued first count of unlawful possession of a firearm. RP at 22.

The Juvenile Rehabilitation Administration probation officer prepared a Predisposition Investigative Report, filed March 30, 2005. CP at 20-24. Minor was granted a diversion in his first three offenses, which date back to June 2000. CP at 21. He was granted a Chemical Dependency Dispositional Alternative [CDDA] in Juvenile Division of the Pierce County Superior Court on August 7, 2002. CP at 21; RP at 22. The CDDA was revoked on September 23, 2002 and he was committed to JRA in November, 2003 pursuant to a 26 week manifest injustice disposition that was previous suspended. CP at 21.

Minor was later committed to the JRA pursuant to the conviction for residential burglary in Grays Harbor Co. cause number 03-8-00453-5 He received a manifest injustice disposition of 30 to 40 weeks. CP at 21.

The JRA representative recommended a manifest injustice disposition of 60 weeks. RP at 23. Minor's defense counsel recommended a standard range of 15 to 36 weeks. RP at 25. Judge Godfrey announced that "[h]is sentence will be as much as I can give him, so if that's 52, that's it. If it's till he's 21, that's it." RP at 30. The disposition was 190 weeks to 238 weeks. CP at 29.

5. **Proceedings on Appeal.** On appeal, Minor contended the predicate-offense court failed to provide notice to him of his ineligibility to possess a firearm, that the exceptional disposition was in violation of *Blakely v. Washington*, and that the disposition was excessive and not supported by the record. Br. App. at 14-31.

The court rejected all of Minor's claims. For the reasons set forth below, Minor seeks review.

#### E. ARGUMENT

- I. **RCW 9.41.047 REQUIRES THAT WHEN A RESPONDENT IS ADJUDICATED GUILTY OF AN OFFENSE THAT MAKES HIM INELIGIBLE TO POSSESS A FIREARM AND THE PREDICATE-OFFENSE COURT FAILS TO PROVIDE WRITTEN NOTICE THAT UNLAWFUL POSSESSION OF FIREARM, THE SUBSEQUENT FIREARM CONVICTION MUST BE DISMISSED**

Jacob Minor was convicted by plea of one count of

residential burglary in Grays Harbor County Superior Court Cause Number 03-8-00453-5. An Order of Adjudication was entered November 6, 2003.

In 1994, the legislature amended RCW 9.41.040 to provide that both adults and juveniles who had previously been convicted of a “serious offense” were prohibited from possessing any firearm. Laws of 1994, 1st Sp. Sess., ch. 7, § 402. RCW 9.41.040(1) (a) provides:

A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted in this state or elsewhere of any serious offense as defined in this chapter

RCW 9.41.010(12) includes residential burglary as a “serious offense.”

Also in 1994, the legislature enacted RCW 9.41.047. Laws of 1994, 1st Sp. Sess., ch. 7, § 404. The statute requires the court to give the person who has been convicted of a crime that made him or her ineligible to possess a firearm both oral and written notice that he or she may not possess a firearm unless the right to do so is restored by the court. RCW 9.41.047. RCW 9.41.047(1) provides in pertinent part:

At the time a person is convicted of an offense making the person ineligible to possess a firearm, .... the convicting .... court shall notify the person, **orally and in writing**, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record.

RCW 9.41.047(1) (emphasis added.)

Conviction for residential burglary falls within the classes of crimes for which the Legislature has prohibited firearm possession. RCW 9.41.040(1)(b)(i). After Minor was convicted of residential burglary, RCW 9.41.047(1) required the sentencing court to advise him both orally **and in writing** that he could no longer possess a firearm. In Minor's predicate offense, the Order on Adjudication and Disposition was entered November 6, 2003. The Order on Adjudication and Disposition is a pre-prepared standard form presented by a Grays Harbor County Deputy prosecuting attorney. To the left side of each provision or clause in the form are brackets that appear as "[ ]". Some of the brackets are interlineated with a manuscript "X", denoting those provisions that the court imposed on Jacob at disposition. At page 7 the Order on Adjudication and Disposition provides:

4.18 [ ] FELONY FIREARM PROHIBITION: Respondent shall not

use or possess 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 identicard, or comparable information, along with the date of conviction, to the Department of Licensing. RCW 9.41.047

Exhibit 1.

Section 4.18 is not marked with an "[X]" or otherwise denoted as applicable to Jacob.

