

**FILED**  
JAN 24 2011

CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON

NO. 84952-8

SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

N.S.T.,

Petitioner.

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**STATE'S ANSWER TO PETITION FOR REVIEW**

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TABLE OF CONTENTS

	Page
A. <u>IDENTITY OF RESPONDENT</u> .....	1
B. <u>COURT OF APPEALS DECISION</u> .....	1
C. <u>STATEMENT OF THE CASE</u> .....	1
D. <u>ARGUMENT AS TO WHY REVIEW SHOULD NOT BE ACCEPTED</u> .....	4
1. THE COURT OF APPEALS CORRECTLY HELD THAT N.S.T. RECEIVED TIMELY WRITTEN NOTICE OF REVOCATION AND THE COURT HAD JURISDICTION .....	4
2. THE COURT OF APPEALS PROPERLY AFFIRMED THE TRIAL COURT BECAUSE REVOCATION WAS STATUTORILY REQUIRED, N.S.T. PRESENTED NO EVIDENCE REGARDING HER INABILITY TO PAY AND REVOCATION WITHOUT FURTHER SANCTIONS DOES NOT VIOLATE DUE PROCESS OR EQUAL PROTECTION .....	9
E. <u>CONCLUSION</u> .....	14

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Bearden v. Georgia, 461 U.S. 660,  
103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983)..... 9, 10, 12, 13

Washington State:

In re Personal Restraint of Runyan,  
121 Wn.2d 432, 853 P.2d 424 (1993)..... 13

Madison v. State, 161 Wn.2d 85,  
163 P.3d 757 (2007)..... 12, 13

Smith v. Whatcom County District Court,  
147 Wn.2d 98, 52 P.3d 485 (2002) ..... 10

State v. Bower, 64 Wn. App. 227,  
823 P.2d 1171 (1992)..... 11

State v. Dahl, 139 Wn.2d 678,  
990 P.2d 396 (1999)..... 7

State v. Haws, 118 Wn. App. 36,  
74 P.3d 147 (2003)..... 4

State v. May, 80 Wn. App. 711,  
911 P.2d 399 (1996)..... 8

State v. Nason, 168 Wn.2d 936,  
233 P.3d 848 (2010)..... 12

State v. N.S.T., 156 Wn. App. 444,  
232 P.3d 584 (No. 62934-4-I,  
filed June 7, 2010)..... 1

State v. Todd, 103 Wn. App. 783,  
14 P.3d 850 (2000)..... 7, 8

State v. Woodward, 116 Wn. App. 697,  
67 P.3d 530 (2003)..... 10, 11

State v. Y.I., 94 Wn. App. 919,  
973 P.2d 503 (1999)..... 8

### Constitutional Provisions

#### Federal:

U.S. Const. amend. XIV ..... 10

### Statutes

#### Washington State:

RCW 13.40.127 ..... 4, 5, 6, 7, 9, 13

RCW 13.40.200 ..... 8

### Rules and Regulations

#### Washington State:

RAP 13.4 ..... 9

A. IDENTITY OF RESPONDENT.

Respondent, the State of Washington, asks this Court to deny the petition for review.

B. COURT OF APPEALS DECISION.

The Court of Appeals decision at issue is State v. N.S.T., 156 Wn. App. 444, 232 P.3d 584 (No. 62934-4-I, filed June 7, 2010). A copy of the decision is attached as Appendix A.

C. STATEMENT OF THE CASE.

N.S.T. was charged in King County Superior Court Juvenile Department with residential burglary and malicious mischief. CP 3-4. N.S.T. threw a large rock through the victim's living room window, causing approximately \$2600 in damage. CP 5; RP 44. N.S.T. requested a deferred disposition. RP 1-3. The State opposed the deferred disposition, in part because the restitution amount was so large. RP 1. Defense counsel advised the court that N.S.T. was choosing a deferred disposition knowing that she would be responsible for paying approximately \$2600 in restitution. RP 3. Defense counsel represented to the court that "I explained to

her that she is solely responsible for that amount if she wants her deferred disposition dismissed at the end of the period." RP 3.

The court granted N.S.T.'s request over the State's objection and entered a deferred disposition. CP 9-11. The court ordered 12 months of community supervision, 40 hours of community service, a \$100 victim penalty and restitution. CP 9-11. The court specifically ordered that "All financial obligations must be paid in full before this matter may be dismissed." CP 11. The disposition was continued to December 13, 2007. CP 10. Subsequently, the court ordered restitution in the amount of \$2,630.40. CP 12-13.

On November 29, 2007, the court entered an order continuing the deferred disposition until November 7, 2008, to allow N.S.T. more time to meet her financial obligations. CP 40-41. N.S.T. had completed the other terms of the deferred disposition. CP 40.

Prior to November 7, 2008, the Juvenile Probation Counselor (JPC) submitted a Deferred Disposition Review Report to the court, recommending revocation. RP 56-57.<sup>1</sup> On November 7, 2008, at a court hearing, the parties jointly agreed to continue

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<sup>1</sup> These reports are confidential and are not made part of the superior court file. However, the report was discussed by the parties on the record, and referred to in the defense briefing, and was made part of the record on appeal. CP 56-57.

