



FILED

OCT 08 2008

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By gja

84891-2

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

V.

JOEL RODRIGUEZ RAMOS,

) NO. 25740-1-III

) STATEMENT OF ADDITIONAL GROUNDS  
) FOR REVIEW

I, Joel R. Ramos, have received and reviewed the opening brief prepared by my attorney. Summarized below are the Additional Grounds for Review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my Appeal is considered on the merits.

ADDITIONAL GROUNDS I

THE YAKIMA COUNTY SUPERIOR COURT SENTENCED MR. RAMOS TO AN INSUFFICIENT SPECIFIC TERM OF COMMUNITY PLACEMENT WHICH REQUIRES A NEW SENTENCING HEARING.

Due process protects against the deprivation of life, liberty or property. U.S. Const. Amend. 5 and 14, §1.

In Benton v. Maryland, 395 U.S. 784 (1969), the United States Supreme Court held that the Fourteenth Amendment's Due process and Equal Protection Clauses extend to state prosecutions.

The Washington State Constitution provides the same protections. Wash. Const. Art. I, § 3; Detention of Albrecht, 147 Wn.2d 1, 7 (2002)(citing In re Pers. Restraint of Young, 122

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW (1).

1, 26, 857 P.2d 989 (1993).

The threshold question in any due process challenge is whether the challenger has been deprived of a protected liberty interest in life, liberty or property. Personal Restraint of Cashaw, 123 Wn.2d 138, 143, 866 P.2d 8 (1994)(citing In re J.H., 117 Wn.2d 460, 472-73, 815 P.2d 1380 (1991)).

Liberty interest may arise from either of two sources, the Due Process Clause and state laws. Personal Restraint of Cashaw, supra at 123 Wn.2d 144,( citing Hewitt v. Helms, 459 U.S. 560, 566(1983)).

A trial Court abuses its discretion when it bases its decision on untenable grounds or reasons. State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995).

"Where a sentence is insufficient ly specific about the period of community placement required by law, remand for modification of the judgment and sentence to expressly provide for the correct period of community placement is the proper course". State v. Broadaway, 133 Wn.2d 118, 136, 942 P.2d363 (1997); see State v. Gallagher, 122 Wn.App. 601, 614, 51 P.3d 100 (2002).

In Mr. Ramos's case, the sentencing Court sentenced Mr. Ramos to insufficient Specific term of community placement. See Appendix A (J & S).

Said Order is an erroneous, unlawful Order. Mr. Ramos respectfully urges this Honorable Court to Order a new sentencing hearing hwere Mr. Ramos's term of community placement will be specified in accordance with the law.

MR. RAMOS' § DUE PROCESS AND EQUAL PROTECTION  
CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN  
THE APPELLANT WAS SUBJECTED TO HARSHER  
PENALTIES THAN THOSE ALLOWED  
BY THE JUVENILE JUSTICE ACT OF 1977.

Juvenile charged with crimes have a right to procedural due process. In re Gault, 387 U.S. 1, 87 S.ct. 1428, 18 L.ED2d 527 (1967).

The Juvenile Justice Act of 1977, RCW 13.40., abandoned the doctrine of "parens patriae" as the single guiding principle of Juvenile Justice and replaced it with twin principles of rehabilitation and punishment. While the act seeks to "[p]rovide necessary treatment, supervision, and custody for juvenile offenders", RCW 13.40.010(2)(f), it also seeks to [m]ake the juvenile offender accountable for his or her criminal behavior", RCW 13.40.010(2)(c), and provide for "punishment commensuated with the age, crime, and criminal history of the juvenile offender". RCW 13.40.010(2)(d). See generally comment, Waiver of Juvenile Court Jurisdiction Under the Juvenile Justice Act of 1977, 14 Gonz. L. Rev. 369, 376 (1978). In re Smiley, 96 Wn. 2d 950, 953, 640 P.2d 7(1982). see also State v. Posey, 161 Wn.2d 638, 641, 167 P.3d 560.

While a statute is clear on its face and unambiguous, the Court does not have to engage in an interpretation of the language. State v. Q.D., 102 Wn.2d 19, 29, 685 P.2d 557 (1984).

