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

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FILED  
COURT OF APPEALS DIV #1  
STATE OF WASHINGTON

In re Personal Restraint )  
Petition of )  
)  
)  
)  
)  
)  
MONTGOMERY MANRO, )  
Petitioner. )  
\_\_\_\_\_ )

No. 57651-8-1

STATE'S RESPONSE TO  
PERSONAL RESTRAINT  
PETITION

A. AUTHORITY FOR RESTRAINT OF PETITIONER.

Montgomery Manro is restrained pursuant to judgment and sentence in King County Superior Court No. 02-C-03980-1 SEA.

Appendix A.

B. ISSUES PRESENTED.

Whether this petition should be dismissed where petitioner has failed to establish a fundamental defect inherently resulting in a complete miscarriage of justice.

C. STATEMENT OF THE CASE.

Seventeen-year-old Montgomery Manro and three friends attacked two other high school students in a parking lot. One of the

STATE'S RESPONSE TO  
PERSONAL RESTRAINT PETITION

victims suffered a skull fracture and brain injury resulting in paralysis on the right side of his body. Appendix B, Opinion at 3. Manro and three co-defendants were charged by information with the crime of assault in the first degree with a deadly weapon. Manro and another co-defendant were also charged with assault in the fourth degree. Although all the defendants were juveniles, the charges were filed in adult court due to the automatic decline provisions of RCW 13.04.030.

A jury trial was held, and Manro's three co-defendants were convicted as charged. Manro turned 18 before completion of the trial. Appendix B, Opinion at 3. The jury only found Manro guilty of two counts of assault in the fourth degree. Manro's case was not returned to juvenile court. Rather, Manro was sentenced in adult court to a suspended sentence with seven months of incarceration and 240 hours of community service. Appendix A.

Manro appealed. The Court of Appeals affirmed the conviction and sentence, holding that adult court had jurisdiction to sentence Manro for assault in the fourth degree. The Supreme Court denied review. Mandate issued on November 18, 2005. Appendix B.

On December 16, 2005, the superior court ordered Manro to report to the King County Jail and commence serving his sentence on February 14, 2006. Appendix C. On December 27, 2005, Manro filed a Petition for Writ of Habeas Corpus in the superior court. This Petition was transferred to this Court for consideration as a personal restraint petition on January 19, 2006. The petition was stayed pending resolution of State v. Posey, No. 78043-9, in the Supreme Court. It appears that Manro was booked into the King County Jail on February 14, 2006, and released on July 1, 2006. Appendix D.

D. ARGUMENT.

PETITIONER HAS FAILED TO ESTABLISH 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 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), the supreme 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 this Court's 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. While, pursuant to the recent holding in Posey, the sentence possibly should have been imposed by the juvenile court rather than the adult court,<sup>1</sup> this is not a basis for vacating the underlying conviction. Given that remand to juvenile court is no longer possible due to Manro's age, the existing judgment and sentence should be allowed to stand.

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

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<sup>1</sup> It is also possible that the juvenile court would have declined jurisdiction and Manro would have been sentenced by the adult court anyway.

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).

E. CONCLUSION.

This petition should be dismissed.

DATED this 7<sup>th</sup> day of December, 2007.

Respectfully Submitted,

DAN SATTERBERG  
King County Prosecuting  
Attorney

by   
ANN SUMMERS, #21509  
Senior Deputy Prosecuting  
Attorney

Attorneys for Respondent  
Office ID #91002

W554 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104  
(206) 296-9650

## APPENDIX A

FILED

03 FEB 28 AM 10: 05

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA.

CERTIFIED COPY TO COUNTY JAIL FEB 28 2003

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

MONTGOMERY A. MANRO

Defendant,

No. 02-C-03980-1 SEA

JUDGMENT AND SENTENCE,

NON-FELONY

SUSPENDED/RCW 9.92.060

Count(s) I AND II

*and Liza BURKE*

The Prosecuting Attorney, the above-named defendant and counsel MICHAEL IARIA being present in Court, the defendant having been found guilty of the crime(s) charged in the amended information on 12/16/2002 by trial and the defendant having been asked if there was any legal cause why judgment should not be pronounced and none being shown.

IT IS ADJUDGED that the defendant is guilty of the crime(s) of: I- ASSAULT IN THE FOURTH DEGREE/RCW 9A.36.041 AND II- ASSAULT IN THE FOURTH DEGREE/RCW 9A.36.041

*12 MONTHS ON EACH CT*

and that the defendant be sentenced to imprisonment in the King County Jail, Department of Adult Detention, for the maximum term(s) of 12 MONTHS ON EACH CT

said term(s) to run  concurrently [ ] consecutively with each other.

