

NO. 66801-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

COURT OF APPEALS
STATE OF WASHINGTON
2012 JUN 12 PM 2:02

STATE OF WASHINGTON,

Respondent,

v.

TERRY L. HOLLIS,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JULIA GARRATT

BRIEF OF RESPONDENT

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A. ISSUES

1. Whether Hollis's termination from King County Juvenile Drug Court (JDC) is rationally related to carrying out the legitimate state ends of the juvenile justice system and drug court program?

2. Whether Hollis may raise the claim for the first time on appeal that his termination from JDC under the automatic termination provision violated due process, and if so, whether the claim fails because the trial court exercised its discretion to terminate Hollis, and Hollis's drug court contract notified him that engaging in criminal activity could lead to termination?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged Terry Hollis with the following offenses, all of which he diverted into JDC:

Cause No.	Charge	Incident Date	JDC Entry
09-8-01395-2	Residential Burglary	July 9-10, 2008	Aug. 27, 2009
08-8-03651-2	Theft Third Degree	Sept. 3, 2008	Aug. 27, 2009

Cause No.	Charge	Incident Date	JDC Entry
09-8-02450-4	Taking a Motor Vehicle without Permission Second Degree Obstructing a Law Enforcement Officer	July 5, 2009	Aug. 27, 2009
09-8-04424-6	Criminal Trespass First Degree	Oct. 20, 2009	Apr. 9, 2010
10-8-02057-0	Residential Burglary	June 7, 2010	July 29, 2010

CP 1, 7-9, 126-27, 136, 148, 164, 172-74, 184-86.

Four months after diverting his last felony charge into JDC, Hollis allegedly committed Robbery in the First Degree. CP 191-96. Based on this new charge, the State moved to terminate Hollis from JDC. CP 187-96. The court terminated Hollis and found him guilty at a stipulated trial of the six charges pending in JDC. CP 119-25; 1RP 17-19.¹ The court imposed a standard-range sentence of local sanctions on each offense. CP 74-79, 129-35, 141-47, 158-63, 175-81; 2RP 8-10.

¹ The Verbatim Report of Proceedings consists of two volumes designated as follows: 1RP (1/28/11) and 2RP (2/17/11).

2. SUBSTANTIVE FACTS

In August 2009, Hollis entered JDC agreeing to successfully complete treatment in exchange for having the court dismiss with prejudice the charges against him. CP 7-9. Id. Hollis initially diverted four felony and misdemeanor charges into JDC, and signed a contract providing that, "I agree and understand that if I engage in any criminal act, I may be prosecuted for any new charges, and this may result in my termination from the Drug Court Program."² CP 7-8. The contract also provided, "I understand that if I fail to follow the terms of my agreement, the Judge may impose sanctions . . . which may include . . . termination from the Drug Court Program." CP 9.

Notwithstanding these provisions, Hollis committed new crimes while enrolled in JDC resulting in additional criminal charges. Hollis diverted two of the new criminal charges into JDC in April and July 2010. CP 148, 164, 172-74, 184-86. Shortly thereafter, Hollis allegedly robbed someone at gunpoint and was charged with first-degree robbery in adult criminal court. CP 191-96.

² The later JDC contracts signed by Hollis in April and July 2010 are identical to the one he signed in August 2009. CP 7-9, 172-74, 184-86.

The State moved to terminate Hollis from JDC based on the new robbery charge and a provision in the JDC "Policies and Procedure" manual mandating termination of participants "[a]utomatically declined to adult court." CP 187-96, 216. Hollis opposed the termination motion and argued that the automatic termination provision violated his right to equal protection because it required the court to terminate 16 and 17 year olds charged with first-degree robbery, but granted it discretion to terminate similarly charged 18 year olds. CP 64-68; 1RP 3-8. Hollis did not challenge the termination based on due process, breach of contract, or any other ground.

At a hearing on January 28, 2011, the court terminated Hollis without ever uttering the words "equal protection." 1RP 13-15. Rather than address Hollis's constitutional claim, the court interpreted the automatic termination provision, and the oversight committee's intent in adopting it. 1RP 13-14. The court explained:

I went to the policy manual for court youth to determine what the oversight committee has set forth as different parameters, and on page 14 . . . they had both consideration for termination paragraph and . . . automatic termination.