Statutory inquiry ends with the plain language of the statute and the Court assumes the legislature "means exactly what it says". State v. Delgado, 148 Wn.2d 723, 727-28, 63

P.3d 792 (2003)(quoting Davis v. Dep't of Licensing, 137 Wn.2d 957, 964, 977 P.2d 554 (1999)(noting words and clauses are not to be added to unambiguous statutes and criminal statutes are interpreted in a literal and strict manner).

The statute in question in this appeal is RCW 13.40.020(1993 ed.) of the Juvenile Justice Act of 1977.(J.J. ACT).

The pertinent part of the statute reads as follows;

(1) "Serious Offender" means a person fifteen [15] years of age or older who has committed an offense which if committed by an adult would be;

(a) a class A-felony, or an attempt to commit a class A-felony;...

The definitional section of the Juvenile Justice Act RCW 13.40.020 (1993 ed.), begins with the words, "For the purpose of this chapter". Davis v. Dep't of Licensing, 137 Wn.2d 957, 977 P.2d 554 (1999).

From subsection (1) of RCW 13.40.020 that in order to be classed as a Serious offender the juvenile had to be 15 years or older and must have committed an offense which an adult would have been one of various felonies.

Since all class A-felony and attempts to commit them are in subsection (a), all class A-felonies are obviously serious.

Each of the felonies listed is separately defined in its appropriate section of the criminal code. Subsection (1) does not change those definitions in anyway, either directly or indirectly.

This is precisely the distinction the Legislature has

made, ... and it is precisely the kind of distinction the Legislature is empowered to make. In re Boot, 130 Wn.2d 553, 573, 925 P.2d 964 (1996)(citing Inre Burttt's Welfare, 12 Wn.App. 564, 574, 530 P.2d 709 (Horewitz, J.), review denied, 85 Wn.2d 1014 (1975).

Therefore, it is clear that the focus of the legislature and the Juvenile Justice Act of 1977, was intended for 15 year olds or older, that committed a class A-felony; that they would be the focus for harsher penalties in the Juvenile Justice Act or possibly transferred to adult criminal Court under RCW 13.40.110(1)(a) a declne hearing in juvenile Court ...[shall] be held if the responent is 15, 16 or 17 years old and the information is a class A-felony... Personal Restraint of Dalluge, 152 Wn.2d 772,780, 100 P.3d 279 (2004); State v. Ollens, 89 Wn.App. 437, 949 P.2d 407(1998);State v. Fangundes, 26 Wn.App. 477, 481, 614 P.2d 198 (1980).

Both statutes RCW 13.40.020(1)(a) and 13.40.110(1)(a) are in the Juvenile Justice Act of 1977, and contain the similiar prerequisites, the age and the class A-felony.

At the time the proceeding were instituted on Mr. Ramos, he had just turned into a fourteen year old child with no psychological evaluation, or no determination of capacity.

The way that RCW 13.40.020 was written brings ambiguity.

At the begining of the statute it defines what a "Serious Offender" is, 15 years of age or older with a class A-felony, than it defines the rest of its definitions which were written in an alphabetical order and instead the Legislature placed it at the begining of RCW 13.40.020(1)(a); clearly emphasizes

its importance into Chapter 13.40.

This makes it more evident and clear on its face that the legislature and the Juvenile Justice Act of 1977 never intended to target children younger than 15 years of age or to consider them for harsher penalties or even worse try them as adults, RCW 13.40.110(1)(a) which also do not apply to younger than 15 years of age.

Had that been the intent/or desire of the Legislature it would have amended its statutory provision to include younger children.

In 1997, it did so by reapealed.

In 1993, Mr. Ramos was arrested and processed in to the Yakima County Juvenile Detention Center.

Mr. Ramos had just turned into a Fourteen (14) year old child, Charged with a class A-felony and he was under the Juvenile Justice Act of 1977(JJ Act of 1977) provision RCW 13. 40.