The sentence(s) is/are hereby SUSPENDED pursuant to the provisions of RCW 9.92.060 upon the following terms and conditions:

(1) The defendant shall serve a term of 7 MONTHS in the King County Jail, Department of Adult Detention, with credit for 4 days already served solely on this cause, ~~with work release if eligible~~, to commence no later than 6/25/03 3:50pm. This sentence shall run [ ] concurrent  consecutively with term(s) imposed for count(s) I & II [ ] Cause # \_\_\_\_\_ This term shall run consecutive to any other term not specifically referenced in this order.

(2) The defendant shall be under the charge of a Community Corrections Officer employed by the Washington State Department of Corrections and comply with the standard rules and regulations promulgated by that department. Probation shall commence immediately but is tolled during any period of confinement. The defendant shall report to the Department of Corrections intake officer within 72 hours of this date or release date if in custody. The termination date of probation shall be set at 12 months from date of this order.

*\* 30 DAYS converted to 240 Hours Community Service*

(3) Defendant shall pay to the clerk of this Court:

Restitution is not ordered.

Order of Restitution is attached as Appendix.

Restitution to be determined at a restitution hearing on \_\_\_\_\_ at \_\_\_\_\_ m.  date to be set. The defendant ~~does~~/does not waive presence at restitution hearing.

(a) \$ 892.50, Court costs;

(b) \$ 500, Victim assessment, RCW 7.68.035 \$500 for gross misdemeanors and \$100 for misdemeanors.

(c) \$ \_\_\_\_\_, Recoupment for attorney's fees to King County Public Defense Programs.

(d) \$ \_\_\_\_\_, Fine;

(e) TOTAL Monetary obligations: 1392.50 + restitution if any.

(f) The above payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:  Not less than \$ \_\_\_\_\_ per month;  On a schedule established by the defendant's Community Corrections Officer.

(4)  The defendant shall complete 240 community service hours under the supervision of the Department of Corrections at a rate ~~to~~ to be determined by a Community Corrections Officer  of not less than \_\_\_\_\_ hours per month.

(5)  The defendant shall not purchase, possess, or use any  alcohol  controlled substance (without a lawful prescription). The defendant shall submit to urinalysis and/or breath testing as required by the Community Corrections Officer and submit to search of person, vehicle or home by a community corrections officer upon reasonable suspicion; \_\_\_\_\_

(6)  The defendant shall <sup>maintain</sup> ~~obtain~~ substance abuse evaluation and follow all treatment recommendations; \_\_\_\_\_

(7)  The defendant shall enter into, make reasonable progress and successfully complete a state certified domestic violence treatment program; \_\_\_\_\_

(8)  The defendant shall have no contact with: SEAN MACHAK; KALEKA HOOKANO; Amy OTHM, STATE'S WITNESSES

(9)  The defendant shall register as a sex offender.

(10)  The defendant shall commit no criminal offenses.

(11)  Additional conditions of probation are attached to and incorporated in this order; \_\_\_\_\_

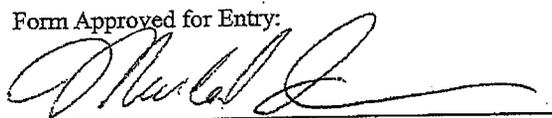
(12) Additional conditions are attached to and incorporated as Appendix \_\_\_\_\_.

The Defendant is ordered to report to commence probation supervision within three working days to the Department of Corrections Intake Officer.

Date: 2/14/03

  
Judge, King County Superior Court

Presented by:  
D. Skp 17322  
Deputy Prosecuting Attorney

Form Approved for Entry:  
  
Attorney for Defendant, WSBA # 15312

Defendant's current address:  
13245 67th AVE  
NE, Kirkland WA.  
98034

## APPENDIX B

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

STATE OF WASHINGTON,	)	
	)	No. 52013-0-1
Respondent,	)	
	)	MANDATE
v.	)	
	)	King County
MONTGOMERY A. MANRO,	)	
	)	Superior Court No. 02-1-03980-1.SEA
Appellant.	)	

**FILED**  
 2005 NOV 22 PM 4:10  
 KING COUNTY CLERK  
 SUPERIOR COURT  
 SEATTLE, WA.

**THE STATE OF WASHINGTON TO:** The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on January 10, 2005, became the decision terminating review of this court in the above entitled case on November 18, 2005. An order denying a petition for review was entered in the Supreme Court on October 5, 2005. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.

Pursuant to RAP 14.4, attorney fees in the amount of \$5524.75 are awarded in favor of judgment creditor WASHINGTON OFFICE OF PUBLIC DEFENSE and costs in the amount of \$56.17 are awarded in favor of judgment creditor KING COUNTY PROSECUTING ATTORNEY against judgment MONTGOMERY MANRO.