I also spoke with Judge Hubbard, who is the lead drug court judge in Seattle, and asked if he had any particular opinion or comments on this particular interpretation of this provision.

It was also his opinion that the statement that the physical [sic] will be automatically terminated does not give a lot of wiggle room . . . *the way the policy is worded, as adopted by the oversight committee, it notes a participant will be automatically terminated,* and one of the prongs says: "If he or she is automatically declined to the adult court." It doesn't note upon adjudication, it notes that the decline to the adult court is the triggering factor that does provide for termination from drug court.

I am going to terminate [Hollis] from drug court at this time on his five cause numbers . . .

I did consider all of the different arguments of counsel . . . but the directive and the operating manual that I am reviewing at this time does not seem to give much room for interpretation. It is pretty clear on its face.

1RP 13-14.

After terminating Hollis based on the automatic termination provision, the court stated:

I have considered, as well, [Hollis] came into drug court in August of '09 with . . . three charges . . . another misdemeanor was brought into drug court, as well as another felony, and now there is another misdemeanor that is pending.

He has been declined to the adult system on a serious offense and is currently pending charges downtown, but as I indicated, I do think it is appropriate to terminate the five cases that are currently in drug court at this time.

1RP 14-15 (emphasis added). Neither party at the hearing followed up by asking whether Hollis's termination violated equal protection. Id. at 15-20.

At a hearing three months later on April 29, 2011, the parties presented the court with the proposed findings of fact and conclusions of law from the termination hearing. CP 182-83, 197. Although the court did not address Hollis's equal protection claim at the January hearing, the proposed order contained the statement that the automatic termination provision "does not violate [Hollis's] right to equal protection under the law. [*Supplemental finding clarified on the record on April 29, 2011*]." CP 183 (emphasis added). The court signed the proposed order without making any alterations and without formally incorporating its oral findings of fact and conclusions of law from the January hearing. CP 182-83. Despite the court's apparent efforts to address Hollis's equal protection claim at the April hearing, no recording exists of the 13-minute hearing due to a mishap with the court's electronic recording system. CP 197; see Resp't Reply Mot. to Remand at 2 (system inadvertently unplugged when a bookshelf was moved).

C. ARGUMENT

1. HOLLIS HAS FAILED TO SHOW THAT THE AUTOMATIC TERMINATION PROVISION LACKS A RATIONAL BASIS.

On appeal, Hollis renews his argument that the automatic termination provision violates equal protection by explicitly requiring the termination of juveniles from JDC who are declined to adult court, while implicitly allowing similarly charged adults to remain in the program. Hollis's argument fails. Although the trial court's reasoning for denying Hollis's equal protection claim is missing from the record, the court properly denied Hollis's constitutional challenge because the automatic termination provision is rationally related to carrying out the legitimate ends of the Juvenile Justice Act (JJA) and drug court.

The equal protection clauses of the Fourteenth Amendment to the United States Constitution and article I, section 12 of the Washington Constitution guarantee that people similarly situated under the law receive like treatment by the State.³ State v. Haq, 166 Wn. App. 221, 253-54, 268 P.3d 997, review denied, 174 Wn.2d 1004 (2012). Equal protection does not guarantee

³ The state and federal equal protection clauses are "substantially identical and subject to the same analysis." State v. Osman, 157 Wn.2d 474, 483 n.11, 139 P.3d 334 (2006).

"complete equality among individuals or classes but equal application of the laws." State v. Simmons, 152 Wn.2d 450, 458, 98 P.3d 789 (2004). The clause is aimed at ensuring equal treatment by prohibiting "undue favor" and "hostile discrimination." State v. Hirschfelder, 170 Wn.2d 536, 550, 242 P.3d 876 (2010).

The threshold question in any equal protection challenge is which standard of judicial review to apply. State v. Shawn P., 122 Wn.2d 553, 560, 859 P.2d 1220 (1993). The appropriate level of review depends upon the nature of the alleged classification and the type of right involved. Id. Strict scrutiny applies if the defendant is a member of a suspect class, or the challenged state action threatens a fundamental right. Id. Intermediate scrutiny applies if the defendant is a member of a "semi-suspect" class, or an "important" right is affected. Id.