The record is silent as whether the court advised Minor orally at disposition on November 6, 2003, that he could not possess a firearm. Inasmuch as the statute explicitly requires both verbal and written advisement, however, whether he was advised orally at the time of disposition is moot; the statute requires both forms of notice.

Minor testified that he was not aware that as a felon, he was not permitted to have a firearm. RP at 17. In his ruling, Judge Godfrey noted that ignorance of the law is not an excuse that prevents a respondent from being guilty of an offence. RP at 19. Washington case law provides that knowledge of the illegality of firearm possession is not an element of the crime. Rather, the State must prove only that the defendant knew he possessed the firearm. *State v. Semakula*, 88 Wn. App. 719, 726, 946 P.2d 795 (1997), *review denied* 134 Wn.2d 1022, 958 P.2d 317 (1998).

Although ignorance of the law is generally not a defense, this Court held that a narrowly-defined class of cases has determined that affirmative, misleading information from a governmental entity is a violation of due process. *State v. Leavitt*, 107 Wn. App. 361, 371, 27 P.3d 622 (2001).

In *Leavitt*, the sentencing court for the underlying predicate conviction failed to give the defendant the statutorily required notice prohibiting firearm possession beyond a one-year probation period. The court, through its words and actions, misled the defendant into believing that any restriction on firearm possession was limited to his one-year probationary period. The Court held that Leavitt's subsequent conviction for illegal possession of firearms violated due process. *Id.* at 371.

This Court held in *Levitt*:

We agree with *Miller* that the "ignorance of the law" axiom should not automatically apply to *malum prohibitum*, such as unlawful firearm possession, in those instances where the predicate sentencing court has failed to follow the law requiring it to advise the defendant that he may no longer possess firearms. The *Miller* court referenced the United States Supreme Court's decision in *Raley*, 360 U.S. 423, 79 S.Ct. 1257, 3 L.Ed.2d 1344, which found that a governmental commission's representations to *Raley* were legally erroneous and "active[ly] misleading," especially because the commission was "the voice of the State most presently speaking to the

[defendants]." *Miller*, 492 S.E.2d at 486, *citing Raley*, 360 U.S. at 438-39, 79 S.Ct. 1257. (FN14) Similarly, here, the predicate sentencing court was the "voice of the State" speaking to Leavitt, or failing to speak to Leavitt, about the constraints on his ability to possess firearms. The 1998 sentencing court had the authority and issued a written order that was bidding upon Leavitt. Leavitt relied in reasonable good faith upon the terms of the written order.

*Leavitt*, 107 Wn.App. at 365.

The Court of Appeals distinguished Minor's case from *State v. Moore*, 121 Wn.App. 889, 896, 91 P.3d 133, review denied, 154 Wn.2d 1012 (2005) in which Division Three held that the trial court's failure to inform Moore that he could no longer possess a firearm constituted governmental mismanagement. *State v. Minor*, 2006, Wn. App. LEXIS at 9-10. in that case, the juvenile court judge in the predicate offense matter affirmatively told Moore that "he could put the ordeal behind him if he stayed out of trouble." *Moore*, 121 Wn.App. at 896.

The Court declined to follow *Leavitt* and *State v. Blum*, 121 Wn.App. 1, 3, 85 P.3d 373 (2004) on the basis that "Minor fails to demonstrate any reliance on the trial court's oversight." *Minor*, 2006, Wn.App. LEXIS at 11.

Minor contends that the Court's ruling has the effect of

absolving the trial court of its error and requiring Minor to show affirmative reliance on what was the trial court's mistake. As was the case in *Leavitt*, the predicate-conviction court did not make express "affirmative assurances" that he could possess a firearm. In both cases the predicate conviction court failed to advise the respondent (or defendant in *Leavitt's* case) that he lost his right to possess firearms for an indefinite period as required by statute. In *Leavitt*, the lower court gave *Leavitt* written notice of an apparently one-year firearm-possession restriction, and did not seize *Leavitt's* concealed weapon permit. *Leavitt*, 107, Wn.App. at 366.

Unlike the facts of *State v. Blum*, the failure of the predicate-offense court to notify Minor in writing the firearm prohibition constituted a denial of due process. Moreover, Minor was prejudiced by the court's omission, as evidenced by his testimony that he was unaware that he could not possess a firearm following his 2003 residential burglary conviction. The court's failure to mark section 4.18 of the Order misled Minor concerning his rights.