- c: Neil Fox
- Michael Iaria
- Andrea Vitalich- KCPA
- Hon. Richard Jones
- Indeterminate Sentencing Review Board

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 18th day of November, 2005.

*[Handwritten Signature]*  
**RICHARD D. JOHNSON**  
 Court Administrator/Clerk of the Court of Appeals,  
 State of Washington, Division I.



IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	DIVISION ONE
	)	No. 52013-0-1
Respondent,	)	<b>PUBLISHED OPINION</b>
	)	
vs.	)	
	)	
MONTGOMERY A. MANRO,	)	
	)	
Appellant.	)	FILED: <u>JAN 10 2005</u>
_____	)	

2005 JAN 10 11:15  
FILED

**BAKER, J.** — This appeal is based on the mistaken assumption that the outcome of a prosecution dictates court jurisdiction. When Montgomery Manro was 17, he was transferred from juvenile court to adult court under RCW 13.04.030(1)(e)(v) and tried on one count of first degree assault and one count of fourth degree assault. RCW 13.04.030(1)(e)(v) grants the adult court exclusive jurisdiction over cases involving 16- or 17-year-old defendants who are charged with certain enumerated, violent offenses, including assault in the first degree. Manro turned 18 after his trial began, but before the jury verdict.

The jury acquitted Manro of first degree assault, but found him guilty of the lesser crime of fourth degree assault on count I. He was also found guilty of fourth degree assault, as charged, on count II, and sentenced to 8 months confinement. He now appeals his conviction, and argues that the trial court erred by not granting his motion to extend juvenile jurisdiction under RCW 13.40.300,

in anticipation that he might be acquitted of the first degree assault charge. But the jury verdict had no affect on adult court jurisdiction. Hence, even if it had been authorized to do so, there was no reason for the adult court to provisionally extend juvenile jurisdiction. We affirm.

I.

When Montgomery Manro was 17 years old, he and three of his friends attacked two other high school students in a parking lot. One of the victims suffered a skull fracture and brain injury, resulting in paralysis on the right side of his body. Manro was charged with one count of assault in the first degree and one count of assault in the fourth degree. Manro was tried in adult court because first degree assault is a serious violent offense, which results in automatic transfer to adult court under RCW 13.04.030.

Before trial, Manro moved to dismiss the first degree assault charge on the grounds that the State did not have sufficient evidence to take the charge to a jury.<sup>1</sup> Alternatively, he requested that the court dismiss the charge without prejudice and remand the case to juvenile court, so that Manro could request that court to extend juvenile jurisdiction. The State could then re-file the first degree assault charge in adult court. This request was based on Manro's belief that if he were found not guilty of first degree assault, the fourth degree assault charge and any lesser charges under count I would then be remanded to juvenile court as long as he was 17 when his trial began. The presiding judge denied the motions.

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<sup>1</sup> State v. Knapstad, 107 Wn.2d 346, 354, 729 P.2d 48 (1986).

The following week, Manro reiterated his motion to dismiss without prejudice to a different judge. The judge did not rule on the merits of the motion. Instead, he scheduled the matter for trial on the next available trial date, thus ensuring that trial would begin before Manro turned 18. He also noted that the trial court would address Manro's motion.

The trial commenced on October 9, 2002.<sup>2</sup> Manro requested that the court extend juvenile jurisdiction over the fourth degree assault charge and all lesser charges under count I, should the first degree assault charge be removed for any reason. The court denied his request, after concluding it did not have authority under RCW 13.40.300 to extend juvenile jurisdiction. It noted that the case "is properly charged at this point in time in adult court and will remain so," therefore the "juvenile court lacks jurisdiction to accept or hear this case."

Manro turned 18 on October 13. On December 16, he was acquitted of first degree assault, but found guilty of the lesser crime of fourth degree assault on count I. He was also found guilty as charged on count II.

Before sentencing, Manro moved unsuccessfully to enter a nunc pro tunc order extending juvenile jurisdiction and to arrest judgment or grant a new trial. He was sentenced to two consecutive 12-month sentences, which were suspended on the condition that he serve 7 months in custody on count I and 30 days on count II.

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<sup>2</sup> We reject the State's assertion that trial did not commence until the later date when jury impaneling began. See State v. Carson, 128 Wn.2d 805, 820, 912 P.2d 1016 (1996) (holding that a trial commences when the trial court hears and disposes of preliminary motions).