In all other cases, rational basis review applies and the challenged state action will be upheld "unless it rests on grounds wholly irrelevant to the achievement of legitimate state objectives." Id. at 561. The rational basis test is the "most relaxed and tolerant" form of judicial review under the equal protection clause. Id. The test requires only that the means employed by the state action are "rationally related to a legitimate State goal," and not that the

means are "the best way of achieving that goal." State v. Manussier, 129 Wn.2d 652, 673, 921 P.2d 473 (1996).

The party challenging the state action bears the burden of proving "beyond a reasonable doubt, that no state of facts exists or can be conceived sufficient to justify the challenged classification, or that the facts have so far changed as to render the classification arbitrary and obsolete." Hirschfelder, 170 Wn.2d at 552. The challenging party must do more than "question the wisdom" of the state action, and "show conclusively" that it is "purely arbitrary." Shawn P., 122 Wn.2d at 561.

"Juveniles are neither a suspect nor a semi-suspect class." State v. Heiskell, 129 Wn.2d 113, 124, 916 P.2d 366 (1996). Hollis does not contend that the automatic termination provision infringes on a fundamental right, or an important right. Thus, Hollis correctly concedes that rational basis is the appropriate standard of review. Hollis fails, however, to carry his heavy burden of demonstrating beyond a reasonable doubt that the automatic termination provision rests on grounds wholly irrelevant to achieving a legitimate state end.

Although the record is devoid of the court's reasoning for having denied Hollis's equal protection challenge, the court properly

denied the challenge because the automatic termination provision is rationally related to carrying out the legitimate ends of the juvenile justice system and drug court. Both the JJA and JDC are aimed at balancing four goals: community safety, offender accountability, punishment, and rehabilitation. The Legislature enacted the JJA with multiple "equally important purposes" in mind; including protecting the community, holding juvenile offenders accountable, providing punishment commensurate with the crime and the juvenile offender's age and criminal history, and providing a clear policy for determining which offenders receive "punishment, treatment, or both." RCW 13.40.010(2)(a), (c), (d), (j).

Similarly, when the Legislature authorized the formation of drug courts, it focused on reducing "recidivism and substance abuse among nonviolent, substance abusing felony and nonfelony offenders, whether adult or juvenile." RCW 2.28.170(2). The Legislature specifically excluded offenders from drug court who had been convicted, or were currently charged with, a serious violent offense, sex offense, offense involving the use of a firearm, or an offense involving another person's substantial or great bodily harm, or death. RCW 2.28.170(3)(b)(ii), (iii). By adopting these minimum eligibility requirements, the Legislature legitimately chose to limit

the availability of treatment and rehabilitation services to nonviolent offenders.

The automatic termination provision challenged by Hollis is one of four provisions adopted by the JDC oversight committee to effectuate the goals of the juvenile justice system and drug court program. The JDC oversight committee - comprised of prosecutors, defense attorneys, judges, and treatment providers - agreed that a JDC participant "will be automatically terminated" if he is (1) convicted of a violent or serious violent offense, (2) sentenced to confinement at a juvenile or adult facility, (3) charged with a serious violent offense after a probable cause finding, or (4) "automatically declined to adult court." CP 200, 216. The oversight committee also provided for the discretionary termination of JDC participants charged with a new crime after a finding of probable cause.⁴ CP 216.

By adopting these provisions, the oversight committee established a rational framework for determining who shall be terminated from JDC based on the seriousness of the participant's charge or conviction. For example, in the first provision, JDC

⁴ A participant may also be terminated for making "insufficient progress" in the program. CP 216.

participants convicted of a violent or serious violent offense are automatically terminated, regardless of their age. CP 216. This provision adheres to drug court admission requirements excluding violent offenders, and advances the JJA's goals of holding juvenile offenders accountable, protecting the community, and providing "a clear policy to determine what types of offenders shall receive punishment, treatment, or both." RCW 2.28.170(3)(b)(ii), (iii); RCW 13.40.010(2)(a), (c), (j).

Similarly, the second provision automatically terminating JDC participants sentenced to confinement at the Juvenile Rehabilitation Administration, or Department of Corrections, is consistent with drug court admission requirements and the oversight committee's decision to exclude violent offenders from JDC. CP 216. Juvenile offenders are not usually confined unless they have committed a violent or serious violent offense. See RCW 13.40.0357 (juvenile sentencing guidelines). JDC participants who are confined at juvenile and adult corrections facilities cannot complete the multiple requirements necessary to graduate from drug court. See CP 214-15 (listing program requirements for each drug court phase). Thus, the second

automatic termination provision reflects both a practical reality and the aims of JDC.