Minor submits that the Court of Appeals erred by refusing to follow *Leavitt*. Minor argues that the failure of the predicate-sentencing court to advise him in writing of his ineligibility to own or

possess firearms under RCW 9.41.047 constitutes a violation of due process, and that he was prejudiced by the court's failure to comply with the statute's mandate to advise him about the statutory firearm-possession prohibition. Therefore, as this court held in *Leavitt*, "RCW 9.41.047 cannot serve as the basis for convicting him of unlawful firearm possession." *Leavitt*, 107 Wn.App. at 368.

**2. THE EXCEPTIONAL DISPOSITION IS FAR OUTSIDE THE STANDARD RANGE, MAKING THIS AN AREA OF SUBSTANTIAL PUBLIC INTEREST**

In a juvenile case, disposition outside the standard range may be imposed only if the trial court concludes that a standard range disposition would effectuate a manifest injustice. RCW 13.40.160(2). "Manifest injustice' means a disposition that would impose a serious and clear danger to society in light of the purposes of [the Juvenile Justice Act of 1977.]" RCW 13.40.020(17).

Under RCW 13.40.160(2), the juvenile court may impose a disposition in excess of the standard range only when the court determines that the imposition of a standard range would constitute a manifest injustice.

If the standard range sentence imposes a "serious, and clear danger to society," then manifest injustice results. RCW

13.40.020(17). A finding that a disposition within a standard range would effectuate a manifest injustice, however, vests the juvenile court “with broad discretion’ in determining the appropriate sentence to impose.” *State v. B.E.W.*, 65 Wn. App. 370, 375, 828 P.2d 87 (1992) (quoting *State v. Tauala*, 54 Wn.App. 81, 86, 771 P.2d 1188, *review denied*, 113 Wn.2d 1007, 779 P.2d 727 (1989)).

When a juvenile appeals a manifest injustice disposition over the standard range, the appellate court may uphold the disposition only if three conditions are satisfied. RCW 13.40.230(2) denotes the three factors to be used by the Appellate Court in reviewing a juvenile disposition order outside the standard range:

To uphold a disposition outside the standard range, the court of appeals must find (a) that the reasons supplied by the disposition judge are supported by the record which was before the judge and that those reasons clearly and convincing support the conclusion that a disposition within the range would constitute a manifest injustice, and (b) that the sentence imposed was neither clearly excessive nor clearly too lenient.

See also, *State v. Rhodes*, 92 Wn.2d 755, 760, 600 P.2d 1264 (1979).

The Supreme Court has held that the phrase ‘manifest injustice’ represents a demanding standard. *State v. Taylor*, 83 Wn.2d 594, 521 P.2d 699 (1974). Thus, in order to stand on

review, the standard range for this offense and this respondent must present, beyond a reasonable doubt, a clear danger to society. *Rhodes*, 92 Wn.2d at 760 (*citations omitted*). If a manifest injustice disposition fails any of the three prongs, it may not be upheld. RCW 13.40.230(3). The threshold for a manifest injustice is high; it cannot be breached for an upward departure from the standard range unless there is clear and convincing evidence a disposition within the standard range present a clear danger to society. *Rhodes*, 92 Wn.2d at 760. The Appellant is entitled to remand for disposition within the standard range if this Court determines the trial court's reasoning does not support the disposition beyond a reasonable doubt. RCW 13.40.230(3). *State v. J.S.*, 70 Wn.App 659, 664, 855 P.2d 230(1993).

When an appellate court reviews a finding of manifest injustice, the reasoning of the trial court is held to a stringent standard. See *State v. Payne*, 58 Wn.App. 215, 219, 795 P.2d 134 (1990). Manifest injustice dispositions may only be entered in cases where the imposition of a standard range disposition would "either impose an excessive penalty on the juvenile or would impose a serious, and clear danger to society." RCW 13.40.020(16). The reasons given do not support a manifest

injustice disposition beyond a reasonable doubt if the appellate court finds that the trial court relied on factors that do not justify disposition outside the standard range, and the trial court would not have entered the same sentence based on the remaining factors, if any. *State v. S.H.*, 75 Wn. App. 1, 12, 877 P.2d 205 (1994) *rev. denied*, 125 Wn.2d 1016 (1995). An appeal from a finding of manifest injustice “shall be heard solely upon the record that was before the disposition court.” RCW 13.40.230(1).