"the motion to revoke" to December 15, 2008. CP 42-43, 48. On December 15, 2008, the matter was continued again to December 30, 2008, because N.S.T.'s attorney was not available. CP 44-45. On December 30, 2008, the State's motion to continue was granted in order to allow the State time to respond to the defense motion to vacate, which was filed that day. CP 50-51; RP 46-48. In the defense motion to vacate, counsel acknowledged that "The JPC submitted a report for that hearing [the November 7, 2008 hearing] recommending dismissal if the restitution was paid and recommending that it be set over for revocation if the restitution was not paid." CP 15.

On January 27, 2009, the revocation hearing was held. The State requested that the court revoke the deferred disposition, impose no sanctions, and order that restitution be paid. CP 64. The Court inquired of defense counsel about N.S.T.'s efforts to pay restitution. CP 67. Counsel represented to the court that N.S.T. had been unemployed for a period, and had paid \$235 since getting a job. CP 68. The court entered an order revoking the deferred disposition, imposing no community supervision, imposing no confinement, and ordering that N.S.T. pay \$2395.40 in financial obligations. CP 31-37.

D. ARGUMENT AS TO WHY REVIEW SHOULD NOT BE ACCEPTED.

1. THE COURT OF APPEALS CORRECTLY HELD THAT N.S.T. RECEIVED TIMELY WRITTEN NOTICE OF REVOCATION AND THE COURT HAD JURISDICTION.

N.S.T. argues in her petition for review that this Court should review her claim that she did not receive timely, written notice of the revocation motion and thus, the juvenile court lacked jurisdiction. As the Court of Appeals concluded, this claim is refuted by the record. Because this claim has no factual support, this Court should refuse to review the Court of Appeals' decision.

RCW 13.40.127 authorizes deferred dispositions in juvenile court for offenders who have no prior felony adjudications, not more than two prior misdemeanor adjudications, no prior deferred dispositions and who are not charged with a sex or violent offense. RCW 13.40.127(1). The juvenile court has broad discretion to grant or deny a request for deferred disposition. State v. Haws, 118 Wn. App. 36, 74 P.3d 147 (2003). A juvenile who requests a deferred disposition must stipulate to the police report and waive her right to an adjudicatory hearing. RCW 13.40.127(3). Upon entry of a deferred disposition, the court shall continue the case for a period not to exceed one year. RCW 13.40.127(2). The court

may continue the case for an additional one-year period for good cause. RCW 13.40.127(8).

The statute mandates that a juvenile receiving a deferred disposition shall be ordered to pay restitution. RCW 13.40.127(5). If the juvenile fully complies with the conditions of the deferred disposition, including payment of restitution, the court vacates the conviction and dismisses the case. RCW 13.40.127(9). "Payment of full restitution" is explicitly required before the disposition may be vacated and dismissed. RCW 13.40.127(9).

If a juvenile fails to fully comply with all the conditions of the deferred disposition, the juvenile's lack of compliance is determined by the judge upon written motion by the prosecutor or the juvenile counselor. RCW 13.40.127(7). If the juvenile fails to comply with the conditions of the deferred disposition, "the court shall enter an order of disposition." RCW 13.40.127(7).

There is no dispute that at the end of the period allowed by statute for the deferred disposition, N.S.T. had failed to pay most of the restitution amount that was owed to the victim. As such, the statute explicitly mandated entry of an order of disposition. RCW 13.40.127(5) and (7).

The statute provides that either the prosecutor or the juvenile counselor can make a motion for revocation based on the juvenile's lack of compliance. RCW 13.40.127(7). Prior to November 7, 2008, the JPC submitted a written report to the juvenile court advising the court that N.S.T. had failed to pay restitution. CP 15, 56-57. As a result of that report, a court hearing was held on November 7, 2008. CP 25-26. At that hearing, the juvenile court entered an order striking the hearing set for that day and continuing the motion to revoke the deferred disposition to December 15, 2008. CP 25-26. The order states, "JPC will move to revoke Deferred. Parties agree to strike today's hearing and set for Revocation." CP 25. This sequence of events and the details of the report were described in detail in the defense briefing presented to the juvenile court. N.S.T.'s counsel outlined the events in his briefing as follows:

On November 7, 2008, there was still outstanding restitution. The JPC submitted a report for that hearing recommending dismissal if the restitution was paid and recommending that it be set over for revocation if the restitution was not paid. The Court struck the review hearing and set a revocation hearing for December 15, 2008.

CP 15. There is no question based on this record that the State moved to revoke the deferred disposition, based on the JPC report,

before November 30, 2008, the end of the juvenile court's two-year jurisdiction over the deferred disposition.

Due process requires that the offender be given notice of the specific sentence violations alleged before a suspended sentence can be revoked. State v. Dahl, 139 Wn.2d 678, 684, 990 P.2d 396 (1999). RCW 13.40.127(7) does not require a detailed description of the facts supporting the alleged violation. State v. Todd, 103 Wn. App. 783, 788, 14 P.3d 850 (2000). In the present case, N.S.T. received notice in the JPC report that revocation was being sought due to her failure to pay restitution. On November 7, 2008, a written order was entered in court continuing the motion to revoke to December 15, 2008. This notice met the minimal due process standards that apply to probation revocation proceedings. See Dahl, 139 Wn.2d at 686.

N.S.T.'s jurisdictional challenge fails as well. The juvenile court loses jurisdiction to revoke a deferred disposition only if violation proceedings are not instituted before the expiration of the deferral period. Todd, 103 Wn. App. at 790. Here, the violation proceedings were instituted based on the written report of the JPC submitted to the court before the November 7, 2008, hearing. The motion to revoke was continued by agreement of the parties from

November 7th to December 15th. The motion to revoke was instituted before expiration of the deferral period on November 30, 2008. As such, the juvenile court had jurisdiction to revoke the deferred disposition.