## II.

We engage in statutory interpretation and review appeals involving constitutional rights de novo.<sup>3</sup>

Two statutory provisions are implicated in this appeal. The first is RCW 13.04.030(1)(e)(v). RCW 13.04.030 provides for exclusive original jurisdiction in the juvenile division of superior court (juvenile court) for all proceedings involving defendants below 18 years of age, with some exceptions.<sup>4</sup> The criminal division of superior court (adult court) has jurisdiction over juveniles in two circumstances. The juvenile court can transfer jurisdiction to adult court under RCW 13.40.110 after it holds a "declination hearing" to determine whether declination of juvenile court jurisdiction is in the best interests of the juvenile and the public.<sup>5</sup> Alternatively, if the juvenile is 16 or 17 and the alleged offense is enumerated in RCW 13.04.030(1)(e)(v), the defendant is automatically transferred, and the adult court has exclusive jurisdiction.<sup>6</sup> When a defendant is charged with a violent crime that automatically places him within the authority of adult court, the court has exclusive jurisdiction over all charges against the defendant.<sup>7</sup>

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<sup>3</sup> Est. of Otani v. Broudy, 151 Wn.2d 750, 753, 92 P.3d 192 (2004); State v. Stanley, 120 Wn. App. 312, 314, 85 P.3d 395 (2004).

<sup>4</sup> The juvenile court is a branch or "session" of the superior court. In re Dillenburg v. Maxwell, 70 Wn.2d 331, 352, 422 P.2d 783 (1967). Therefore, referring to the "jurisdiction" of adult versus juvenile court is not a truly accurate use of the word with respect to its traditional meaning. Dillenburg, 70 Wn.2d at 353.

<sup>5</sup> RCW 13.40.110; State v. Anderson, 83 Wn. App. 515, 518, 922 P.2d 163 (1996).

<sup>6</sup> RCW 13.04.030.

<sup>7</sup> State v. Salavea, 151 Wn.2d 133, 141 n.3, 86 P.3d 125 (2004); In re Boot, 130 Wn.2d 553, 575, 925 P.2d 964 (1996); State v. Sharon, 100 Wn.2d 230, 231, 668 P.2d 584 (1983).

The second provision involved in this appeal is RCW 13.40.300. It authorizes the juvenile court to extend jurisdiction over a defendant past his 18th birthday in some circumstances.<sup>8</sup> But the juvenile court must have jurisdiction over the proceeding before it can extend jurisdiction.<sup>9</sup> Juvenile jurisdiction ends when a defendant turns 18, unless the court has extended jurisdiction under RCW 13.40.300.<sup>10</sup>

Manro argues that the trial court erred by concluding that RCW 13.40.300 does not permit the adult court to extend juvenile jurisdiction. He maintains that this interpretation of the statute is incorrect and inconsistent with the constitution and international law. First, Manro urges this court to read language into RCW 13.40.300 that authorizes the adult court to extend juvenile jurisdiction. Alternatively, Manro argues that RCW 13.40.300 is unconstitutional because it violates his rights to equal protection and procedural due process.

Manro makes an incorrect assumption about the law. His arguments concerning RCW 13.40.300 are based on his assumption that jurisdiction was defeated under RCW 13.04.030 when the jury acquitted him of first degree assault. He believes that if he had still been 17 years old at that time, his case would have been remanded to juvenile court. No appellate court has decided

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<sup>8</sup> It cannot extend jurisdiction past age 21, however. RCW 13.40.300(c)(3).

<sup>9</sup> RCW 13.40.300(1)(a). The statute allows the court to extend jurisdiction when proceedings are pending, when it is necessary for the imposition of disposition or execution of disposition, and if the court previously extended jurisdiction.

<sup>10</sup> RCW 13.40.300(4).

whether the outcome of the prosecution affects jurisdiction under RCW 13.04.030(1)(e)(v).

Manro cites State v. Mora<sup>11</sup> in support of his position. In Mora, our Supreme Court considered whether the adult court lost jurisdiction when the State amended charges against a defendant to include only non-automatic-transfer offenses.<sup>12</sup> The defendant was originally charged with assault in the second degree with a firearm, which is an enumerated offense under RCW 13.04.030(1)(e)(v), and he was transferred to adult court.<sup>13</sup> The State later amended the charges to possession of a firearm and assault in the third degree in exchange for the defendant stipulating to facts.<sup>14</sup> The latter offenses do not automatically invoke adult court jurisdiction. Rather, the juvenile court must hold a declination hearing before a juvenile defendant is transferred to adult court to be tried on such charges. Mora appealed his adult court conviction, arguing that jurisdiction was no longer appropriate when the State amended the charges. Our Supreme Court agreed. It concluded that "adult court jurisdiction over a juvenile is not irrevocable or absolute,"<sup>15</sup> and noted that it is the nature of the charges, not the charging decision, that dictates adult court jurisdiction.<sup>16</sup>

Unlike Mora, the statutory criteria for exclusive original jurisdiction under RCW 13.04.030(1)(e)(v) were met in this case. The State did not amend the charges against Manro. Rather, he was found not guilty of assault in the first

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<sup>11</sup> 138 Wn.2d 43, 977 P.2d 564 (1999).

