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STATE OF WASHINGTON

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In The Matter of the Personal Restraint of

MONTGOMERY MANRO,

Petitioner.

MOTION FOR DISCRETIONARY REVIEW
PETITIONER'S REPLY

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I. INTRODUCTION.

Manro attempted at every turn to preserve his right to be treated within the rehabilitative framework of the juvenile justice system. Thwarted every time he asked, there is no doubt that he was right all along and entitled to the relief he timely sought. Now, because of delays not of his making, the State asserts that he is out of luck. Time, argues the State, has turned his claim into a mere technicality. The State's absurd argument not only mocks basic notions of fairness and justice, it also collides headlong with the law.

II. DUE PROCESS IS NOT A TECHNICALITY.

Citing *State v. Warner*, 125 Wn.2d 876, 889-890 (1995), the State asserts that “[t]here is no constitutional right to be tried as a juvenile” and thus “the fact that the judgment and sentence was entered by the adult court rather than the juvenile court” is a mere technicality that does not warrant relief. *State's Response* at 3. A peek behind the curtain, however, calls into question the State's analysis. The cited portion of *Warner* refers to *State v. Sharon*, 33 Wn. App. 491(1982), which noted that, although there may be no constitutional right to be tried in juvenile court, where, as in Washington, the legislature has provided for the option of adjudication

of juvenile offenses in a juvenile court, and a mechanism for transfer to adult court, the State must provide the juvenile an opportunity for a hearing which measures up to the essentials of due process and fair treatment prior to the entry of an order declining juvenile jurisdiction. *Id.* at 495 (citations omitted). Here, Manro never received an opportunity for a hearing that complied with due process, which hardly amounts to a mere procedural technicality.

In *In re Personal Restraint of Gronquist*, 89 Wn. App. 596, 606 (1997), also cited by the State for its “mere technicality” argument, the Court distinguished those procedural rules that implicated due process liberty interests from those that do not. Indeed, Gronquist, a prison inmate, was given notice of a general infraction and the opportunity to defend himself at a hearing, unlike Manro, who never got the opportunity to have his nondecline charges transferred to juvenile court for a decline hearing. Thus, Gronquist suffered a mere technical violation, whereas Manro suffered a violation of due process.

III. REMEDIES OTHER THAN VACATING.

The State asserts that vacation of Manro’s conviction is the only remedy available. *State’s Response* at 3. As explained in *In re Personal*

Restraint of Dalluge, 152 Wn.2d 772, 782 (2004) where, as was the case for Manro, adult criminal jurisdiction is deemed to have been improper, the appellate court can remand to the adult or juvenile court (depending upon the defendant's current age) to determine whether transfer to adult criminal court would have been proper in the first place. Thus, an after-the-fact Dillenburg hearing in adult court can serve as a substitute for a decline hearing in juvenile court.

While the following block citation to In re Dillenburg v. Maxwell is lengthy, it serves as an appropriate rebuttal to the State's argument:

[I]n those cases where it is demonstrated, in appropriate post conviction proceedings, that a transfer from juvenile court control has been faulty, proper relief can be afforded, in the ordinary case, by a de novo hearing before the superior court as to the propriety of the challenged transfer, i.e., whether the facts before the juvenile "session" of the superior court in the first instance warranted and justified the transfer for criminal prosecution. If at the time of the hearing the convicted person still be under the age of 18 years, such hearing should be held before the superior court sitting in juvenile court session. If, however, the person has reached and passed his 18th birthday, he is amenable to the normal authority of the superior court and the hearing should be conducted by the superior court sitting, without a jury, in regular session. In either event the convicted person would be entitled to representation by counsel and to access to the pertinent investigatory reports of the juvenile court, and, at the conclusion of the hearing, the court would be required to make findings of fact and conclusions of law relative to any relevant and disputed issue between the

prosecuting officials and the convicted person.

In the event it be determined, as a result of such hearing, that the initiating juvenile court transfer for criminal prosecution was appropriate under all of the circumstances, then the challenged conviction will stand unless intervening events have so prejudiced the constitutional rights of the convicted person as to compel a different result. On the other hand, should it be determined that the initiating transfer was inappropriate under all of the circumstances and that in fact the convicted person should have been dealt with as a juvenile, then the conviction should be set aside. If the conviction be set aside, and the convicted person be under the age of 18 years, and thus amenable to juvenile court authority, his case should be remanded to juvenile court for proper disposition. Should he, however, be over the age of 18 years at the time the conviction be set aside, he is then amenable to prosecution as an adult, and a new trial should be granted to him. *State v. Ring*, 54 Wn.2d 250, 339 P.2d 461 (1959).

70 Wn.2d 331, 355-356 (1967).

IV. THE DISABILITIES FROM MANRO'S CONVICTIONS ARE SUBSTANTIAL.

The State argues that “[t]he fact that Manro’s conviction was entered in adult court rather than juvenile court does not result in any additional disability that would constitute restraint pursuant to RAP 16.4(b).” *State’s Response* at 4. Of course, as the Court in *State v. Chavez*, 163 Wn.2d 262, 271 (2008) recognized, there is, in general, a rather large difference between a juvenile adjudication and an adult

conviction, simply because “an adult criminal conviction carries far more serious ramifications for an individual than a juvenile adjudication, no matter where the juvenile serves his time.” Indeed, “an act which would be a crime if committed by a adult is not a crime ... if committed by a juvenile.” *State v. J.H.*, 96 Wn. App. 167, 174 n.20 (1997) (citing *In re Weaver*, 84 Wn. App. 290, 294 (1996)).