The court's holding in this case is in accord with State v. Todd, supra, State v. May, 80 Wn. App. 711, 911 P.2d 399 (1996), and State v. Y.I., 94 Wn. App. 919, 973 P.2d 503 (1999). May and Y.I. were based on interpretation of a different statute: RCW 13.40.200, which governs modifications of disposition orders. May, 80 Wn. App. at 714; Y.I., 94 Wn. App. at 922. Nonetheless, in those cases the courts adopted a bright-line rule that the juvenile court's jurisdiction to enforce a disposition order terminates when the supervision period expires unless a violation proceeding is "then pending before the court." May, 80 Wn. App. at 711; Y.I., 94 Wn. App. at 919, 923 (stating "We agree with the May court's analysis and with its application here."). These cases all hold that the juvenile court retains jurisdiction over violation proceedings that are pending when the deferral period ends. N.S.T.'s claim that the juvenile court had no jurisdiction to revoke her deferred disposition was properly rejected by the Court of Appeals. The court's holding is not in conflict with any other decisions of the courts of appeal or

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any decision of this Court. This claim does not meet the standards for review set forth in RAP 13.4(b).

2. THE COURT OF APPEALS PROPERLY AFFIRMED THE TRIAL COURT BECAUSE REVOCATION WAS STATUTORILY REQUIRED, N.S.T. PRESENTED NO EVIDENCE REGARDING HER INABILITY TO PAY AND REVOCATION WITHOUT FURTHER SANCTIONS DOES NOT VIOLATE DUE PROCESS OR EQUAL PROTECTION.

N.S.T. contends that the juvenile court violated due process and equal protection by revoking her deferred disposition without finding that her failure to pay restitution was willful. This claim is without merit. RCW 13.40.127 mandates revocation of a deferred disposition when the juvenile offender fails to pay restitution. Assuming arguendo that due process and equal protection prohibit the juvenile court from revoking a deferred disposition when the respondent is unable to pay the financial obligations, the Court of Appeals properly held that N.S.T. had provided no evidence of her inability to pay. Moreover, revocation of a deferred disposition for failure to pay does not violate due process or equal protection if imprisonment is not imposed.

In Bearden v. Georgia, 461 U.S. 660, 672, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983), the Supreme Court held that when a

probationer willfully refuses to pay legal financial obligations or fails to make bona fide efforts to pay, the court may revoke probation and impose imprisonment. If the probationer could not pay the financial obligations, despite bona fide efforts to do so, the court must consider alternative measures of punishment other than imprisonment. Id. Thus, before imprisoning a probationer for failure to pay a fine, the court must consider the probationer's ability to pay and find that his or her failure to pay was willful. Smith v. Whatcom County District Court, 147 Wn.2d 98, 111-12, 52 P.3d 485 (2002). Pursuant to the due process and equal protection clauses of the Fourteenth Amendment, a court may not imprison an offender for failure to pay unless the failure was willful. Bearden, 461 U.S. at 666-68. The court may, however, impose alternatives to imprisonment such as extending the time for making payments or directing that the probationer perform public service in lieu of the fine. Bearden, 461 U.S. at 672.

Washington courts have held that the State bears the initial burden of proving that an offender has failed to comply with sentencing conditions, such as payment of legal financial obligations. State v. Woodward, 116 Wn. App. 697, 702, 67 P.3d 530 (2003). The burden then shifts to the offender to show that his

failure to pay was not willful. Id. The offender must do more than plead poverty in general terms. Id. at 704; State v. Bower, 64 Wn. App. 227, 233, 823 P.2d 1171 (1992). Whether the offender established that the violation was not willful is reviewed under the clearly erroneous standard. Woodward, 116 Wn. App. at 703. The court may not incarcerate a truly indigent offender because his or her indigence makes him or her unable to pay the obligations. Id.

In the present case, the State established that N.S.T. failed to complete restitution. The court inquired as to her ability to pay, and defense counsel presented no specific information about her efforts to pay, other than an assertion that she paid small amounts while she was employed. Indeed, counsel's argument was that N.S.T. should not be expected to pay restitution because she was a minor. RP 65. Of course, this a classic "bait and switch" argument, having argued strenuously two years earlier that the court should grant the deferred disposition despite the high restitution amount because N.S.T. was willing to pay the amount and understood that she was responsible for doing so if she wanted the deferred disposition to be dismissed. RP 3. The brief generalizations offered by counsel and the unsupported assertions by N.S.T. and her mother at the hearing fall far short of meeting the burden of

proof required to prove inability to pay. If the burden were so low, any defendant could come into court, assert without proof that he or she had little or no money and be relieved from all financial obligations under the guise of due process and equal protection.

Moreover, Bearden is inapplicable because N.S.T. was not *imprisoned* for her failure to pay. This Court has recognized that the holding of Bearden is that the State may not *incarcerate* an offender for his or her inability to pay financial obligations. State v. Nason, 168 Wn.2d 936, 945, 233 P.3d 848 (2010); Madison v. State, 161 Wn.2d 85, 101, 163 P.3d 757 (2007). In the present case, the juvenile court employed an alternative to imprisonment that was explicitly approved in Bearden: "the sentencing court could extend the time for making payments, or reduce the fine, or direct that the probationer perform some form of labor or public service in lieu of a fine." Bearden, 461 U.S. at 672. The juvenile court revoked the deferred disposition, and entered an order of disposition in which the court imposed no further sanctions: no community service, no community supervision, and no confinement time. The court only imposed the outstanding restitution, thereby "extending the time for making payments," which was the only method the juvenile court had available for insuring that the victim

continued to be compensated for his losses. If the juvenile court was required to dismiss the deferred disposition, as N.S.T. argues, the victim would remain uncompensated, a result not intended by the legislature and not required by Bearden.