Whether an aggravating factor justifies departure from the standard range is a question of law. *S.H.*, 75 Wn.App. at 9, (citing *State v. Scott*, 72 Wn. App. 207, 213, 866 P.2d 1258 (1993), *aff'd sub nom.*, *State v. Richie*, 126 Wn.2d 388, 894 P.2d 1308 (1995).

JRA Diagnostic Coordinator Larry Sturgill filed a Predisposition Investigation Report dated march 28, 2005, requesting a manifest injustice of a minimum of 52 weeks and a maximum of 60 weeks. CP at 20-24.

Minor submits that the record presented at trial provides insufficient evidence to support a manifest injustice disposition and appears to be based solely on his robust criminal history, prior Manifest Injustice commitments, and the judge’s stated desire to commit him to age 21, “as much as I can give him.” RP at 30. The

Petitioner does concede, however, that criminal history is a specifically enumerated aggravating factor under RCW 13.40.160.

The need for treatment can in some cases be a valid reason in support of a manifest injustice disposition. *State v. S.H.* 75 Wn.App. 1, 877 P.2d 205 (1994). Nevertheless, the “appropriate treatment must be determined by the special needs of the offender in each case.” *State v. J.N.*, 64 Wn. App. 112, 117, 823 P.2d 1128 (1992). In the absence of testimony regarding the personal amount of time it would take to achieve such needs in treatment, the record before this Court does not clearly and convincingly support the conclusion that any treatment that Minor may need supports the imposition of a manifest injustice disposition, and that it could not be accomplished during a 15 to 36 week disposition, rather than commitment to 21.

The record is devoid of a showing that a 238 week—commitment to age 21—is necessary to achieve the results desired by the court.

Minor contends that the appropriate measure of punishment for this offense is already provided for by the 15 to 36 week period of commitment contemplated by the Legislature, and that there is no showing that that offense and manner in which he committed the

offense for which he was convicted can be distinguished from the “garden variety” version of the crime of unlawful possession of a firearm. Simply put, there are no facts that set this Petitioner’s offense apart from the myriad other fact patterns that comply with the commission of this offense in other cases and that a desire to commit Minor for as long as legally possible is not a supportable basis for Manifest Injustice.

The record does not support the court’s reasons for imposing a manifest injustice.

3. **A DISPOSITION OF 238 WEEKS IS CLEARLY EXCESSIVE IN LIGHT OF THE MINIMAL AGGRAVATING FACTS PRESENTED AT THE DISPOSITION HEARING**

The third requirement of RCW 13.40.230 is “that the sentence imposed is neither clearly excessive nor clearly too lenient.” While a juvenile court’s determination of the appropriate length of a sentence is a matter of discretion, the court “should not pick a number out of thin air. *State v. Sledge*, 83 Wn. App. 639, 646, 922 P.2d 832 (1996) (citing *State v. B.E.W.*, 65 Wn. App. 370, 828 P.2d 87 (1992)). A disposition has been determined to be excessive where “it cannot be justified by any reasonable view which may be taken of the record.” *State v. Tauala*, 54 Wn. App.

81, 87, 771 P.2d 1188, review denied, 113 Wn.2d 1007, 779 P.2d 727 (1989) (quoting *State v. Strong*, 23 Wn. App. 789, 794-95, 599 P.2d 20 (1979)). Once the juvenile court has concluded that a disposition within the standard range would effectuate a manifest injustice, the court is vested with broad discretion to determine the appropriate disposition. *State v. M.L.*, 134 Wn.2d 657, 952 P.2d 187 (1998). In the present case, there is no factual basis whatsoever to make a determination of the time needed to effectuate any treatment that the court believed that Jacob needs.

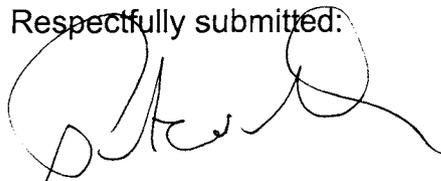
Division Two wrongly decided this important question, but this Court should not. Because resolution of this question is of substantial public interest, this Court should grant review.

F. CONCLUSION

For the foregoing reasons, Jacob Minor respectfully requests her petition for review be granted.

DATED this 25th day of July, 2006.

