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Court of Appeals
Division III
State of Washington

NO. 96434-3

35130-1-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

TREVON J. SOLOMON-MCDONALD, APPELLANT.

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. SUMMARY

Following a bench trial, Trevon Solomon-McDonald was convicted of two counts of unlawful imprisonment with sexual motivation and one count of assault. Upon finding that a standard range sentence would constitute a manifest injustice, the court entered a disposition committing Mr. Solomon-McDonald to the Juvenile Rehabilitation Administration (JRA) for a term of 36 weeks. The court then suspended that disposition and ordered a Special Sex Offender Dispositional Alternative (SSODA). Commitment to the JRA will only occur if Mr. Solomon-McDonald fails to make satisfactory progress in treatment under the SSODA.

Now, on appeal, Mr. Solomon-McDonald challenges the manifest injustice finding underlying the order committing him to the JRA. While that finding is well supported by the record, the issue is not yet ripe for review. Unless the SSODA is revoked at some point, any potential harm from the challenged finding is hypothetical. Consequently, this Court should find this appeal unripe and decline to address the issue raised.

II. ISSUES PRESENTED

1. Is the suspended disposition ripe for review?
2. Is the suspended disposition supported by the record?

III. STATEMENT OF THE CASE

On February 17, 2016, J.G. was a high-school junior and went to school as normal. RP 142. At the beginning of that semester, J.G. and the defendant Trevon Solomon-McDonald had become friends, but they never discussed any romantic notions or engaged in any romantic acts. RP 143-45. That day, she ran into Mr. Solomon-McDonald in the hallway. RP 146. She wasn't feeling well and he asked if she needed a hug. RP 146-47. When he hugged her, he gripped her tightly. RP 147. She tried to pull away, but he wouldn't let her. *Id*. He then grabbed her chin, pushed her head up and kissed her. RP 147. She continued struggling and told him to get away. *Id*.

K.C. was a sophomore at the same school. RP 15. Earlier that day, Mr. Solomon-McDonald walked her to class. RP 21. As they were walking up the stairs, he grabbed her buttocks. RP 22. When they got to the top of the stairs, he grabbed her arm, and then kissed her. RP 23. Initially she reciprocated, but then she told him she needed to leave and tried to go to class. RP 24-25. Mr. Solomon-McDonald continued to grab her and pull her towards him. RP 25. She pulled back and said he was making her angry, and he put her in a corner. RP 25-26. During this, he was touching her breasts. RP 26. Mr. Solomon-McDonald then asked her to give him a blow job, and pulled his penis out. RP 27-28.

A.R. was also a junior at the same school. RP 76. She met Mr. Solomon-McDonald that semester and found out that he was the stepson of her biological father. RP 77-80. Because of that newfound relation, Mr. Solomon-McDonald began hugging her every day when they ran into each other in the hall. RP 80. On February 18, Mr. Solomon-McDonald approached her in a hallway. RP 88. He pressed her against the wall and began forcefully kissing her. RP 88-89. He grabbed her breasts and she told him to stop. RP 89. At one point, she managed to pull away, and Mr. Solomon-McDonald grabbed her arm and pulled her back. RP 90. Another student came up the stairwell, and A.R. was able to get away. RP 90-91.

As a result of these incidents, the State charged Mr. Solomon-McDonald with two counts of indecent liberties, two counts of unlawful imprisonment with sexual motivation, and one count of assault with sexual motivation. CP 1-2. Following a bench trial, the Court found Mr. Solomon-McDonald not-guilty on the two counts of indecent liberties, but guilty on the other three counts. RP 278-286.

At sentencing, the State asked the court to impose a SSODA, with a suspended 36-week disposition at the JRA. CP 20-25. Mr. Solomon-McDonald asked the court to impose a standard range disposition with "SSODA like conditions," to include sex offender counseling. CP 51-52.

The Court imposed the State's recommended sentence, and Mr. Solomon-McDonald appealed. Further facts concerning sentencing are included below as appropriate.

IV. ARGUMENT

Here, on appeal, Mr. Solomon-McDonald challenges the court's finding that a standard range disposition would constitute a manifest injustice. A juvenile court will ordinarily impose a standard range disposition. RCW 13.40.160(1). However, the court may impose a disposition outside that standard range upon concluding that a standard range disposition would effectuate a manifest injustice. RCW 13.40.160(2). Such a finding must be supported by clear and convincing evidence. *Id*. Upon finding that an offender has committed a sex offense, and has no history of a prior sex offense, the court can impose a SSODA under RCW 13.40.162. RCW 13.40.160(3).