N.S.T. argues that she has been punished for "her poverty and youth." Pet. for Rev., at 14. This is not true. N.S.T. has been punished for committing residential burglary and malicious mischief. The juvenile court exercised its broad discretion to give her the opportunity to take advantage of the deferred disposition statute. She chose to do so, knowing that successful completion would require payment of full restitution. She is not being treated any differently from other juvenile offenders. As this Court has previously observed, "[T]he equal protection clause does not require a state to eliminate all inequalities between the rich and the poor." Madison, 161 Wn.2d at 104 (quoting In re Personal Restraint of Runyan, 121 Wn.2d 432, 449, 853 P.2d 424 (1993)).

Revocation of the deferred disposition was mandated by the statute. RCW 13.40.127(7) provides that the disposition may only be vacated upon payment of full restitution. Imposition of the order of disposition, as required by statute, imposing the outstanding

restitution amount and no other punishment did not violate either due process or equal protection.

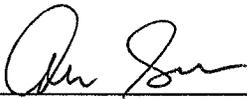
E. CONCLUSION.

The Court of Appeals did not err in affirming the trial court's revocation of the deferred disposition, which resulted in no additional punishment other than an order imposing the outstanding restitution. The petition for review should be denied.

DATED this 21st day of January, 2011.

Respectfully submitted,

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## APPENDIX A

Westlaw

232 P.3d 584  
 156 Wash.App. 444, 232 P.3d 584  
 (Cite as: 156 Wash.App. 444, 232 P.3d 584)

Page 1

C

Court of Appeals of Washington,  
 Division 1.  
 STATE of Washington, Respondent,  
 v.  
 N.S.T. (d.o.b. 11/24/1991), Appellant.

No. 62934-4-I.  
 June 7, 2010.

**Background:** State filed motion to revoke juvenile's deferred disposition for her failure to pay her court-ordered restitution. The Superior Court, King County, Joan E. Dubuque, J., granted motion. Juvenile appealed.

**Holdings:** The Court of Appeals, Leach, A.C.J., held that:

- (1) trial court had authority to revoke juvenile's deferred disposition after expiration of juvenile's one-year supervisory period;
- (2) juvenile probation counselor's (JPC) written documents provided juvenile sufficient notice that JPC was recommending revocation of her deferred disposition; and
- (3) juvenile failed to present sufficient evidence necessary to establish that she made a bona fide effort to comply with her restitution obligation.

Affirmed.

West Headnotes

[1] **Infants 211** ↪ 223.1

211 Infants  
 211VIII Dependent, Neglected, and Delinquent Children  
 211VIII(E) Judgment; Disposition of Child  
 211k223 Delinquents and Law Violators  
 211k223.1 k. In general. Most Cited

Cases

(Formerly 211k225)  
 Trial court had authority to revoke juvenile's

deferred disposition after expiration of juvenile's one-year supervisory period, where revocation proceeding was initiated by State before expiration date. West's RCWA 13.40.200.

[2] **Constitutional Law 92** ↪ 4468

92 Constitutional Law  
 92XXVII Due Process  
 92XXVII(G) Particular Issues and Applications  
 92XXVII(G)24 Juvenile Justice  
 92k4468 k. Probation. Most Cited

**Infants 211** ↪ 223.1

211 Infants  
 211VIII Dependent, Neglected, and Delinquent Children  
 211VIII(E) Judgment; Disposition of Child  
 211k223 Delinquents and Law Violators  
 211k223.1 k. In general. Most Cited

Cases

(Formerly 211k225)

Juvenile probation counselor's (JPC) written documents seeking revocation of juvenile's deferred disposition provided juvenile sufficient notice that JPC was recommending revocation of her deferred disposition due to her failure to pay restitution, in accordance with juvenile's due process rights; documents explicitly stated that juvenile had complied with all of her court-ordered obligations except for the restitution requirement and that, unless she provided verification of payment of restitution, her deferred disposition should be set for a revocation hearing. U.S.C.A. Const.Amend. 14.

[3] **Infants 211** ↪ 223.1

211 Infants  
 211VIII Dependent, Neglected, and Delinquent Children  
 211VIII(E) Judgment; Disposition of Child  
 211k223 Delinquents and Law Violators

232 P.3d 584  
 156 Wash.App. 444, 232 P.3d 584  
 (Cite as: 156 Wash.App. 444, 232 P.3d 584)

Page 2

211k223.1 k. In general. Most Cited Cases

(Formerly 211k225)

Upon showing that juvenile had failed to pay restitution after 24 months, juvenile failed to present sufficient evidence necessary to establish that she made a bona fide effort to comply with her restitution obligation, thus authorizing trial court to revoke juvenile's deferred disposition based on juvenile's failure to comply with restitution order; although juvenile made a general inability to pay argument, she presented no direct evidence documenting actual income, assets, reasonable living expenses, or efforts to find other legal resources from which restitution might have been paid over the course of 24 months.