Respectfully submitted:



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Peter B. Tiller (WSBA 20835)  
Attorney for Petitioner

FILED  
COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

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

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

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

JACOB L.T. MINOR,

Appellant.

No. 33193-4-II

PUBLISHED OPINION

VAN DEREN, A.C.J. — Jacob L.T. Minor appeals his adjudication for first degree unlawful possession of a firearm, arguing that (1) a previous court failed to inform him that he was not allowed to possess a firearm following a felony conviction; and (2) the trial court erred in imposing a manifest injustice disposition because the record did not support it, it was clearly excessive, and the disposition procedure is invalid under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). Finding no error, we affirm.

**FACTS**

In December 2004, Ocean Shores police officer Christian Iverson was dispatched to Richard Frost's home to investigate the theft of Frost's .38 caliber Smith and Wesson handgun. Frost said that he suspected that Minor had stolen the gun because Frost's daughters had heard rumors at school that Minor had stolen the gun and then sold it.

Subsequently, Katie Robinson, who came into contact with Iverson because she had been arrested on another matter, told Iverson that she had seen Minor with a handgun. She said she saw Minor with a .38 caliber, fully loaded, black gun in the spring or fall of 2004 while the two were at a friend's home. At Minor's trial, Robinson testified that Minor told her to lie about seeing the gun and "not to get him in trouble." Report of Proceedings at 9.

Joe Palm also saw Minor possessing a gun. Palm reported to detective Russ Fitts that in September or October 2004, Minor showed him a .38 caliber revolver and tried to sell it to him. Palm said he refused to buy the gun because he was on parole and was, therefore, ineligible to possess a firearm. Palm did not testify at Minor's trial.

The State charged Minor with two counts of first degree unlawful possession of a firearm, in violation of RCW 9.41.040(1)(a). In count I, the State charged that Minor, having previously been convicted of a serious offense, residential burglary, possessed a black firearm in September or October 2004.<sup>1</sup> Count II charged that Minor, having previously been convicted of a serious offense, residential burglary, possessed a firearm in the spring or summer of 2004 in Robinson's presence.

Minor testified that he did not show Robinson a gun and that he never told her to lie. He also testified that no one had ever told him that as a convicted felon he was not allowed to possess a gun. Furthermore, on his judgment and sentence for his predicate conviction, the box that stated that he was not allowed to possess a firearm was not checked. And Minor did not sign the judgment and sentence nor did he review it with his attorney.

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<sup>1</sup>This count was dismissed without prejudice when Palm could not appear to testify and it is not an issue on appeal.

At a bench trial in juvenile court, the court found Minor guilty of count II. The court ordered a disposition diagnostic report.

The predisposition diagnostic report outlined Minor's criminal history, drug use history, treatment history, behavior, and family history. Minor, the youngest of 11 children, began using nicotine at age five. By age eight, he began smoking marijuana and drinking alcohol. By age 11, he began regularly using marijuana and alcohol and began using methamphetamine. He began using valium at age 13. Minor has also used ecstasy, mushrooms, and LSD and has inhaled formaldehyde. He has been diagnosed with Attention Deficit Hyperactivity Disorder, Bi-Polar Disorder, and Conduct Disorder.

Minor's first three criminal offenses occurred from June 2000 to September 2001, and included possession of a dangerous weapon and two counts of fourth degree assault. He was given diversion for all three charges.

In August 2002, the court granted Minor a chemical dependency disposition alternative for three counts of fourth degree assault and one count of minor in possession. The court suspended Minor's 26-week manifest injustice disposition, but Minor did not comply with the conditions of his suspended disposition and reoffended in September 2002, by obstructing a police officer. The court revoked the suspended disposition and ordered Minor to serve the remainder of the 26-week disposition plus 30 days for the obstruction charge. He was released on parole in March 2003. His 2003 parole was revoked four times, and the State issued four arrest warrants for him while he was on parole. Since 2001, Minor has violated parole nine times and the State has issued 10 arrest warrants against him.

In November 2003, Minor was found guilty of residential burglary. The court granted a manifest injustice disposition upward and sentenced Minor to 30 to 40 weeks. In 2004, Minor underwent drug treatment as part of an eight-week program at Maple Lane. After completing the program, he was sent to a group home in Olympia but was expelled a short time later. In December 2004, Minor served time for a parole violation and was transitioned to another group home. Minor has participated in other drug treatment programs and has been prescribed medication, which he has refused to take.

