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SUPREME COURT  
STATE OF WASHINGTON

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CLERK

In re Personal Restraint  
Petition of

No. 81600-0

STATE'S RESPONSE TO  
MOTION FOR  
DISCRETIONARY  
REVIEW

MONTGOMERY MANRO,  
Petitioner.

A. ISSUE PRESENTED ON REVIEW.

Whether Manro's misdemeanor convictions for assault in the fourth degree constitute unlawful restraint that amounts to a fundamental defect where the fact that the lawful convictions were entered in adult court results in no additional disability.

B. ARGUMENT.

PETITIONER HAS FAILED TO ESTABLISH UNLAWFUL RESTRAINT THAT CONSTITUTES A FUNDAMENTAL DEFECT RESULTING IN A COMPLETE MISCARRIAGE OF JUSTICE.

An appellate court will grant substantive review of a personal restraint petition only when the petitioner makes a threshold

STATE'S RESPONSE TO  
PERSONAL RESTRAINT PETITION

showing of constitutional error from which he has suffered actual prejudice or nonconstitutional error which constitutes a fundamental defect that inherently resulted in a complete miscarriage of justice. In re Personal Restraint of Cook, 114 Wn. 2d 802, 813, 792 P.2d 506 (1990). In a personal restraint petition, petitioner bears the burden of showing prejudicial error. State v. Brune, 45 Wn. App. 354, 363, 725 P.2d 454 (1986).

In State v. Posey, \_\_\_ Wn.2d \_\_\_, 167 P.3d 560, 564 (2007), this Court held that under former RCW 13.04.030(1)(e)(v)(A), in effect in 2002 when Manro committed these crimes, when a juvenile has been acquitted in adult court of the crime that triggered automatic decline, the case should be remanded to juvenile court for a decline hearing or a sentencing. By so holding the court overturned the Court of Appeals holding in Manro's direct appeal. Thus, if Manro were younger than twenty-one years of age, the remedy in this case would be remand to juvenile court for a either a decline hearing or sentencing before the juvenile court.

But two facts make this remedy impossible. First, Manro has completed his sentence. Second, Manro's date of birth is October 13, 1984, and thus he is now 23 years old. Pursuant to RCW 13.40.300(3) provides that "In no event may the juvenile court have

authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday except for the purpose of enforcing an order of restitution or penalty assessment." The juvenile court can have no jurisdiction over Manro now that he is over twenty-one years old. This case cannot be remanded to the juvenile court.

Manro was lawfully convicted by a jury of the crime of assault in the fourth degree. There is no constitutional right to be tried as a juvenile, and thus the error alleged in this case is not constitutional. State v. Warner, 125 Wn.2d 876, 889, 889 P.2d 479 (1995). In order to be entitled to the only relief available, vacation of his conviction altogether, Manro must establish that entry of the judgment in this case constitutes a fundamental defect that inherently results in a complete miscarriage of justice. It does not. At this point, the fact that the judgment and sentence was entered by the adult court rather than the juvenile court constitutes a technical procedural defect. Collateral relief is not warranted for technical procedural violations that do not rise to the level of a deprivation of due process. In re Personal Restraint of Gronquist, 89 Wn. App. 596, 950 P.2d 492 (1997), reversed on other grounds, 138 Wn.2d 388, 978 P.3d 1083 (1999).

Under the circumstances, Manro's convictions of two adult misdemeanor do not constitute unlawful restraint. RAP 16.4(b) defines restraint as "limited freedom", "confinement" or "imminent confinement" or "some other disability." Manro's adult convictions do not constitute additional restraint under this standard. Manro is not under confinement or subject to imminent confinement. Manro's freedom is not limited by these misdemeanor convictions. While a felony conviction constitutes a disability under the offender score provisions of the Sentencing Reform Act because it may increase the sentence for subsequent crimes, this is not true of misdemeanor assault convictions, whether they are juvenile or adult. See RCW 9.94A.525. And, while a misdemeanor conviction may affect the washout of any prior felony convictions under the Sentencing Reform Act, this effect remains the same whether or not the crime is punished as an adult or juvenile offense. See RCW 9.94A.525(2). The 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). Manro has failed to establish that his lawful convictions for assault in the fourth degree constitute unlawful restraint that is a

fundamental defect that inherently results in a complete miscarriage of justice.<sup>1</sup>

E. CONCLUSION.

This petition was properly dismissed by the Court of Appeals. The motion for discretionary review should be denied.

DATED this 3rd day of October, 2008.

Respectfully Submitted,

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<sup>1</sup> Even if this were a constitutional claim, Manro has failed to establish actual prejudice.