The third provision, terminating JDC participants who are charged with serious violent offenses upon a probable cause finding, also effectuates the legitimate goals of drug court and the juvenile justice system. CP 216. The oversight committee rationally determined that JDC participants alleged to have committed the most heinous crimes, specifically first- and second-degree murder, first-degree manslaughter, first-degree assault, first-degree rape, first-degree kidnapping, and first-degree assault of a child, are automatically terminated when probable cause is found. Id. This provision mirrors the Legislature's determination that offenders "currently charged with . . . a serious violent offense" are ineligible for drug court. RCW 2.28.170(3)(b)(iii)(B). The provision also furthers the JJA's focus on protecting "the citizenry from criminal behavior," and treating juvenile offenders "consistent with public safety." RCW 13.40.010(2)(a), (g).

The final provision, challenged here by Hollis, mandates the termination of JDC participants who are "[a]utomatically declined to adult court." CP 216. By adopting this provision, the oversight committee adhered to its legitimate policy of terminating JDC

participants convicted of, or charged with, violent crimes. Juvenile offenders who are automatically declined to adult court must be 16 or 17 years old at the time of the offense, and alleged to have committed a serious violent offense, a violent offense with a firearm, first-degree robbery, first-degree rape of a child, drive-by shooting, or any other violent offense based on prior criminal history. RCW 13.04.030(1)(e)(v)(A)-(E).

The oversight committee's decision to distinguish between JDC participants based on their alleged commission of a violent offense is consistent with drug court legislation excluding offenders charged with violent offenses, and the JJA's express commitment to keeping the community safe, and providing a clear policy for determining which offenders receive treatment. RCW 2.28.170(3)(b)(iii)(B)-(D); RCW 13.40.010(2)(a), (j).

Hollis contends that the automatic decline provision violates equal protection because there is "no reasonable basis" for allowing an 18 year old JDC participant charged with first-degree robbery to remain in drug court, while requiring a 16 or 17 year old participant to be terminated. App. Br. at 14. Hollis essentially argues that there is no rational basis for treating younger JDC participants "more severely" than older JDC participants. Id. at 18.

Hollis's argument overlooks the Washington Supreme Court's decision in the consolidated case of State v. Shawn P., 122 Wn.2d 553, 859 P.2d 1220 (1993), where the court upheld legislation imposing an additional license penalty on "minor teenagers" aged 13 to 17 years old who had been convicted of drinking or possessing alcohol. The court held that revoking a minor teenager's privilege to drive after such a conviction was rationally related to the legitimate state objectives of promoting highway safety and deterring illegal drinking. Id. at 557.

The court rejected the juvenile offenders' argument that the additional license penalty violated equal protection because it punished them more harshly than other juveniles who were either younger or older than them, and similarly prohibited from using and possessing alcohol. 122 Wn.2d at 561-67. The court reasoned that juveniles under the age of 18 "are frequently treated differently under criminal law." Id. at 564 (noting minor teenagers cannot legally own a car, or obtain a driver's license unless they are (1) 16 years old, (2) have successfully completed an approved traffic safety course, and (3) have a parent or guardian's permission); see also RCW 77.32.155(1)(a) (requiring hunters

under 18 years old to complete a minimum of 10 hours instruction in firearm safety).

Further, the court stated that the party challenging the legislation "must do more than question the wisdom of the legislative classification; *they must show conclusively that the classification is purely arbitrary.*" 122 Wn.2d at 561 (emphasis added). If the purpose of the challenged legislation is a legitimate state objective, then the only question is whether the classification is rationally related to the purpose of the legislation. *Id.* at 563.

Thus, the automatic termination provision challenged by Hollis cannot be invalidated on equal protection grounds simply because it has the potential to treat 16 and 17 year olds more severely than similarly charged 18 year olds. The relevant issue is whether the automatic termination provision is rationally related to a legitimate state end.