**[4] Infants 211 225**

211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(E) Judgment; Disposition of Child

211k223 Delinquents and Law Violators

211k225 k. Probation or suspension.

Most Cited Cases

In juvenile revocation proceedings under the Juvenile Justice Act (JJA), the state bears the burden to prove, by a preponderance of the evidence, that the juvenile has failed to comply with the terms of community supervision, including failure to pay restitution; and thus, if the State meets this burden, the burden shifts to the juvenile defendant to prove that his or her noncompliance was not willful. West's RCWA 13.40.127(6).

**\*\*585** Vanessa Lee, Washington Appellate Project, Seattle, WA, for Appellant.

Ann Summers, King County Prosecutor's Office, Seattle, WA, for Respondent.

LEACH, A.C.J.

**\*446** ¶ 1 The Juvenile Justice Act of 1977, chapter 13.40 RCW, authorizes a court in certain

circumstances to defer disposition of a juvenile, order restitution, and revoke the deferred disposition if restitution goes unpaid. A juvenile court revoked N.S.T.'s deferred disposition for failing to pay her court-ordered restitution. She appeals, contending that (1) the trial court lacked authority to revoke because the period of supervision had expired, (2) the State's failure to file a written motion to revoke deprived her of adequate notice, and (3) the disposition order, based solely on her failure to pay, violated her due process and equal protection rights under the Fourteenth Amendment to the United States Constitution because the court did not affirmatively find that this failure was willful.

**\*\*586** ¶ 2 Because a revocation proceeding was pending before the supervisory period expired, we hold that the trial court had authority to revoke. We also hold that the juvenile probation counselor's written report provided N.S.T. with **\*447** constitutionally adequate notice of the reason for the revocation hearing. Finally, we conclude that N.S.T. failed to meet her burden of establishing that her inability to pay was not willful. We affirm.

FACTS

¶ 3 In June 2006, N.S.T. and a group of kids went to R.R.'s house where a fight over an iPod broke out. The fight took place on R.R.'s porch. At some point during the mêlée, N.S.T. threw a large rock through the living room window. R.R.'s father broke up the fight and restrained N.S.T. until the police arrived. N.S.T. was 14 years old.

¶ 4 The State charged N.S.T. with residential burglary and malicious mischief in the first degree. In December 2006, she stipulated to the charges, and the juvenile court granted N.S.T.'s motion for deferred disposition, continuing the matter for 12 months. Terms of the deferred disposition included community supervision, 40 hours of community service, counseling, mandatory school attendance, residency requirements and curfew, a prohibition on drugs and alcohol, and restitution in the amount of \$2,630.40, payable at a minimum rate of \$10.00 per month.

232 P.3d 584  
 156 Wash.App. 444, 232 P.3d 584  
 (Cite as: 156 Wash.App. 444, 232 P.3d 584)

Page 3

¶ 5 In November 2007, a juvenile probation counselor (JPC) submitted a report indicating that N.S.T. was in full compliance with all of these terms except one, payment of restitution. Because an outstanding balance was still owed, the court extended the deferral until November 30, 2008. By November 2008, N.S.T. had paid \$235.00 towards her restitution obligation, leaving an outstanding balance of \$2,341.29.<sup>FN1</sup> Early that same month, a JPC submitted a deferred disposition review report to the court indicating that unless N.S.T. provided verification of payment of her remaining financial obligation, he recommended that the matter be set for revocation.

FN1. The record does not reflect how this number was obtained.

¶ 6 On November 7, the court continued the matter until the middle of December. The order indicated that the \*448 parties jointly agreed to continue the "motion to revoke." At the request of N.S.T.'s attorney, the hearing was again continued until December 30. On the morning of the 30th, N.S.T.'s attorney filed a motion to vacate, arguing that because the period of supervision expired in November, the court no longer had authority to revoke. The court then granted the State's motion to continue so that it could prepare a response. The matter was reset for January 6, and N.S.T. waived her right to be present at that hearing. At the hearing, the court determined that it still had authority to revoke and denied N.S.T.'s motion to vacate. It then reset a revocation hearing for later that month.

¶ 7 At the final revocation hearing, held January 27, 2009, the State argued that N.S.T. was not in substantial compliance with the terms of her deferred disposition because she had not paid her restitution in full. Defense counsel observed that, while employed, she made payments totaling \$235, just \$5 shy of the amount owed at the minimum rate of \$10 per month.

¶ 8 N.S.T.'s mother also testified that she was a single mother paying what she could before her

daughter gained employment and that both her hours and her daughter's had been cut, making it difficult to pay routine household bills. Though sympathetic to N.S.T.'s position, the trial court revoked the deferred disposition stating,

You did everything that you were asked to do with the exception of the financial obligations. So, you should feel proud of the fact that you completed those community service hours.... But, I am bound by the confines [of] the legislature.... I have no option but to revoke the deferred, okay?

Somebody should go down and lobby Olympia about this.

N.S.T. appeals.

#### \*449 STANDARD OF REVIEW

¶ 9 We review de novo whether a juvenile court had authority to act and did so in \*\*587 compliance with the Juvenile Justice Act of 1977.<sup>FN2</sup>

FN2. *State v. Beaver*, 148 Wash.2d 338, 344, 60 P.3d 586 (2002).

#### ANALYSIS

[1] ¶ 10 We first must decide whether the juvenile court had authority to revoke N.S.T.'s deferred disposition in January 2009 when the period of supervision was set to expire in November 2008.