<sup>12</sup> Mora, 138 Wn.2d at 48.

<sup>13</sup> RCW 13.04.030(1)(e)(v)(E); Mora, 138 Wn.2d at 46.

<sup>14</sup> Mora, 138 Wn.2d at 47.

<sup>15</sup> Mora, 138 Wn.2d at 53.

<sup>16</sup> Mora, 138 Wn.2d at 52.

degree. Thus, we must first decide whether acquittal of all automatic-transfer offenses defeats adult court jurisdiction under RCW 13.04.030(1)(e)(v).

#### A. RCW 13.04.030(1)(e)(v)

When a statute is ambiguous, we apply principles of statutory construction, legislative history, and relevant case law, giving effect to the Legislature's intent.<sup>17</sup> But when the plain language of a statute is clear on its face, we do not engage in rules of statutory interpretation. We interpret statutory language in context of the entire statute and its purpose, and avoid strained interpretations.<sup>18</sup> Where possible, however, we will interpret a statute as constitutional.<sup>19</sup>

RCW 13.04.030 is clear on its face. While some jurisdictions have adopted statutes that provide procedures upon acquittal of all automatic-transfer charges,<sup>20</sup> RCW 13.04.030 is silent on this issue. But its wording indicates that it

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<sup>17</sup> Yousoufian v. Office of Ron Sims, \_\_\_ Wn.2d \_\_\_, 98 P.3d 463, 471 (2004).

<sup>18</sup> City of Seattle v. Clark-Munoz, 152 Wn.2d 39, 43-44, 93 P.3d 141 (2004).

<sup>19</sup> Public Utility Dist. No. 1 v. Dep't of Ecology, 146 Wn.2d 778, 834-35, 51 P.3d 744 (2002) (citing State v. Furman, 122 Wn.2d 440, 458, 858 P.2d 1092 (1993); Grant v. Spellman, 99 Wn.2d 815, 827, 664 P.2d 1227 (1983); State v. Collins, 55 Wn.2d 469, 470, 348 P.2d 214 (1960); State ex rel. Davis v. Clausen, 160 Wash. 618, 632, 295 P. 751 (1931)).

<sup>20</sup> E.g., 18 U.S.C.A. § 5032 (requiring that further proceedings against a juvenile be held pursuant to the juvenile delinquency statute whenever a juvenile "is not convicted of the crime upon which the transfer [to district court] was based or another crime which would have warranted transfer"); Or. Rev. Stat. § 419C.361 (providing that if "the person is found guilty of any lesser included offense that is not itself a waivable offense, the trial court shall not sentence the defendant therein, but the trial court shall order a presentence report to be made in the case, shall set forth in a memorandum such observations as the court may make regarding the case and shall then return the case to the juvenile court in order that the juvenile court make disposition in the case based upon the guilty

is the nature of the charge which justifies adult court jurisdiction. It states, "the juvenile courts in this state shall have exclusive original jurisdiction . . . unless . . . [t]he juvenile is sixteen or seventeen years old and the alleged offense is [a] serious violent offense as defined in RCW 9.94A.030 . . . ." <sup>21</sup> Use of the word "alleged" indicates that our Legislature intended the charge, not the final outcome, to dictate the proper court jurisdiction. <sup>22</sup> The Legislature's silence regarding alternative procedures upon acquittal of all automatic-transfer charges also indicates that the outcome of the prosecution has no effect on jurisdiction.

This interpretation is consistent with one of the purposes behind the Juvenile Justice Act, which is to "[p]rovide for a clear policy . . . to determine the jurisdictional limitations of the courts." <sup>23</sup> If the Legislature intended the outcome of the prosecution to dictate jurisdiction, then adult court jurisdiction would be provisional throughout the prosecution. This does not harmonize with the Legislature's intent to clearly delineate jurisdictional boundaries. Nor does it mesh with one of its objectives for adopting the automatic-transfer provision,

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finding in the court of waiver"); Conn. Gen. Stat. § 46b-127(c) (providing that if a "child is found not guilty of the charge for which he was transferred or of any lesser included offenses," the child resume his status as a juvenile).

<sup>21</sup> RCW 13.04.030(1)(e)(v)(A) (emphasis added).