Here, the oversight committee adopted the automatic termination provisions with the same legitimate state objectives in mind as those guiding the juvenile justice system and drug court program: community safety, offender accountability, punishment, and rehabilitation. The specific provision challenged by Hollis is rationally related to those objectives because it works to terminate

JDC participants who have been declined to adult court for having allegedly committed a serious violent offense, first-degree robbery, or other certain violent offenses. RCW 13.04.030(1)(e)(v)(A)-(E). Given these circumstances, Hollis cannot show conclusively that the provision is “purely arbitrary.” Shawn P., 122 Wn.2d at 561.

Hollis’s entire equal protection challenge boils down to his claim that the automatic termination provision is unconstitutional because it treats 16 and 17 year old JDC participants charged with first-degree robbery more severely than similarly charged 18 year old participants. Although 18 year old participants are not subject to automatic termination, they are subject to discretionary termination. See CP 216 (“A participant will be considered for termination from JDC if: There are probable cause findings against the participant for new cases filed on.”). Given the court’s authority to exercise its discretion to terminate a participant, it is not certain that an 18 year old participant charged with first-degree robbery would be allowed to remain in drug court.

Moreover, Hollis cannot carry his “heavy burden” of demonstrating beyond a reasonable doubt that the automatic termination provision is “wholly irrelevant to the achievement of legitimate state objectives” based on a single hypothetical that may

or may not occur. See Shawn P., 122 Wn.2d at 561 (challenged legislation is presumed constitutional). While it is true that the oversight committee could have included similarly charged 18 year olds or other older adults in the automatic termination provision, the test is not what the oversight committee “could have done,” nor is it what a reviewing court “would have done” if it was drafting the provision. Id. at 563.

Equal protection does not require the Legislature “to attack every aspect of a problem. The Legislature is free to approach a problem piecemeal and to learn from experience.” Id. at 567. A legislative classification is not unconstitutional simply because the Legislature could have found a better way to achieve a legitimate state end. See Manussier, 129 Wn.2d at 673 (“The rational basis test requires only that the means employed by the statute be rationally related to a legitimate State goal, and not that the means be the best way of achieving that goal.”).

The oversight committee rationally chose to include JDC participants automatically declined to adult court in the larger category of participants subject to automatic termination for having committed, or allegedly committed, a violent offense. Viewed in context, the challenged provision is part and parcel of an overall

rational framework aimed at effectuating the legitimate state ends of community safety, offender accountability, punishment, and rehabilitation. Hollis cannot show that the challenged provision lacks a rational basis.

**2. HOLLIS HAS FAILED TO SHOW THAT THE
AUTOMATIC TERMINATION PROVISION
VIOLATES DUE PROCESS.**

For the first time on appeal, Hollis argues that the trial court violated his right to due process by terminating him from JDC based on the automatic termination provision in the manual. Hollis's failure to raise this issue below precludes him from seeking review on appeal. Hollis cannot show that the alleged error is either constitutional or manifest. Even if the alleged error is a manifest constitutional error, Hollis's claim fails because the trial court exercised its discretion to terminate him and the JDC contract notified him that engaging in criminal activity could lead to termination.

Washington law has long held that an "appellate court may refuse to review any claim of error which was not raised in the trial court." RAP 2.5(a); State v. O'Hara, 167 Wn.2d 91, 98, 217 P.3d 756 (2009). RAP 2.5(a)(3) is a narrowly drawn exception to this

rule allowing appellate courts to consider constitutional errors raised for the first time on appeal only if they are “manifest.” State v. Kirkman, 159 Wn.2d 918, 934-35, 155 P.3d 125 (2007); State v. Lynn, 67 Wn. App. 339, 344, 835 P.2d 251 (1992) (“permitting *every possible* constitutional error to be raised for the first time on appeal undermines the trial process, generates unnecessary appeals, creates undesirable re-trials and is wasteful of the limited resources of prosecutors, public defenders and courts”) (emphasis in original).

A reviewing court will not assume that an alleged error is of constitutional magnitude. O’Hara, 167 Wn.2d at 98. Rather, the court will consider “the asserted claim and assess whether, if correct, it implicates a constitutional interest as compared to another form of trial error.” Id. If the alleged error is constitutional, then the reviewing court must determine whether it is “manifest.” Id. The appellant must show that the claimed error resulted in “actual prejudice” by identifying practical consequences resulting from the alleged error. Kirkman, 159 Wn.2d at 935. To be “manifest,” the error must be “so obvious on the record that the error warrants appellate review.” O’Hara, 167 Wn.2d at 100. If the error is both constitutional and manifest, then the reviewing court

must decide if the error is harmless beyond a reasonable doubt.
Id. at 99.

