

FILED  
September 23, 2016  
Court of Appeals  
Division I  
State of Washington

No. 74941-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

S.P.H.,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

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APPELLANT'S OPENING BRIEF

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**A. Summary of Argument**

S.P.H. seeks review of the juvenile court’s denial of his request for a manifest injustice disposition based on an untenable view of the record that was unsupported by the evidence. Because the juvenile court’s findings were not supported by the record, the court abused its discretion in concluding there was no basis for a manifest injustice disposition. In doing so they failed to properly consider the “immediate provocation” and “mental or physical condition significantly reduced his culpability” mitigating factors as required by RCW 13.40.150 and S.P.H.’s constitutional right to due process of law.

**B. Assignments of Error**

1. The juvenile court abused its discretion in regard to the chronology of the findings of fact 12-19 and to the extent they are not supported by the record, must be stricken because the undisputed evidence established that S.P.H ran into the ally while being chased by Ms. Hadenfeldt immediately after she tased S.P.H.

2. The juvenile court abused its discretion when it found the evidence insufficient to support a manifest injustice down based on findings and conclusions unsupported by the record. CP 54 (Supplemental Finding of Fact 3).

3. The juvenile court erred in denying the motion for a manifest injustice down because it failed to properly consider S.P.H.'s mitigating factors.

**C. Issues Pertaining to Assignments of Error**

The juvenile court must base its reasons for or against manifest injustice on facts supported by the record. Was the denial of the manifest injustice here improper where the juvenile court failed to meaningfully consider S.P.H.'s mitigating factors in light of the erroneous findings regarding the chronology of events?

**D. Statement of the Case**

S.P.H. is a fourteen-year-old boy who was found guilty of first degree robbery and received a standard range disposition of 103-129 weeks commitment to the Juvenile Rehabilitation Authority (JRA).. CP 6-7, 48-53.

The underlying incident occurred on the night of September 27, 2015, at approximately 10:30 p.m., when S.P.H. exited Joe's Market near 2<sup>nd</sup> Avenue and Pine Street in downtown Seattle. RP 160. S.P.H. began flirting with eighteen-year-old Micah Hadenfeldt and at some point in their conversation S.P.H. noticed a phone in Ms. Hadenfeldt's

back pocket. RP 162. Impulsively, S.P.H. reached into her pocket and took the phone and ran down the street. RP 163.

Accounts of their interactions there after differ slightly, however, it was undisputed that at some point S.P.H. dropped his phone and Ms. Hadenfeldt picked it up. *Id.*; RP 83. It was also undisputed that Ms. Hadenfeldt used a taser on S.P.H., after which he immediately ran into an alleyway, pulled out a BB gun, and fired at Ms. Hadenfeldt. RP 82-83, 92-93, 164. S.P.H.'s shot struck Ms. Hadenfeldt on the bridge of the nose. RP. 85.

Despite S.P.H and Ms. Hadenfeldt's testimony, the juvenile court made the following facts:

12. Hadenfeldt testified that the respondent turned towards her and she pressed the stun gun at his chest.
13. ...
14. The respondent started to run away again, but dropped his cell phone.
15. Hadenfeldt picked up his cell phone and testified that she offered to give him his cell phone if he gave her cell phone back.
16. The respondent testified that Hadenfeldt was yelling.
17. The Court finds that the truth of how the conversation occurred is likely somewhere in between conversational tones and yelling.
18. The respondent ran away from Hadenfeldt and turned into the alley.
19. When Hadenfeldt pursued the respondent into the alley, the respondent pulled the "BB" gun from his waistband and shot it at Hadenfeldt.

CP 49 (Findings of Fact 12-19).

At the disposition hearing, the prosecutor recommended the standard range disposition of 103-129 weeks at JRA. RP 221. S.P.H. requested a manifest injustice disposition below the standard range of 47-52 weeks based on two mitigating factors, specifically that S.P.H. acted under strong and immediate provocation after being tased by Ms. Hadenfeldt and that S.P.H. was suffering from a mental or physical condition that significantly reduced his culpability. CP 26-37; RP. 231-33.