<sup>22</sup> Colorado courts have adopted the same interpretation of "alleged," reasoning the words "charged" and "alleged" demonstrate that "the [Colorado Legislature] intended the Indictment, and not the subsequent conviction, to trigger the allocation of juvenile and district court jurisdiction." Further, "jurisdiction is not lost simply because the juvenile defendant is convicted of a lesser offense." People v. Davenport, 602 P.2d 871, 872 (Colo. App. 1979) (citing Gray v. State, 6 Md.App. 677, 253 A.2d 395 (1969)); People v. Hughes, 946 P.2d 509 (Colo. App. 1997) (overruled on other grounds).

<sup>23</sup> RCW 13.40.010(2)(j); State v. Cirkovich, 41 Wn. App. 275, 279, 703 P.2d 1075 (1985) (noting that "one of the express purposes of the Act as stated in RCW 13.40.010(2)(j) is to provide clear policy as to jurisdiction").

which was to reduce the fiscal impact of violence.<sup>24</sup> Valuable court time and money would be wasted if adult court jurisdiction was deemed improper after a full trial.

Thus, RCW 13.04.030 is clear on its face—jurisdiction attaches when certain enumerated offenses are charged. The outcome of the prosecution has no affect on jurisdiction. The plain language of the statute, coupled with the Legislature's objectives, leaves no room for a different interpretation.<sup>25</sup>

### **B. Constitutional Challenges**

Because Manro incorrectly assumed the acquittal of first degree assault defeated adult court jurisdiction, he did not question the constitutionality of RCW 13.04.030. Rather, he only challenged the constitutionality of RCW 13.40.300. Regardless, RCW 13.04.030 is constitutional.

In In re Boot,<sup>26</sup> Justice Alexander noted in a concurring opinion that the application of RCW 13.04.030 may cause two defendants of the same age, who commit the same crimes, to suffer different punishment.<sup>27</sup> This is, in fact, the circumstance in which Manro finds himself. He is being punished more severely than would be a defendant of the same age, who was found guilty of two counts of fourth degree assault in juvenile court.

Nevertheless, equal protection does not ensure complete equality among individuals or classes. Rather, it ensures equal application of the laws to persons

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<sup>24</sup> Laws of 1994, 1st Sp. Sess., ch. 7, § 101, at 2197-98.

<sup>25</sup> Further, Manro's argument that the statute be read in compliance with international law is unavailing. We will not misconstrue a constitutional statute in order to comply with principles under international law.

<sup>26</sup> 130 Wn.2d 553, 925 P.2d 964 (1996).

<sup>27</sup> Boot, 130 Wn.2d at 577-78 (Alexander, J., concurring).

similarly situated.<sup>28</sup> Our Supreme Court has held that initially sending two 16- or 17-year-old defendants to different courts based on the nature of the charges against them is constitutional.<sup>29</sup> Two juveniles are no longer similarly situated once they are sent on different paths, one in adult court and the other in juvenile. Thus, we do not engage in an equal protection analysis.

Manro also argues that "to prohibit the extension of juvenile jurisdiction over non-auto-decline offenses would be to approve of the transfer of such offenses to adult court without a decline hearing, in violation of the due process clause." But our Supreme Court has held that when a defendant is charged with an automatic transfer offense, the adult court is vested with exclusive jurisdiction over all charges against the defendant.<sup>30</sup> Because Manro was properly tried in adult court under RCW 13.04.030(1)(e)(v), he was not entitled to a declination hearing under RCW 13.40.110. Therefore, he was not deprived of procedural due process.<sup>31</sup>

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<sup>28</sup> State v. Simmons, \_\_\_\_ Wn.2d \_\_\_\_, 98 P.3d 789, 793 (2004).

<sup>29</sup> Boot, 130 Wn.2d at 572, 574.

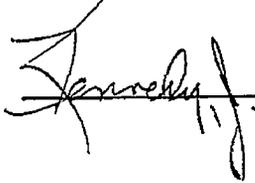
<sup>30</sup> Salavea, 151 Wn.2d at 141 n.3; Boot, 130 Wn.2d at 575; Sharon, 100 Wn.2d at 231.

<sup>31</sup> Even if jurisdiction was improper, Manro would not be deprived of due process. When the adult court improperly exercises jurisdiction over a defendant, but he has since turned 18, the appropriate remedy is to hold a Dillenburg hearing in adult court. Dillenburg, 70 Wn.2d at 355-56; State v. Anderson, 83 Wn. App. 515, 522, 922 P.2d 163 (1996). The court holds a Dillenburg hearing to determine whether jurisdiction would have been appropriate after a declination hearing. It offers the same constitutional guarantees as a declination hearing. Dillenburg, 70 Wn.2d at 355. If jurisdiction is deemed improper after a Dillenburg hearing, a conviction will be vacated and the defendant retried in adult court. Dillenburg, 70 Wn.2d at 355-56.

52013-0-1/11

AFFIRMED.