¶ 11 The Juvenile Justice Act (JJA) establishes a framework for the deferred disposition of juvenile offender cases. The JJA authorizes the juvenile court to defer disposition of the juvenile's case for a period not to exceed one year after the juvenile is found or pleads guilty.<sup>FN3</sup> As part of the deferral, the court may also impose terms, including payment of restitution.<sup>FN4</sup> If the juvenile satisfies these terms by the expiration of the deferral period, the court vacates the conviction and dismisses the case with prejudice.<sup>FN5</sup> But if the court finds "upon written motion by the prosecutor or the juvenile's juvenile court community supervision counselor" that the juvenile failed to comply with the terms of supervision, the court shall enter an or-

232 P.3d 584  
 156 Wash.App. 444, 232 P.3d 584  
 (Cite as: 156 Wash.App. 444, 232 P.3d 584)

Page 4

der of disposition.<sup>FN6</sup> Finally, at any time after deferral, upon a showing of good cause, the court may continue the case for an additional one-year period.<sup>FN7</sup>

FN3. RCW 13.40.127(2), (4).

FN4. RCW 13.40.127(5).

FN5. RCW 13.40.127(9).

FN6. RCW 13.40.127(7).

FN7. RCW 13.40.127(8).

¶ 12 Washington courts construing the JJA have developed a bright-line rule that a court's authority to \*450 revoke a deferred disposition order terminates upon the expiration of the supervisory period unless violation proceedings are initiated before the period expires. In *State v. May*,<sup>FN8</sup> the court decided whether a juvenile court retains authority under RCW 13.40.200 to consider violations occurring during the period of community supervision but not brought to the court's attention until after the period ends. The *May* court answered this question no, holding that a juvenile court's authority to "enforce its disposition order terminates when the community supervision period expires, unless a violation proceeding is then pending before the court."<sup>FN9</sup> And since the prosecutor in that case initiated a show cause hearing one week after the supervisory period ended, the trial court's order imposing detention for violation of the disposition order was reversed.

FN8. 80 Wash.App. 711, 714, 911 P.2d 399 (1996).

FN9. *May*, 80 Wash.App. at 716-17, 911 P.2d 399.

¶ 13 Three years later, in *State v. Y.I.*,<sup>FN10</sup> we considered whether the juvenile court retained statutory authority to sanction a juvenile under RCW 13.40.200 for failing to pay his victim penalty assessments (VPA). Citing *May*, we held that the ju-

venile court's authority to enforce a juvenile's financial obligations under a disposition order, including VPAs, expires upon the termination of the supervisory period.<sup>FN11</sup> One year later, in *State v. Todd*,<sup>FN12</sup> the court addressed yet another application of the *May* bright-line rule. In that case, the juvenile court entered a deferred disposition under RCW 13.40.127(7) imposing 12 months of community supervision upon Todd and requiring that he commit no further "law violations."<sup>FN13</sup> Three weeks before the expiration of the supervisory period, the State accused Todd of malicious mischief and moved to revoke his deferred disposition. At a hearing held one month after the supervisory\*451 period ended, the juvenile court found the State's motion untimely and dismissed.<sup>FN14</sup> In reversing, the Court of Appeals expressly applied *May*'s bright-line rule, noting that the juvenile court loses authority "to enforce a disposition order only if \*\*588 the State fails to *institute* violation proceedings before the expiration of the deferral period."<sup>FN15</sup> Since the State had commenced revocation proceedings before the supervisory period ended, the juvenile court retained authority to revoke.

FN10. 94 Wash.App. 919, 922-23, 973 P.2d 503 (1999).

FN11. *Y.I.*, 94 Wash.App. at 924, 973 P.2d 503.

FN12. 103 Wash.App. 783, 789-90, 14 P.3d 850 (2000).

FN13. *Todd*, 103 Wash.App. at 785, 14 P.3d 850.

FN14. *Todd*, 103 Wash.App. at 786, 14 P.3d 850.

FN15. *Todd*, 103 Wash.App. at 790, 14 P.3d 850.

¶ 14 In this case, *May* and *Todd* are dispositive. N.S.T.'s deferral period expired on November 30, 2008. Sometime before November 7, 2008, a full three weeks before the supervisory period was to

232 P.3d 584  
 156 Wash.App. 444, 232 P.3d 584  
 (Cite as: 156 Wash.App. 444, 232 P.3d 584)

Page 5

expire, N.S.T.'s JPC submitted a report to the court recommending revocation in the event that N.S.T. failed to pay restitution in full. The report stated, "Rather than asking for supervision to be extended 1 more month, should N[S.T.] be unable to provide verification of payment of her remaining financial obligations, probation recommends that this matter be set out for revocation."

¶ 15 The agreed order entered at the November 7th hearing states that both parties agreed to continue the "motion to revoke" until mid-December. The case was continued twice more, once at the request of N.S.T. and once at the request of the State. N.S.T.'s deferred disposition was finally revoked in January 2009. Because the revocation proceeding was initiated before November 30, 2008, the juvenile court had authority to revoke N.S.T.'s deferred disposition at the final hearing in January 2009.

[2] ¶ 16 We next must decide N.S.T.'s claim that RCW 13.40.127(7) obligated the State to file a "formal written notice" of the basis for revocation and whether the State's supposed failure to do so deprived N.S.T. of due process.