The Honorable J. Wesley Saint Clair found the record failed to support the mitigating circumstances and ordered the standard range disposition. RP 237; CP 53-54. Judge Saint Clair explained that while “I have certainly found that there were circumstances that from [S.P.H.’s] perspective fell into that, ... it didn’t feel like that to me,” and that “I haven’t found those.” RP 244-45.

S.P.H. now seeks review in this Court.

## **E. Argument**

**Where the juvenile court rejected S.P.H.'s request for a manifest injustice disposition based on an unsupported chronology of the events and without meaningfully considering his extreme youth in assessing culpability, this Court should reverse and remand for a new disposition hearing.**

**1. S.P.H is entitled to due process and an appropriate disposition under RCW 13.40.150**

Before a juvenile is deprived of their liberty, the state and federal constitutions demand due process of law. Const. art. I, § 3; U.S. Const. amend. XIV. The essence of constitutional due process is notice and an opportunity to be heard. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950). When a party seeks a manifest injustice disposition, therefore, constitutional due process imposes stringent requirements. *See State v. Gutierrez*, 37 Wn. App. 910, 916, 684 P.2d 87 (1984) (“the juvenile is entitled to the same high standards of due process as is held to apply in a deadly weapon finding or a habitual criminal proceeding.”).

“Generally, a standard range disposition will be adequate to achieve the goals of the Juvenile Justice Act, including the goal of Rehabilitation.” *State v. Tai N.*, 127 Wn. App. 733, 745, 113 P.3d 19, 25 (2005). However, a court may impose a disposition outside of the standard range if a sentence within the range would effectuate a

“manifest injustice.” RCW 13.40.0357. “Manifest injustice’ means a disposition that would either impose an excessive penalty on the juvenile or would impose a serious, and clear danger to society in light of the purposes of [the Juvenile Justice Act].” RCW13.40.160(2). The court’s determination regarding a manifest injustice must be supported by clear and convincing evidence. RCW 13.40.160. Furthermore, consistent with the demands of due process, a court’s decision on a juvenile’s disposition is to be based on evidence “received by the court.” RCW 13.40.150.

Like RCW 13.40.160(2), RCW 9.94A.585(1) states that a sentence within the normal sentencing range is not appealable. However, courts have determined that the “statute itself does not preclude a challenge to the procedure by which a sentence within the standard range is imposed, so long as a defendant can show ... that the sentencing court refused to consider information mandated by RCW 9.94A.110.” *State v. Garcia-Martinez*, 88 Wn. App. 322, 329, 944 P.2d 1104 (1997). Specific examples include “where the court has refused to exercise discretion at all or has relied on an impermissible basis for refusing to impose an exceptional sentence below the standard range.” *Id.* at 330.

**2. The juvenile court’s chronology and findings are unsupported and inconsistent with the evidence, so should be stricken.**

On appeal, the reviewing court must determine that the reasons relied upon by the juvenile court “clearly and convincingly” support the findings. RCW 13.40.230(2). It was undisputed that at some point S.P.H. dropped his phone and Ms. Hadenfeldt picked it up. *Id.*; RP 83. It is also undisputed Ms. Hadenfeldt used a taser on S.P.H. upon which he immediately ran into an alleyway, pulled out his BB gun, and fired at Ms. Hadenfeldt. RP 82-83, 92-93,164. S.P.H.’s shot struck Ms Hadenfeldt on the bridge of the nose. RP. 85.

Despite S.P.H and Ms. Hadenfeldt’s testimony, the judge found the following facts:

12. [M.H.] testified that [S.P.H.] turned towards her and she pressed the stun gun at his chest
13. ...
14. [S.P.H.] started to run away again, but dropped his cell phone
15. [M.H.] picked up his cell phone and testified that she offered to give him his cell phone if he gave her cell phone back
16. [S.P.H.] testified that [M.H.] was yelling
17. The Court finds that the truth of how the conversation occurred is likely somewhere in between conversational tones and yelling
18. [S.P.H.] ran away from [M.H.] and turned into the alley.
19. When [M.H.] pursued the respondent into the alley, the respondent pulled the “BB” gun from his waistband and shot it at [M.H.].