WE CONCUR:

 \_\_\_\_\_

 \_\_\_\_\_

 \_\_\_\_\_

## APPENDIX C

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KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

~~COMMITMENT~~

DEC 21 2005

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, )  
 )  
 ) Plaintiff, )  
 )  
 ) vs. )  
 )  
 ) MONTGOMERY A. MANRO, )  
 )  
 ) Defendant, )

No. 02-C-03980-1 SEA

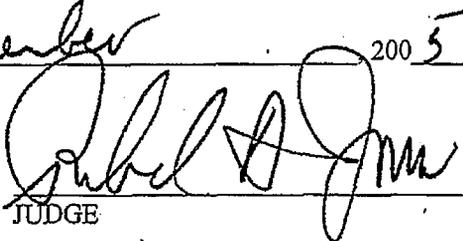
**ORDER DIRECTING  
COMMENCEMENT OF SENTENCE**

The Court having received a mandate issued on November 18, 2005 from the Court of Appeals affirming the court's judgment and sentence; and there being no further basis for staying execution of sentence, now, therefore,

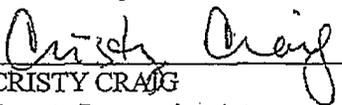
IT IS HEREBY ORDERED:

- (1) The Clerk shall forthwith issue a warrant of commitment in execution of the sentence order imposed on **February 14, 2003** (copy attached);
- (2) The defendant shall report to the King County Jail to commence serving this commitment **on or before February 14, 2006 @ 4:00 pm.**
- (3) The defendant shall report within 30 days to the Department of Corrections, Intake Officer, 1516 Second Avenue, Third Floor, Seattle, Washington, to commence supervision of the terms of the court's Judgment and Sentence.

DATED this 16<sup>th</sup> day of December 2005.

  
\_\_\_\_\_  
JUDGE

Presented by:

  
\_\_\_\_\_  
CRISTY CRAIG 27457  
Deputy Prosecuting Attorney

ORDER DIRECTING COMMENCEMENT  
OF SENTENCE

Norm Maleng, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000  
FAX (206) 296-0955



PHOTOCOPY

FILED

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KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 02-C-03980-1 SEA

vs.

JUDGMENT AND SENTENCE,

MONTGOMERY A. MANRO

NON-FELONY

SUSPENDED/RCW 9.92.060

Defendant,

Count(s) I AND II

*Liza Burke*

The Prosecuting Attorney, the above-named defendant and counsel MICHAEL IARIA being present in Court, the defendant having been found guilty of the crime(s) charged in the amended information on 12/16/2002 by trial and the defendant having been asked if there was any legal cause why judgment should not be pronounced and none being shown.

IT IS ADJUDGED that the defendant is guilty of the crime(s) of: I- ASSAULT IN THE FOURTH DEGREE/RCW 9A.36.041 AND II- ASSAULT IN THE FOURTH DEGREE/RCW 9A.36.041

and that the defendant be sentenced to imprisonment in the King County Jail, Department of Adult Detention, for the maximum term(s) of 12 MONTHS ON EACH CT

said term(s) to run  concurrently [ ] consecutively with each other.

The sentence(s) is/are hereby SUSPENDED pursuant to the provisions of RCW 9.92.060 upon the following terms and conditions:

(1) The defendant shall serve a term of 7 MONTHS in the King County Jail, Department of Adult Detention, with credit for 4 days already served solely on this cause, ~~with work credit if eligible~~, to commence no later than 6/25/03 5:50pm. This sentence shall run [ ] concurrent  consecutively with term(s) imposed for count(s) I & II [ ] Cause # \_\_\_\_\_ . This term shall run consecutive to any other term not specifically referenced in this order.

(2) The defendant shall be under the charge of a Community Corrections Officer employed by the Washington State Department of Corrections and comply with the standard rules and regulations promulgated by that department. Probation shall commence immediately but is tolled during any period of confinement. The defendant shall report to the Department of Corrections intake officer within 72 hours of this date or release date if in custody. The termination date of probation shall be set at 12 months from date of this order.

*30 DAYS converted to 240 HOURS commencing 6/25/03*

CERTIFIED COPY TO COUNTY JAIL FEB 28 2003

(3) Defendant shall pay to the clerk of this Court:

Restitution is not ordered.

Order of Restitution is attached as Appendix.

Restitution to be determined at a restitution hearing on \_\_\_\_\_ at \_\_\_\_\_ m.  date to be set. The defendant ~~does~~/does not waive presence at restitution hearing.

(a) \$ 892.50 Court costs;

(b) \$ 500.00 Victim assessment, RCW 7.68.035 \$500 for gross misdemeanors and \$100 for misdemeanors.