¶ 17 As an initial matter, N.S.T. mistakenly contends that RCW 13.40.127(7) requires the State to file a written \*452 motion. This statute plainly states that either the "*prosecutor or the juvenile's juvenile court community supervision counselor*" may initiate revocation proceedings (emphasis added). The trial court recognized in its January 6 ruling that there is no "require [ment] that th[ere] be a formal written notice in some form saying we are the prosecutor, we are moving for revocation ... because the JPC's [sic] often move for revocation."

¶ 18 Since the express terms of the statute authorize either a JPC or a prosecutor to initiate revocation proceedings upon written motion, the questions are whether a written motion was filed in this case and whether it fulfilled N.S.T.'s due process rights. Citing *May* and our Supreme Court's holding in *State v. Dahl*,<sup>FN16</sup> N.S.T. claims that she was deprived of "formal written notice" and

due process of law. But these cases support the State's position, not N.S.T.'s.

FN16. 139 Wash.2d 678, 990 P.2d 396 (1999).

¶ 19 In *May*, the court determined that the prosecutor's untimely motion provided adequate notice. The motion alleged that May had failed to complete community service, attend school regularly, keep scheduled appointments, and avoid contact with his codefendant.<sup>FN17</sup> In a footnote, the court observed that May received the same due process as would be afforded an adult probationer.<sup>FN18</sup> In *Dahl*, the court held that before a hearing to revoke a special sex offender sentencing alternative sentence, due process requires that the State "inform the offender of the specific violations alleged and the facts that the State will rely on to prove those violations."<sup>FN19</sup>

FN17. *May*, 80 Wash.App. at 713, 911 P.2d 399.

FN18. *May*, 80 Wash.App. at 714 n. 2, 911 P.2d 399.

FN19. *Dahl*, 139 Wash.2d at 685, 990 P.2d 396.

¶ 20 Here, the JPC filed a written document with the court titled "Deferred Disposition Review Report to Court." This document explicitly stated that N.S.T. had complied \*453 with all of her court-ordered obligations except for the restitution requirement and that, unless she provided verification of payment of restitution, her deferred disposition should be set for a revocation hearing. A short time later, but still within the supervisory period, the JPC filed a second document with the court titled "Deferred Disposition, Revocation Report to Court." This report repeated the assertion that N.S.T. fulfilled all of her court-ordered obligations except her restitution\*\*589 obligation. It then stated that "[i]f case is revoked[,] we recommend no additional sanctions."

232 P.3d 584  
 156 Wash.App. 444, 232 P.3d 584  
 (Cite as: 156 Wash.App. 444, 232 P.3d 584)

Page 6

¶ 21 Read together, these documents notified N.S.T. of proceedings that would result in revocation of her deferred disposition if she had not paid the full amount of restitution ordered before the hearing date. N.S.T. confirmed that these documents provided this notice to her when she argued in her brief in support of her claim that the juvenile court lacked authority to revoke:

On November 7, 2008, there was still outstanding restitution. *The JPC submitted a report for that hearing recommending dismissal if the restitution was paid and recommending that it be set over for revocation if the restitution was not paid.* The Court struck the review hearing and set a revocation hearing for December 15, 2008.

(Emphasis added.) We conclude that N.S.T. was provided with adequate written notice that the JPC was recommending revocation of her deferred disposition due to her failure to pay restitution. Thus, N.S.T. received all the notice she was entitled to under the law.

[3] ¶ 22 Finally, we decide whether the juvenile court's revocation of N.S.T.'s deferred disposition, done without any finding that her failure to pay restitution was willful, violated her due process and equal protection rights under the Fourteenth Amendment to the United States Constitution.

\*454 ¶ 23 N.S.T. relies primarily upon *Bearden v. Georgia*<sup>FN20</sup> where the United States Supreme Court held that a sentencing court could not revoke a defendant's probation for failure to pay a fine and restitution without evidence and findings that the defendant was somehow responsible for the non-payment or that alternative forms of punishment were inadequate. The State claims that *Bearden* does not apply because N.S.T. was not incarcerated for her failure to pay. Both parties misread *Bearden*.

FN20. 461 U.S. 660, 668-69, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983).

¶ 24 In *Bearden*, the Court stated that it had long been sensitive to the treatment of indigents in our criminal justice system and noted its prior holding that the State cannot convert a fine into a jail term solely because a defendant cannot immediately pay that fine.<sup>FN21</sup> At the same time, the Court recognized limits on the principle of protecting indigent defendants.<sup>FN22</sup>

FN21. *See Bearden*, 461 U.S. at 664, 103 S.Ct. 2064 (citing *Tate v. Short*, 401 U.S. 395, 399, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971)).

FN22. *Bearden*, 461 U.S. at 664-65, 103 S.Ct. 2064.

¶ 25 The Court stated that "the reason for non-payment is of critical importance."<sup>FN23</sup> Under *Bearden*, a sentencing court must inquire into the reasons for an indigent defendant's failure to pay on his or her court-imposed financial legal obligations. If a defendant willfully refuses to pay or evidences an insufficient concern for paying the debt owed, the court may revoke probation.<sup>FN24</sup> But if a defendant fails to pay despite sufficient bona fide efforts to satisfy his legal debts, the court must consider and reject alternative measures of punishment before a period of incarceration may be imposed.<sup>FN25</sup> Focusing on the reason for noncompliance balances unlawful discrimination against the poor on the one hand and the State's interest in punishing criminal offenders on the other hand.

FN23. *Bearden* 461 U.S. at 668, 672, 103 S.Ct. 2064.