CP 49 (Findings of Fact 12-19).

Ms Hadenfeldt expressly stated multiple times on the record it was only after she tased S.P.H. that he ran into the ally and used the force he did. RP. 82-83; RP. 92-93. The chronology in the findings of fact, specifically that the parties had a conversation after Ms. Hadenfeldt tased S.P.H. is unsupported by the record. Unsupported findings should be stricken.

**3. The juvenile court abused its discretion when it determined there were no mitigating factors.**

**a. *S.P.H. responded only because he was under “immediate provocation”***

RCW 13.40.150(3)(h)(ii) states, “immediate provocation” is a mitigating factor that the court must consider before entering a dispositional order. RCW 13.40.150(3)(h)(ii). Similarly, under RCW 9.94A.390, recodified to RCW 9.94A.535, certain “failed defenses” may constitute mitigating factors supporting an exceptional sentence below the standard range. *State v. Whitfield*, 99 Wn. App. 331, 336, 994 P.2d 222 (1999) (citing *State v. Hutsell*, 120 Wn.2d 913, 845 P.2d 1325 (1993)).

Commentators recognize the importance in allowing “failed defenses” to be used as mitigating factors where the full defense is not allowable. See *Hutsell*, 120 Wn.2d at 921-22

The Guidelines contain a number of mitigating factors applicable in situations where circumstances exist which tend to establish defenses to criminal liability but fail. In all these situations, if the defense were established, the conduct would be justified or excused, and thus would not constitute a crime at all. The inclusion of these factors as mitigating factors recognizes that there will be situations in which a particular legal defense is not fully established, but where the circumstances that led to the crime, even though falling short of establishing a legal defense, justify distinguishing the conduct from that involved where those circumstances were not present. Allowing variations from the presumptive sentence range where factors exist which distinguish the blameworthiness of a particular defendant's conduct from that normally present in that crime is wholly consistent with the underlying principle. Certainly the fact that the substantive law treats these circumstances as complete defenses establishes the legitimacy of their use in determining relative degrees of blameworthiness for purposes of imposing punishment.

*Id.*, (citing D. Boerner, *Sentencing in Washington* 9–23 (1985))

A court abuses its discretion “when it refuses categorically to impose an exceptional sentence below the standard range under any circumstances.” See *State v. Grayson*, 154 Wn. 2d 333, 342, 111 P.3d 1183 (2005) (citing *State v. Garcia-Martinez*, 88 Wn. App. 322, 944 P.2d 1104 (1997)). On the other hand, a court does not abuse its

discretion when it properly considers mitigating factors and decides based on the facts of the case that that circumstances do not warrant departure from the standard range. *State v. M.L.*, 114 Wn. App. 358, 362, 57 P.3d 644 (2002).

S.P.H explains several times on the record he used force because he had just been tased and was worried about being tased again. RP 164. In fact his actions as recounted by Ms. Hadenfeldt indicate that S.P.H's use force was in response to her immediate provocation. RP 82-83, 92-93. If it was not for the fact S.P.H. had taken Ms. Hadenfeldt's phone, he would have a full self-defense claim to utilize. This is a prime example of a situation contemplated by the Legislature where immediate provocation is a proper mitigating factor.