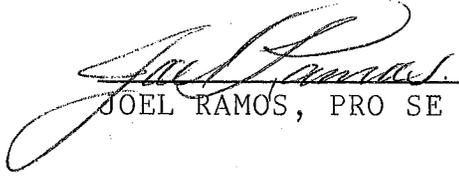
However, Mr. Ramos issue is that he was not a 15 year old child, and the JJ Act of 1977 could not consider him a "Serious Offender" or even consider him for a declin hearing.

As previously mention, both statutes 13.40.020(1)(a) and 13.40.110(1)(a) clearly shows a bright line rule on which juveniles the statutes applies to ( a 14 year old child does not apply, a 15 year old does apply).

neither statute gives discretion to the juvenile Court for consideration towards Mr. Ramos.

Had Mr. Ramos been 15 years old and charged with a class A-felony, the Court would have then considered him a "Serious Offender" and decline him to adult Court.

Dated: 10.6.08.

  
JOEL RAMOS, PRO SE

93-9-2293-4

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SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF YAKIMA

STATE OF WASHINGTON

ROLL 461 00004054

Plaintiff.

No. 93-1-1281-6

JOEL RODRIGUEZ RAMOS

Defendant.)

JUDGMENT AND SENTENCE (FELONY)

SID.NO.:

AUG 23 PM 12 06

I. HEARING

1. A sentencing hearing in this case was held: 8/23/93 (DATE) DOB: 2/27/79 M/F M RACE: Hispanic

EX OFFICIO CLERK OF SUPERIOR COURT

- 2. Present were: JOEL RODRIGUEZ RAMOS, Defendant; DIANA PARKER & JOY VAN NOSTERN, Defendant's Lawyer; JEFFREY C. SULLIVAN & DOUGLAS S. HAYNES, Deputy Prosecuting Attorney. 3. Count(s) have been dismissed by the court. 4. Defendant was asked if there was any legal cause why judgment should not be pronounced, and none was shown.

II. FINDINGS

Based on testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report and case record to date, the court finds:

1. CURRENT OFFENSE(S): The defendant was found guilty on August 23, 1993 (DATE) by jury verdict / by plea of guilty / by court trial

Count No. I Crime: First Degree Murder RCW: 9A.32.030(1)(a) Crime Code: Date of Crime: March 24, 1993 Law Enforcement Incident No. Yakima Sheriff # Count No. II Crime: First Degree Murder (Felony) RCW: 9A.32.030(1)(c) Crime Code: Date of Crime: March 24, 1993 Law Enforcement Incident No. Yakima Sheriff # Count No. III Crime: First Degree Murder (Felony) RCW: 9A.32.030(1)(c) Crime Code: Date of Crime: March 24, 1993 Law Enforcement Incident No. Yakima Sheriff #

- ( ) Count(s) includes a special verdict/finding for use of a deadly weapon/sexual motivation, attached hereto. ( ) Count(s) Current offenses encompassed the same criminal conduct and count as one crime in determining the offender score. (X) Additional current offenses are attached in Appendix A.

2. CRIMINAL HISTORY: Prior criminal history used in calculating the offender score (RCW 9.94A.360) is:

CRIME SENTENCING DATE ADULT/JUVENILE

NONE

FILED AUG 23 1993

( ) Additional criminal history is attached in Appendix B.

3. OTHER CURRENT CONVICTIONS Under other cause number used to determine offender score.

CRIME

CAUSE NUMBER YAKIMA COUNTY CLERK

Table with 5 columns: SENTENCING DATA, OFFENDER SCORE, OFFENSE SCORE, RANGE, MAXIMUM TERM. Rows for counts I, II, III, IV.

(X) Additional current offense(s) sentencing information is attached in Appendix C:

5. EXCEPTIONAL SENTENCE: ( ) Substantial and compelling reasons exist which justify a sentence (above) (below) the standard range for Count(s). See Appendix D.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the crime(s) of: COUNT I: FIRST DEGREE MURDER; COUNTS II, III, IV: FIRST DEGREE MURDER (FELONY)

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the conditions set forth below.