In *In re Personal Restraint of Davis*, 142 Wn.2d 165 (2000), the petitioner, as is Manro, was no longer incarcerated or under state supervision. The State filed a motion with this Court to dismiss his personal restraint petition on this ground. The motion was denied, with the Court noting that “a separate conviction, apart from the concurrent sentence, has potential adverse collateral consequences that may not be ignored. For example, the presence of two convictions on the record may . . . result in an increased sentence under a recidivist statute for a future offense. Moreover, the second conviction . . . certainly carries the societal stigma accompanying any criminal conviction.” *Id.* at 170, n.2 (quotations and citations omitted). Thus, the stigma, without more, is the disability that constitutes restraint under RAP 16.4(b). Moreover, just as it does not matter whether the stigma or disability from one conviction and

sentence is comparatively greater than from another conviction and concurrent sentence, it does not matter whether the stigma or disability from an adult conviction is greater than that arising from a juvenile adjudication for the same offense. In the end, stigma is restraint.

Of course, adult convictions do carry greater stigma than juvenile adjudications. The stigma that flows from adult convictions and punitive sentences is necessarily different from and greater than the stigma, if any, that results from a juvenile adjudication in a system that has rehabilitation, and not punishment, as its overriding goal. *Cf. State v. Chavez*, 163 Wn.2d 262.

Moreover, Manro's adult convictions, even if they would not automatically, by Washington statute, subject him to greater punishment for future offenses than he would receive if they were juvenile adjudications, would undoubtedly be used to subject him to harsher discretionary treatment by prosecutors and judges. Bail recommendations and amounts undoubtedly would be affected, too. Furthermore, if Manro were convicted of a future crime in federal court, his criminal history category would almost certainly be greater because of his adult convictions than if they were juvenile adjudications. *See* U.S.S.G. 4A1.2(d).

In those areas of life where there are discretionary barriers to entry erected by statute, Manro's adult convictions could provide a basis to deny him entry. For example, the State Gambling Commission could deny him a license, based on his convictions. See RCW 9.946.075(4) and WAC 230-03-085(2) (allowing denial of license for a misdemeanor conviction of a crime involving physical harm to individuals)

In those areas of life where there are discretionary barriers erected by custom, culture, and practice, and not necessarily by law, there is little doubt that Manro will be affected by the stigma of his adult assault conviction, whereas he would not be by a juvenile adjudication. For example, a juvenile adjudication for assault would have a higher likelihood of being overlooked or forgiven by a potential employer, landlord, college admissions officer, licensing agency, or recruiter than would an adult conviction. People know that juvenile adjudications are products of a rehabilitative system, whereas adult convictions are punitive. People forgive the transgressions of children far more readily than they do adults. For Manro, whose adult convictions were the result of acts committed while he was a juvenile, the average person would think that he was so bad the juvenile system had given up on him.

It would be exceedingly difficult, and perhaps impossible, for Manro to be admitted into Canada with an adult conviction for fourth degree assault. As noted by the Canadian government,

Members of Inadmissible Classes include those who have been convicted of MINOR OFFENCES (including shoplifting, theft, assault, dangerous driving, unauthorized possession of a firearm, possession of illegal substances, etc.)

<http://geo.international.gc.ca/can-am/seattle/visas/inadmissible-en.asp>.

(web address of the Canadian consulate in Seattle). However, if Manro had been convicted in juvenile court, he “most likely [would] NOT be prohibited from entering Canada” *Id.* While a comprehensive analysis of the travel and visa restrictions of other foreign governments is not within the scope of this short reply brief (it would be in a supplemental brief if review is accepted), it is highly likely that Manro would face severe limitations on his ability to enter many countries around the world.

V. CONCLUSION.

In the end the State’s argument amounts to a cruel absurdity: that a defendant who demanded justice at every step of his case, who sought review promptly, and who turned out to be right, can have his issue mooted by delays not of his own making, but, rather, inflicted on him by

others. Others wasted his time, says the State, and now time must waste
him. It is inconceivable that justice would allow this result.

DATED: October 18, 2008.

Respectfully submitted,

COHEN & IARIA
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By:



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DECLARATION OF SERVICE

I, Breanna Caldwell, do hereby declare:

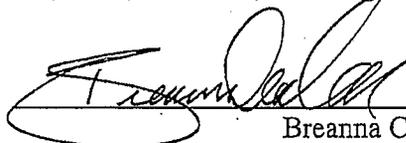
1. That I am over the age of eighteen years, that I am now and at all times relevant was a citizen of the United States and resident in the State of Washington and that I am not a party to this action.

2. That on the 20th day of October, 2008, I served a copy of the MOTION FOR DISCRETIONARY REVIEW PETITIONER'S REPLY and this DECLARATION OF SERVICE by ABC Legal Messenger, to be delivered on or before October 20th, 2008, to the following location:

Ann Marie Summers
King County Prosecutor's Office
516 3rd Ave Ste W554
Seattle, WA 98104-2362

I declare under penalty of perjury under the laws of the State of Washington that the information contained in the foregoing Declaration of Service is true and correct.

SIGNED this 20th day of October, 2008, in Seattle, Washington.


Breanna Caldwell

OFFICE RECEPTIONIST, CLERK

To: Michael Iaria
Subject: RE: No. 81600-0 - In re PRP of Montgomery Manro - Reply Brief of Petitioner

Rec. 10-20-08

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Michael Iaria [mailto:mpi@cohen-iarria.com]
Sent: Monday, October 20, 2008 9:57 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: No. 81600-0 - In re PRP of Montgomery Manro - Reply Brief of Petitioner

Pursuant to the order of the court dated September 4, 1997, I have attached for filing the following documents in *In re the Personal Restraint of Montgomery Manro*, No. 81600-0:

- Reply Brief of Petitioner
- Declaration of Service

Sincerely,

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