Minor has had behavioral problems both in and out of detention. He has a pending fourth degree assault charge for throwing a screwdriver at his sister, who says that she is afraid of him and his violent outbursts. He has a history of assaults in detention and in the community, as well as at home and at school. Minor has been working toward his GED, but he rarely attends school. When he does attend, he is disruptive, disrespectful, and noncompliant. One teacher reported that Minor only comes to school so he can make drug deals.

At the time of the disposition for the firearm charge, Minor had a pending disposition for one count of fourth degree assault and one count of minor in possession, to which he had pleaded guilty. Based on the diagnostic report, the diagnostic coordinator recommended that the court impose a manifest injustice disposition of 52 to 60 weeks for the firearm conviction on count II. The court sentenced Minor to 190 to 238 weeks because (1) Minor had “a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement;” (2) “[t]here are other complaints which have resulted in diversion or a finding or plea of guilty which are not included as criminal history;” (3) “[t]he standard range disposition is clearly too lenient considering the seriousness of [Minor’s] prior adjudications;” (4) Minor “is a continuing

threat to the community [and] himself;” and (5) Minor “is in need of more substance abuse counseling.” Clerk’s Papers at 27.

Minor appeals.

## ANALYSIS

### I. NOTICE OF PROHIBITION TO CARRY A FIREARM

Minor argues that at the time of disposition for his residential burglary conviction the trial court failed to advise him that he was prohibited from thereafter possessing a firearm and that without such an instruction we must vacate the unlawful firearm possession conviction. The State acknowledges that the record is devoid of evidence that Minor received written notification of his loss of firearm rights and that without a record of the oral proceedings, we must assume that he also did not receive oral notification. But the State argues that lack of notice here does not warrant reversal. We agree with the State.

Former RCW 9.41.040(1)(a)(2003)<sup>2</sup> states that a person, whether adult or juvenile, is guilty of first degree unlawful possession of a firearm if the person “owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted in this State or elsewhere of any serious offense as defined in this chapter.” RCW 9.41.010(12)(a) lists any crime of violence as a serious offense and RCW 9.41.010(11)(a) lists burglary as a crime of violence.

Knowledge of the illegality of firearm possession is not an element of the crime. *State v. Leavitt*, 107 Wn. App. 361, 368, 27 P.3d 622 (2001). The State need only prove that the defendant knew that he possessed a firearm. *Leavitt*, 107 Wn. App. at 368. But RCW

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<sup>2</sup> Laws of 2005, ch. 53, § 26.

9.41.047(1), which governs the restoration of the right to possess a firearm, states that when a person is convicted of a serious offense that makes him ineligible to possess a firearm, the court must “notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record.”

Although ignorance of the law is generally not a defense, we must balance that long-standing principle with the “inherent unfairness of . . . [a] sentencing judge [] inadvertently misleading a defendant about his legal obligations such that the defendant relied on this misinformation to his detriment.” *Leavitt*, 107 Wn. App. at 368. Due process requires dismissal of an unlawful firearm possession charge when a court misleads a defendant into believing that his conduct was not prohibited and the defendant shows prejudice. *State v. Carter*, 127 Wn. App. 713, 720, 112 P.3d 561 (2005). “The sentencing court need not make express affirmative assurances on the status of the convicted defendant’s rights. Actions, inactions, or a combination of the two may be enough to implicate due process rights.” *State v. Moore*, 121 Wn. App. 889, 896, 91 P.3d 133, *review denied*, 154 Wn.2d 1012 (2005).

Several cases have dealt with whether subsequent convictions for possession of a firearm must be reversed because the trial court failed to inform the defendant about the long-term restriction on possessing a firearm following a felony conviction.

In *Moore*, Division Three of this court held that the trial court’s failure to inform Moore that he could no longer possess a firearm constituted governmental mismanagement under CrR 8.3(b). 121 Wn. App. at 895. The court found that Moore had been prejudiced because the

predicate juvenile dispositional judge had affirmatively told him that “he could put the ordeal behind him if he stayed out of trouble.” *Moore*, 121 Wn. App. at 896.