- 1. THE DEFENDANT shall pay the financial obligations as set forth in APPENDIX E. The defendant shall be under the jurisdiction to this court and the Department of Corrections, Community Corrections Office, Yakima, or such other office as may be designated, for up to 10 years for purposes of payment of the financial obligations. During the time payments remain due, the Office may order the defendant to report to a community corrections officer, remain within prescribed geographical boundaries, and/or notify the office of changes in address and employment. 2. OTHER orders and conditions follow on the attached pages of this judgment. 4 File #

APPENDIX A:

(Additional Current Offenses)

COUNT No: IV CRIME: FIRST DEGREE MURDER  
RCW: 9A.32.030(1)(c)  
CRIME CODE: \_\_\_\_\_  
DATE OF CRIME: 3-24-93  
LAW ENFORCEMENT NO.: \_\_\_\_\_

COUNT NO: \_\_\_\_\_ CRIME: \_\_\_\_\_  
RCW: \_\_\_\_\_  
CRIME CODE: \_\_\_\_\_  
DATE OF CRIME: \_\_\_\_\_  
LAW ENFORCEMENT NO.: \_\_\_\_\_

COUNT NO: \_\_\_\_\_ CRIME: \_\_\_\_\_  
RCW: \_\_\_\_\_  
CRIME CODE: \_\_\_\_\_  
DATE OF CRIME: \_\_\_\_\_  
LAW ENFORCEMENT NO.: \_\_\_\_\_

COUNT NO.: \_\_\_\_\_ CRIME: \_\_\_\_\_  
RCW: \_\_\_\_\_  
CRIME CODE: \_\_\_\_\_  
DATE OF CRIME: \_\_\_\_\_  
LAW ENFORCEMENT NO.: \_\_\_\_\_

JOEL RODRIGUEZ RAMOS

WA

DEFENDANT'S NAME

SID NUMBER

CONFINEMENT OVER ONE YEAR

1. Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows:

240 Months for Count No. I  
240 Months for Count No. II  
240 Months for Count No. III  
240 Months for Count No. IV  
 \_\_\_\_\_ Months for Count No. \_\_\_\_\_  
 \_\_\_\_\_ Months for Count No. \_\_\_\_\_

( ) The terms in Counts \_\_\_\_\_ are concurrent for a total term of \_\_\_\_\_ months.

(X) The terms in Counts I, II, III & IV are consecutive for a total term of 960 months.

( ) The sentence herein shall run (concurrently) (consecutively) with the sentence in \_\_\_\_\_

(X) Defendant shall comply with all the mandatory provisions of RCW 9.94A.120(Bb) and as many of those in RCW 9.94A.120(Bc) as deemed appropriate by his/her Community Corrections Officer.

CREDIT is given for 141 days served.

The following Appendices are attached to this Judgment and Sentence and are incorporated by reference:

(X) A, Additional Current Offenses.

( ) B, Additional Criminal History

(X) C, Current Offense(s) Sentencing Information.

( ) D, Exceptional Sentencing Findings of Fact and Conclusions.

(X) E, Financial Order.

DATE: August 23, 1993

Robert M. Hackett Jr.  
 (JUDGE) (JUDGE PRO TEM)

Presented by: JC Sullivan  
 Deputy Prosecuting Attorney  
 DOUGLAS S. HAYNES, WSBA # 14659 3655

Approved as to form: \_\_\_\_\_  
 Attorney for Defendant

THE STATE OF WASHINGTON

WARRANT OF COMMITMENT

To: The Sheriff of Yakima County.

The defendant JOEL RODRIGUEZ RAMOS has been convicted in the Superior Court of the State of Washington of the crime(s) of:

COUNT I: FIRST DEGREE MURDER; COUNT II: FIRST DEGREE MURDER ( FELONY)  
 COUNT III: FIRST DEGREE MURDER (FELONY); COUNT IV: FIRST DEGREE MURDER (FELONY)

and the court has ordered that the defendant be punished as set out in the attached Judgment and Sentence.

Defendant shall receive credit for time served as ordered.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections.

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

DATE: August 23, 1993

By the Direction of the Honorable Robert M. Hackett Jr.  
 (JUDGE) (JUDGE PRO TEM)

KIM M. EATON  
 Clerk  
 By: Connie Stockton  
 Deputy Clerk