To support his claim that a constitutional error occurred, Hollis analogizes a drug court contract to a plea agreement and relies on case law holding that plea agreements raise “constitutional due process considerations” because they involve a defendant’s fundamental rights. See State v. Sledge, 133 Wn.2d 828, 839, 947 P.2d 1199 (1997) (holding the defendant’s right to due process was violated when the prosecutor’s conduct at sentencing undermined the terms of the plea agreement).

Hollis’s proposed analogy, however, fails in light of State v. Drum, which explicitly rejected the argument that “a drug court contract is equivalent to a guilty plea.” 143 Wn. App. 608, 620, 181 P.3d 18 (2008), aff’d on other grounds, 168 Wn.2d 23, 225 P.3d 237 (2010). In Drum, the court reasoned that a drug court contract is more akin to a deferred prosecution because it leaves the adjudication of guilt for a later date.⁵ 143 Wn. App. at 619-20.

This Court has explicitly held that the principles governing deferred prosecutions apply to drug court prosecutions. State v.

⁵ A drug court contract, similar to a deferred prosecution agreement, also allows a drug court participant to avoid conviction by successfully completing treatment. Drum, 143 Wn. App. at 616-17.

Melick, 131 Wn. App. 835, 844-45, 129 P.3d 816 (2006). All three Divisions of the Court of Appeals have held that a deferred prosecution is not equivalent to a guilty plea. City of Kent v. Jenkins, 99 Wn. App. 287, 290, 992 P.2d 1045 (2000) (Division One); State v. Higley, 78 Wn. App. 172, 187-88, 902 P.2d 659 (1995) (Division Two); City of Richland v. Michel, 89 Wn. App. 764, 769, 950 P.2d 10 (1998) (Division Three). Thus, Hollis cannot establish a constitutional error warranting review for the first time on appeal by arguing that the same constitutional due process considerations that inhere in a guilty plea agreement also inhere in a drug court contract.

Similarly, Hollis cannot establish a “manifest” error that is “so obvious” on the record that it warrants appellate review. O’Hara, 167 Wn.2d at 100. Hollis argues that actual prejudice resulted from the trial court’s failure to exercise its discretion to terminate him under the contract provision allowing for termination based on new criminal charges being filed. Hollis is mistaken. Contrary to Hollis’s claim, the trial court terminated him based on *both* the automatic termination provision and the discretionary termination provision in the contract.

At the January termination hearing, the trial court initially relied on the automatic termination provision to terminate Hollis and then stated:

I have considered, as well, [Hollis] came into drug court in August of '09 with . . . three charges . . . another misdemeanor was brought into drug court, as well as another felony, and now there is another misdemeanor that is pending.

He has been declined to the adult system on a serious offense and is currently pending charges downtown . . . I do think it is appropriate to terminate the five cases that are currently in drug court at this time.

1RP 14-15 (emphasis added). Given the court's decision to terminate Hollis based on the automatic termination provision, it had no reason to address – “as well” – Hollis's year and a half in drug court other than to provide an additional, discretionary basis for his termination.

Although the court failed to memorialize its discretionary termination of Hollis three months later in its written findings of fact and conclusions of law, the court's oral findings at the January hearing are sufficient to permit appellate review. See State v. Riley, 69 Wn. App. 349, 352-53, 848 P.2d 1288 (1993) (holding the trial court's failure to submit written findings and conclusions after a CrR 3.5 and 3.6 hearing was harmless because the court's oral

findings provided sufficient basis for appellate review); State v. Clark, 46 Wn. App. 856, 859, 732 P.2d 1029 (1987) (same).

Despite the trial court's failure to include its discretionary termination of Hollis in its written findings of fact and conclusions of law, the court's discretionary termination of Hollis should be considered on appeal because it is based on the court's comprehensive oral findings, and is not inconsistent with the court's written findings of fact and conclusions of law. See State v. Bynum, 76 Wn. App. 262, 266, 884 P.2d 10 (1994) (affirming the defendant's conviction based on the trial court's comprehensive oral findings, despite the trial court's incomplete written findings and conclusions); State v. Moon, 48 Wn. App. 647, 653, 739 P.2d 1157 (1987) ("An appellate court is permitted to use the trial court's oral decision to interpret findings of fact and conclusions of law if there is no inconsistency.").