A. RIPENESS

Initially, this matter is not yet ripe for review. The sole challenge here is to a suspended disposition that will only come into effect *if* the juvenile court revokes the SSODA. Until then, any harm is speculative. If Mr. Solomon-McDonald successfully completes the disposition alternative

(SSODA), the suspended disposition will never affect him.[1] Additionally, there are any number of intervening occurrences that could prevent the court from ever imposing the suspended sentence. "Until a juvenile's SSODA disposition is revoked, appeal of the suspended disposition is not proper." *State v. J.B.*, 102 Wn. App. 583, 585, 9 P.3d 890 (2000); *see also State v. Langland*, 42 Wn. App. 287, 292, 711 P.2d 1039 (1985) (finding suspended sentence not ripe for review until the suspension is revoked and the sentence imposed). Consequently, the propriety of the suspended disposition is not appealable at this time.

B. BASIS FOR SENTENCE

Regardless, should this Court choose to review the suspended disposition, it is well supported by the facts of the case. In order to affirm a juvenile disposition outside the standard range, this Court must determine whether the reasons supplied by the judge are supported by the record, and that those reasons clearly and convincingly[2] support the conclusion that a

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[1] It should be noted that should the suspended sentence be imposed in the future, it would be subject to expedited review under RCW 13.40.230. *See* RCW 13.40.160(2); *see also J.B.*, 102 Wn. App. at 585.

[2] Appellate Courts have equated the "clear and convincing" standard with a "beyond a reasonable doubt standard." *See State v. Rhodes*, 92 Wn.2d 755, 760, 600 P.2d 1264 (1979). Meanwhile, the trial Court stated that it was slightly lower. RP 353. Mr. Solomon-McDonald asserts that this merits striking the exceptional disposition and compelling a standard range sentence. However, should this Court determine that the trial court applied

standard range sentence would constitute a manifest injustice. RCW 13.40.230.

At the behest of Mr. Solomon-McDonald, Priscilla Hannon evaluated him to assess his amenability to treatment. *See* CP 54-62. She concluded that Mr. Solomon-McDonald's behaviors are learned. He learned from his step-father how to interact with women. CP 60. He learned that men can just take what they want, and he observed his step-father do just that repeatedly. *Id*. Because of this, Mr. Solomon-McDonald did not perceive that he had done anything wrong. *Id*. That skewed perception of the world is precisely what a treatment program would correct. CP 60-61.

In challenging the suspended disposition, Mr. Solomon-McDonald focuses on one aspect of this assessment, the risk assessment tool, which indicated that he was a "low-risk" to reoffend. However, he ignores the context of that tool. The Estimate of Risk of Adolescent Sexual Offense Recidivism, (ERASOR) is simply an amalgam of risk factors indicative of sexual recidivism. CP 59. There is no empirical support for the ERASOR. *Id*. Rather, it was used by Ms. Hannon as a base line to begin assessing Mr. Solomon-McDonald. According to the report, the ERASOR cannot by itself assess risk of recidivism, but must be subject to further judgment. *Id*.

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an incorrect burden of proof, the appropriate remedy is to remand for a determination whether the evidence presented meets the correct burden.

Ms. Hannon's actual conclusion was that Mr. Solomon-McDonald should receive treatment in order to learn about healthy sexual behaviors. CP 61. This makes sense given the facts presented. At the time of the crimes, Mr. Solomon-McDonald could not perceive any wrongdoing on his own part. Should he learn about healthy social and sexual behaviors, he should be able to conform to those expectations. However, without treatment, Mr. Solomon-McDonald would not know what is and what is not acceptable or how to interact with women. In that situation, he would be very likely to cross the line again in the future.

Seen in this light, the trial Court's disposition is well supported. Contrary to Mr. Solomon-McDonald's argument, the Court imposed the suspended sentence not to incentivize him, but to ensure treatment.[3] RP 355-56. "I believe that if you don't do the program, the Court needs to protect the community, and that's why I'm going to impose the manifest injustice, not because I want to give you incentive." RP 356. The Court gave him an option: do treatment through SSODA while in the community, or do treatment in custody at JRA. *Id*. Without the suspended disposition,

[3] In his brief, Mr. Solomon-McDonald also challenges the court's finding that he threatened serious bodily injury. However, from the record, that finding did not affect the sentence at all. *See* RP 355-56.

treatment would be left completely to the discretion of Mr. Solomon-McDonald.

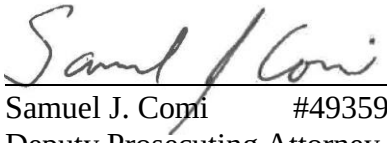
Without treatment, Mr. Solomon-McDonald posed a clear danger to society. The suspended disposition was imposed solely to ensure such treatment, and was consequently necessary to prevent a manifest injustice. This Court should affirm that suspended disposition.

V. CONCLUSION

This court should decline to review the issues presented because it is not proper to appeal a suspended disposition. However, should this Court review the issue, the juvenile court's disposition is well supported.

Dated this 30 day of October, 2017.

LAWRENCE H. HASKELL
Prosecuting Attorney



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

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I certify under penalty of perjury under the laws of the State of Washington, that on October 30, 2017, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

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10/30/2017	Spokane, WA	
(Date)	**(Place)**	**(Signature)**

SPOKANE COUNTY PROSECUTOR

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