Similarly, in *Leavitt*, we held that the trial court misled Leavitt when it suspended his sentence so long as he abstained from certain conduct for one year, including not possessing firearms for one year. 107 Wn. App. at 363. The trial court did not inform Leavitt that the prohibition against possession of firearms could extend longer than the one year. *Leavitt*, 107 Wn. App. at 363. Thus, we reversed Leavitt’s unlawful possession of a firearm conviction, holding that Leavitt demonstrated actual prejudice when the predicate sentencing court misled him and failed to advise him of the statutory firearm-possession prohibition. *Leavitt*, 107 Wn. App. at 372-73.

But in *State v. Blum*, we refused to reverse a conviction for unlawful possession of a firearm where a predicate Colorado court failed to inform Blum that he was prohibited from possessing a gun. 121 Wn. App. 1, 3, 85 P.3d 373 (2004). We held that lack of knowledge of the law was no defense and that the State did not have a duty to inform Blum because his conviction was from another state. *Blum*, 121 Wn. App. at 4. We refused to apply *Leavitt* because the trial court did nothing to mislead Blum. *Blum*, 121 Wn. App. at 5.

Here, the court failed to comply with RCW 9.41.047 when it did not check the box on the judgment and sentence indicating that Minor was prohibited from possessing a firearm. But Minor fails to demonstrate any reliance on the trial court’s oversight. At oral argument, Minor conceded that the record did not indicate that he looked at or relied on the judgment and sentence to determine whether he could possess a firearm. And unlike in *Moore* and *Leavitt*, the trial court here did nothing to affirmatively indicate to Minor that he could possess a firearm.

We agree with Minor that this reading of RCW 9.41.047 imposes no sanction for the court's failure to comply with the statute's express oral and written notice requirements. But we can find no consequence the legislature spelled out for violating this statute. It is not a judicial function but, rather, a legislative task to prescribe a remedy for failing to inform a convicted felon of the loss of the right to possess firearms.

Thus, without a legislatively prescribed sanction, we hold that Minor's ignorance of the law is not a defense. *See Leavitt*, 107 Wn. App. at 368. And because Minor cannot show prejudice based on affirmative conduct by the trial court, we affirm his conviction.

## II. MANIFEST INJUSTICE DISPOSITION

Minor next argues that (1) the record does not support the imposition of a manifest injustice disposition; (2) the disposition was excessive; and (3) *Blakely* prohibits manifest injustice dispositions. 542 U.S. at 296.

A court may impose a disposition outside the standard range when it determines that a disposition within the standard range would "effectuate a manifest injustice." *State v. T.E.C.*, 122 Wn. App. 9, 17, 92 P.3d 263 (2004) (quoting RCW 13.40.160(2)). RCW 13.40.230(2) governs appellate review of a manifest injustice disposition:

To uphold a disposition outside the standard range, the court of appeals must find (a) that the reasons supplied by the disposition judge are supported by the record which was before the judge and that those reasons clearly and convincingly support the conclusion that a disposition within the range would constitute a manifest injustice, and (b) that the sentence imposed was neither clearly excessive nor clearly too lenient.

### 1. Evidence Relied on by the Juvenile Court

Minor argues that the evidence in the record does not support a finding of manifest injustice under RCW 13.40.230.

To impose a manifest injustice disposition the trial court must rely on clear, cogent, and convincing evidence. *State v. P.B.T.*, 67 Wn. App. 292, 301, 834 P.2d 1051 (1992) (quoting RCW 13.40.160(1)). We review the trial court's findings of fact under a clearly erroneous standard and will reverse only if substantial evidence fails to support the court's conclusion. *T.E.C.*, 122 Wn. App. at 18 (relying on *State v. S.H.*, 75 Wn. App. 1, 9, 877 P.2d 205 (1994), *overruled on other grounds*, *State v. Sledge*, 83 Wn. App. 639, 645, 922 P.2d 832 (1996)). In determining whether a manifest injustice disposition is proper, the trial court may look at statutory and non-statutory factors, including whether the juvenile is at a high risk to reoffend. *T.E.C.*, 122 Wn. App. at 17.

Here the court made findings that (1) Minor had a recent criminal history or had failed to comply with the conditions of a recent dispositional order; (2) had other complaints against him; (3) a standard range disposition was too lenient; and (4) Minor was a continuing threat to himself and the community.