When the trial court's alternative, discretionary ground for terminating Hollis is considered, Hollis's "manifest" error argument evaporates. Hollis cannot show "actual prejudice" resulted from the trial court's termination of him under the automatic termination provision if the court also exercised its discretion to terminate him because either means led to the same result – termination from

drug court. See Kirkman, 159 Wn.2d at 935 (“actual prejudice” requires the appellant to show that the claimed error resulted in practical and identifiable consequences). Given the court’s oral findings at the January hearing, Hollis cannot establish that the alleged error fell within the narrow category of unpreserved errors warranting review on appeal.

Even if Hollis could show that a manifest error had occurred, Hollis’s due process claim would still fail because any error in the court’s termination of Hollis under the automatic termination provision was harmless. As discussed above, the court terminated Hollis based on two alternative grounds, the automatic termination provision and the discretionary contract provision. Any error resulting from the court’s termination of Hollis based on the automatic termination provision was alleviated by the court’s exercise of discretion.

Moreover, for purposes of due process, Hollis had notice that engaging in new criminal activity could result in his termination from JDC. In at least two places in the contract, Hollis indicated that he understood that being prosecuted for new criminal activity, or failing to abide by the terms of the contract, could lead to termination. CP 8-9. The language of the contract could not have

been clearer: *"I agree and understand that if I engage in any criminal act, I may be prosecuted for any new charges, and this may result in my termination from the Drug Court Program."* CP 8 (emphasis added). Hollis signed three JDC contracts over the period of almost a year warning him that he may be terminated for engaging in criminal activity. See CP 7-9 (signed Aug. 27, 2009), 172-74 (signed Apr. 9, 2010), 184-86 (signed July 29, 2010).

Although Hollis argues that it was "fundamentally unfair" for him to be terminated based on the automatic termination provision in the manual, Hollis's argument overlooks the alternative, discretionary basis for his termination, and the practical reality that allegedly robbing someone at gunpoint, and then being charged with first-degree robbery in adult court, would result in termination from drug court.

This Court's decision in State v. J.V. is instructive. 132 Wn. App. 533, 132 P.3d 1116 (2006). In J.V., the juvenile defendant argued that his right to due process was violated when the trial court imposed a manifest justice disposition following his termination from drug court, because the drug court contract did not advise him that such a disposition might result. Id. at 538. This Court rejected that argument, reasoning that the language in the

contract, substantially mirroring the language in Hollis's contract,⁶ "clearly informed J.V. that if he failed in the treatment court program, sentence could be imposed." Id. at 539. Although the contract failed to expressly advise J.V. that a manifest injustice disposition could be imposed, the relevant JJA statutes provided sufficient notice to J.V. that he could receive such a disposition. Id. at 539-40.

Here, Hollis had substantially more notice than J.V. because the contract, rather than relevant statutes under the JJA, explicitly warned him that engaging in criminal activity could lead to termination from JDC. Given the record and this Court's decision in J.V., any error in terminating Hollis from JDC based on the automatic termination provision was harmless.

⁶ Similar to Hollis's contract, J.V.'s contract provided, "I understand that if I fail to follow the terms of my agreement, the Judge may impose sanctions on me, which may include . . . *termination [from] the Treatment Court Program and sentence imposed.*" State v. J.V., 132 Wn. App. 533, 538-39, 132 P.3d 1116 (2006) (emphasis in original); see CP 9 (Hollis's JDC contract providing, "I understand that if I fail to follow the terms of my agreement, the Judge may impose sanctions . . . which may include . . . termination from the Drug Court Program and disposition").

D. CONCLUSION

For the reasons stated above, the Court should affirm Hollis's termination from JDC.

DATED this 12th day of July, 2012.

Respectfully submitted,

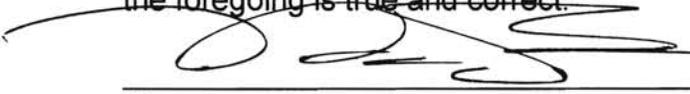
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Casey Grannis, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. TERRY L. HOLLIS, Cause No. 66801-3-I, in the Court of Appeals, Division I, 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.



Name
Done in Seattle, Washington



Date

07-12-12