***b. S.P.H's mental and physical condition significantly reduced his culpability***

Children are “constitutionally different from adults for purposes of sentencing.” *Miller v. Alabama*, \_ U.S. \_\_, 132 S. Ct. 2455, 2464, 183 L. Ed. 2d 407 (2012). They are categorically less blameworthy and more likely to be rehabilitated. *Id.*; *Roper v. Simmons*, 543 U.S. 551. Children are less blameworthy because they are less capable of making reasoned decisions. *Miller*, 132 S. Ct at 2464. Scientists have documented their lack of brain development in areas of judgment. *Id.*

Also, children cannot control their environments. *Id.* at 2464, 2468. They are more vulnerable to and less able to escape from poverty or abuse and have not yet received a basic education. *Id.* Most significantly, juveniles' immaturity and failure to appreciate risk or consequence are temporary deficits. *Id.* at 2464

Culpability is not defined simply by a person's participation in the offense. Instead, among the relevant factors the judge should consider in mitigating culpability are: (1) immaturity, impetuosity, and failure to appreciate risks and consequences; (2) lessened blameworthiness and resulting diminishment in justification for retribution; and (3) the increased possibility of rehabilitation. *O'Dell*, 183 Wn.2d at 692-93. *O'Dell* concluded a court's failure to "meaningfully consider youth as a possible mitigating circumstance" constituted "an abuse of discretion subject to reversal." 183 Wn.2d at 696-97.

Here S.P.H. was a fourteen-year-old boy who had just been tased by an older woman who was still pursuing him. Like most children would have been, S.P.H. was scared and acted irrationally. RP 164. His actions were not thought through, they were simply an automatic response from a boy who found himself provoked by a

situation that was spiraling out of control. RP 166. The juvenile court's failure to meaningfully consider and to take into account S.P.H.'s mental and physical condition in at the time of the incident was improper in light of the supreme court's directive.

**4. Remand is required because, before finding the standard range would not constitute a manifest injustice, the juvenile court must consider mitigating factors presented by the respondent.**

The juvenile court is required to consider on the record any aggravating or mitigating factors presented, as well as a number of other factors set forth in RCW 13.40.150. *State v. ML*, 114 Wn. App. 358, 362, 57 P.3d 644 (2002) (citing *State v. Malychewski*, 41 Wn. App. 488, 489, 704 P.2d 678 (1985)). In addition, the court is required to follow the directives of the statute. RCW 13.40.150(3)(h) states the court must "consider whether or not any ... mitigating factors exist." *Malychewski*, 41 Wn. App. at 490-91.

Similarly, mitigated sentencing requests are entitled to actual consideration based on the record, and where they are not the court should remand the case for a new sentencing hearing. *See Grayson*, 154 Wn. 2d at 336. S.P.H. identified substantial evidence in record which supported his request for a manifest injustice disposition. *State v. J.V.*, 132 Wn. App. 533, 540-41, 132 P.3d 1116 (2006) (substantial evidence

is evidence “sufficient to persuade a fair-minded, rational person of the finding’s truth.”); *State v. Solomon*, 114 Wn. App. 781, 60 P.3d 1215 (2002)); *State v. Strong*, 23 Wn. App. 789, 793-94, 599 P.2d 20 (1979); see also *State v. N.E.*, 70 Wn. App. 602, 607, 854 P.2d 672 (1983).

Because the juvenile court abused its discretion in determining there were no mitigating factors based on an untenable view of the record and a failure to meaningfully consider S.P.H.’s extreme youth, the juvenile court could not have properly considered the mitigating factors of immediate provocation or that a mental or physical condition significantly reduced his culpability. In order to comply with the statute and conform to constitutional due process, S.P.H. asks this court to reverse and remand for further proceedings.

#### **F. Conclusion**

Because the juvenile court declined to consider a manifest injustice disposition based upon an erroneous and untenable view of the chronology of events, the court abused its discretion. S.P.H. identified

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two significant mitigating factors which amply supported the disposition requested. S.P.H. requests this Court reverse the disposition and remand for a new hearing.

DATED this 23<sup>rd</sup> day of September, 2016.

Respectfully submitted,

s/ David L. Donnan

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

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
v.	)	NO. 74941-2-I
	)	
S.P.H.,	)	
	)	
Juvenile Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 23<sup>RD</sup> DAY OF SEPTEMBER, 2016, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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**SIGNED** IN SEATTLE, WASHINGTON THIS 23<sup>RD</sup> DAY OF SEPTEMBER, 2016.



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