(c) \$ \_\_\_\_\_ Recoupment for attorney's fees to King County Public Defense Programs.

(d) \$ \_\_\_\_\_ Fine;

(e) TOTAL Monetary obligations: 1392.50 + restitution if any.

(f) The above payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:  Not less than \$ \_\_\_\_\_ per month;  On a schedule established by the defendant's Community Corrections Officer.

(4)  The defendant shall complete 240 community service hours under the supervision of the Department of Corrections at a rate  to be determined by a Community Corrections Officer  of not less than \_\_\_\_\_ hours per month.

(5)  The defendant shall not purchase, possess, or use any  alcohol  controlled substance (without a lawful prescription). The defendant shall submit to urinalysis and/or breath testing as required by the Community Corrections Officer and submit to search of person, vehicle or home by a community corrections officer upon reasonable suspicion; \_\_\_\_\_

(6)  The defendant shall maintain ~~obtain~~ substance abuse ~~evaluation and~~ ~~follow~~ treatment recommendations; \_\_\_\_\_

(7)  The defendant shall enter into, make reasonable progress and successfully complete a state certified domestic violence treatment program; \_\_\_\_\_

(8)  The defendant shall have no contact with: SEAN MACHAK; KALEKA HOOKLAND; Amy OHM, STATE'S WITNESSES

(9)  The defendant shall register as a sex offender.

(10)  The defendant shall commit no criminal offenses.

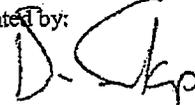
(11)  Additional conditions of probation are attached to and incorporated in this order; \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(12) Additional conditions are attached to and incorporated as Appendix \_\_\_\_\_.

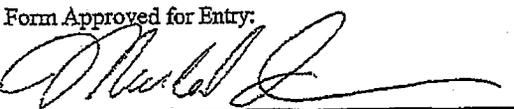
The Defendant is ordered to report to commence probation supervision within three working days to the Department of Corrections Intake Officer.

Date: 2/14/03

  
\_\_\_\_\_  
Judge, King County Superior Court

Presented by:  
 17322

Deputy Prosecuting Attorney

Form Approved for Entry:  
  
Attorney for Defendant, WSBA # 15312

Defendant's current address:  
13245 67th AVE  
NE Kirkland WA.  
98034

## APPENDIX D

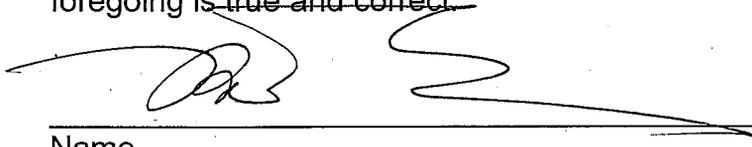
NAM MANRO, MONTGOMERY A DOB 10131984 POB  
 SEX M RAC W HGT 510 WGT 145 HAI BRO EYE BLU SKN VSM  
 ADDRESS 13245 67 AV NE KIRKLAND WA 98034  
 AREA 425 TELE 8215523 CTZ US OCC U/E EMPL U/E  
 OLN OLS OLY SOC 539218806 PROP#  
 \*\*\* THIS BOOKING HAS BEEN AFIS VERIFIED BY - KVIKING \*\*\*  
 ARRD 021406 ARRTM 1500 ARRA WA017033C ARRO 03034 00000 ARRU BK-UNIT 4  
 TRANA WA017033C TRANO 03034 ARRL 500 5TH AVE  
 BDT 021406 BTM 1510 BOF 03034 JSTAT SJS JLOC TOTBAIL .00  
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 DHRC DNA PCN 200696867 A-ST V A-NO 00741432 DOC  
 RELDT 070106 RELTM 0701 RELOF 09244 BONDCM TEMPL  
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 TOW MC ISA WA017015J WAR 021039801 COURT WA017015J CAUSE 021039801 COFF 003034  
 ORGAG WA0170800 CASE 020001662 SENTYP STYPDT CAAD  
 SENTDT 021406 MINDAYS 0140 MAXDAYS 0210 LASTDT 070106 DAYSERV 0002  
 CRELCD SE CRELDT 070106 CRELOF 07628 CHEFDT CHOF  
 COMTYP OAADT INSDT CTSNTDT 021406  
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CERTIFICATION OF SERVICE

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Neil Fox, at the following address: Cohen & Iaria, 1008 Western Avenue, Suite 302, Seattle, WA 98104, the attorney for the petitioner, containing a copy of the State's Response to Personal Restraint Petition in In re Montgomery Manro, No. 57651-8-1, in the Court of Appeals of the State of Washington.

I certify under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.



Name  
Done in Seattle, Washington

12-07-07  
Date

FILED  
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