FN24. *Bearden*, 461 U.S. at 668, 672, 103 S.Ct. 2064.

FN25. *Bearden*, 461 U.S. at 672, 103 S.Ct. 2064.

\*455 ¶ 26 N.S.T. confuses the court's instruction to inquire into the economic status of the non-compliant defendant with the burden-shifting scheme that applies during the inquiry. For ex-

232 P.3d 584  
 156 Wash.App. 444, 232 P.3d 584  
 (Cite as: 156 Wash.App. 444, 232 P.3d 584)

Page 7

ample, in *State v. Woodward*,<sup>FN26</sup> the court noted that under provisions of the Sentencing Reform Act (SRA), chapter 9.94A RCW, the State bears the initial burden of proving by a preponderance of the evidence that a defendant has failed to meet the terms of his or her sentencing conditions. "If the State proves the defendant's failure to comply, the burden shifts to the defendant to show cause why he or she should not be \*\*590 punished."<sup>FN27</sup> To meet this burden, the defendant must do more than plead poverty in general terms: he or she should be prepared to show the court proof of (1) actual income, (2) reasonable living expenses, (3) efforts to find legal means to acquire employment and other resources from which restitution may be paid, and (4) any lawful excuse explaining any failure to comply with the terms of community supervision.<sup>FN28</sup> This analytic framework is consistent with the rule that "[w]hen the probationer has made reasonable efforts to meet his court-ordered financial obligations, and yet cannot do so, through no fault of his own, it is 'fundamentally unfair to revoke probation automatically.'" <sup>FN29</sup>

FN26. 116 Wash.App. 697, 702, 67 P.3d 530 (2003) (citing *State v. Peterson*, 69 Wash.App. 143, 146, 847 P.2d 538 (1993)).

FN27. *Woodward*, 116 Wash.App. at 702, 67 P.3d 530 (citing *Peterson*, 69 Wash.App. at 146, 847 P.2d 538).

FN28. *Woodward*, 116 Wash.App. at 704, 67 P.3d 530 (quoting *State v. Bower*, 64 Wash.App. 227, 233, 823 P.2d 1171 (1992)).

FN29. *Woodward*, 116 Wash.App. at 704, 67 P.3d 530 (quoting *Bower*, 64 Wash.App. at 232, 823 P.2d 1171 (quoting *Bearden*, 461 U.S. at 668, 103 S.Ct. 2064)).

[4] ¶ 27 We hold that the same analysis applies to juvenile revocation proceedings under the JJA.

Like the SRA, the JJA states, "The state shall bear the burden to prove, by a preponderance of the evidence, that the juvenile has failed to comply with the terms of community supervision," including failure to pay restitution.<sup>FN30</sup> Accordingly, if the State \*456 meets this burden, the burden shifts to the juvenile defendant to prove that his or her noncompliance was not willful.

FN30. RCW 13.40.127(6).

¶ 28 Applying this rule to the facts of this case is straightforward. N.S.T. admits that she paid only \$235 of the total \$2,600 owed. The State therefore met its burden of proving by a preponderance of the evidence that N.S.T. failed to pay restitution after 24 months.<sup>FN31</sup> At the final restitution hearing, the court specifically asked N.S.T.'s counsel, "[W]hat information do I have about efforts to pay over the course of [the deferral period]?" Her counsel informed the court that "[N.S.T.] is currently employed. I know she was unemployed for a while. When she was employed she made \$235 worth of payments. So, that's what she was able to pay. That's what she paid over the course of this deferred disposition." And her mother stated,

FN31. N.S.T. suggests that she was near total compliance because she had been paying at nearly \$10 a month. This argument overlooks the fact that she was ordered to pay restitution on the full \$2600 within the 24 months and that the minimum monthly installment at \$10 was the least she could pay in any given month without violating the order. Paying the minimum monthly amount was therefore necessary but not by itself sufficient to avoid revocation for noncompliance.

I was actually paying what I could before she got employed. Uhm, my job is at a freeze, so they cut down everyone's hours. I have household bills; I'm a single mom, too. So, I'm doing the best I can. And my household bills come first. You know, if I have anything extra, it usually goes to

232 P.3d 584  
156 Wash.App. 444, 232 P.3d 584  
(Cite as: 156 Wash.App. 444, 232 P.3d 584)

Page 8

gas. I'm barely feeding my kids. [N.S.T.'s] working. Her hours got cut. They have to call in to see if they even have to work.

Absent from the record, however, is any direct evidence documenting actual income, assets, reasonable living expenses, or efforts to find other legal resources from which restitution might have been paid over the course of 24 months. Without such evidence, N.S.T. could not meet her burden of proving that she made sufficient bona fide efforts to comply with her restitution obligation.

**\*457 CONCLUSION**

¶ 29 We affirm. The juvenile court had authority to revoke the deferred disposition order, the JPC's report satisfied N.S.T.'s minimum notice requirements, and N.S.T. failed to meet her burden of establishing her sufficient bona fide efforts to pay the amount of restitution owed.

WE CONCUR: SCHINDLER and ELLINGTON, JJ.

Wash.App. Div. 1,2010.  
State v. N.S.T.  
156 Wash.App. 444, 232 P.3d 584

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Vanessa Lee, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Answer to Petition for Review, in STATE V. N.S.T., Cause No. 84952-8-I, in the Supreme Court, for 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.

L. Brame

Name

Done in Seattle, Washington

1/21/11

Date