The evidence in the record is clear that Minor has an extensive and continuous criminal history and that he has repeatedly violated the terms of his dispositions and paroles, which indicate that he is a high risk to reoffend. Further, Minor's continuous drug use began at a very young age. While incarcerated, Minor participates in drug programs but when he is released he fails to comply with treatment requirements. And at the time of this disposition, Minor had two other pending offenses. He rarely attended school for educational purposes and was disruptive and uncooperative when he was at school.

This evidence is clear, cogent, and convincing and supports the trial court's manifest injustice disposition and we hold that the trial court did not err.

## 2. Length of Disposition

Minor argues that 190 to 238 weeks was an excessive manifest injustice disposition under RCW 13.40.230(2).

A manifest injustice disposition is excessive if it cannot be justified by any reasonable view of the record. *T.E.C.*, 122 Wn. App. at 17 (quoting *State v. Taulala*, 54 Wn. App. 81, 87, 771 P.2d 1188 (1989)). Once a court has determined a manifest injustice disposition proper, it has broad discretion in determining the appropriate sentence. *State v. M.L.*, 134 Wn.2d 657, 660, 952 P.2d 187 (1998).

In *M.L.*, our Supreme Court found a manifest injustice disposition excessive where the trial court incarcerated 10-year-old M.L. until he turned 21. 134 Wn.2d at 660-61. M.L. had no previous criminal record and the State, M.L.'s counselor, the defense, and the juvenile probation officer all recommended a one-year disposition. *M.L.*, 134 Wn.2d at 661. The Court held that, although the trial court was not bound by the recommendations of others, "the imposition of a sentence which is in excess of 10 times as long as the longest sentence recommended is excessive when imposed upon a 10-year-old boy." *M.L.*, 134 Wn.2d at 661. The court found that such a sentence did not further the goals of the Juvenile Justice Act of 1977. *M.L.*, 134 Wn.2d at 661.

Here, unlike in *M.L.*, Minor has an extensive criminal record and he is 16, not 10. Furthermore, the record supports the sentence because of Minor's lengthy and continuous criminal history, his substance abuse, and his refusal to participate in drug treatment outside incarceration. The record also indicates that Minor has better success controlling himself when he is in a structured setting. Thus, a lengthy disposition will likely benefit him because he can

continue his education in a structured setting and he can participate in long-term drug treatment.

We hold that Minor's manifest injustice disposition was not excessive.

### III. *BLAKELY V. WASHINGTON*

Finally, Minor argues that the United States Supreme Court's decision in *Blakely* renders RCW 13.40.160<sup>3</sup> unconstitutional.

*Blakely* clarified that a defendant has a Sixth Amendment right to have a jury, not a judge, determine facts that warrant an exceptional sentence. 542 U.S. at 313. The Court based its analysis on the historical foundation of the Sixth Amendment. But juveniles do not have a Sixth Amendment right to a jury trial. *State v. Schaaf*, 109 Wn.2d 1, 16, 743 P.2d 240 (1987). And juvenile proceedings are generally not considered criminal prosecutions under the Sixth Amendment. *State v. Tai N.*, 127 Wn. App. 733, 738, 740, 113 P.3d 19 (2005), *review denied*, *State v. Nguyen*, 156 Wn.2d 1019, 132 P.3d 735 (2006).

Further, Division One of this court in *Tai N.* refused to extend *Blakely* to juvenile trials. 127 Wn. App. at 738. It found that the "unique rehabilitative nature of juvenile proceedings"

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<sup>3</sup> RCW 13.40.160(2) states:

If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option D of RCW 13.40.0357. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230 by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230.

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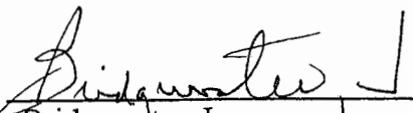
made judges and not juries the appropriate fact finders in juvenile proceedings. *Tai N.*, 127 Wn. App. at 739 (quoting *State v. J.H.*, 96 Wn. App. 167, 186-87, 978 P.2d 1121 (1999)).

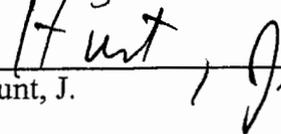
We agree with Division One and, thus, we hold that *Blakely* does not prohibit a judge in a juvenile trial court from imposing a manifest injustice sentence.

Finding no error, we affirm.

  
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Van Deren, A.C.J.

We concur:

  
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Bridgewater, J.

  
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Hunt, J.