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95542-5

Supreme Court No. \_\_\_\_\_  
(COA No. 76258-3-1)

THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

B.O.J.,  
a juvenile,

Petitioner.

---

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

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PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

B.O.J., petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision terminating pursuant to RAP 13.3 and RAP 13.4.

B. COURT OF APPEALS DECISION

B.O.J. seeks review of the Court of Appeals decision dated January 22, 2018, a copy of which is attached as an appendix.

C. ISSUES PRESENTED FOR REVIEW

1. Is a juvenile sentence of up to fifty-two weeks of incarceration for a shoplifting offense contrary to the legislative goals of the Juvenile Justice Act and this Court's holdings on youthful culpability?
2. May a sentencing court impose a manifest injustice sentence when it is not supported by clear and convincing evidence?
3. Is resentencing required where a sentencing court considers improper factors to justify a manifest injustice sentence for a youth?
4. Is a new sentence hearing required when the sentencing court imposes a clearly excessive sentence on a youth convicted of a minor crime?

5. Is a prosecutor permitted to breach a plea agreement when it makes claims of a breach by the defendant, but presents no evidence of the breach other than the prosecutor's claims?

D. STATEMENT OF THE CASE

Seventeen-year-old B.O.J. was surviving on her own because of her unstable family life and unsuccessful foster-care placements when she was convicted of two counts of shoplifting. CP 40. Her parents had never taken care of her and she never felt safe in any of her foster homes placements. CP 40.

B.O.J. was born crack-exposed. Initial Mental Health Summary Report 1. Her grandmother took immediate custody of her. Probation Report 8. B.O.J. had no contact with her mother. Probation Report 8. Her father had addiction problems of his own, making him also unavailable. Initial Mental Health Summary Report 1. She turned to friends, some of whom were involved in criminal activity. Her age and susceptibility caused her to be negatively influenced by these people.

When B.O.J.'s grandmother died, B.O.J. became a ward of the State. Probation Report 8. The government tried to place her in a variety of foster placements, mostly group homes. CP 40. B.O.J.'s past stranger-related trauma caused her to run away from these stress-

inducing environments. CP 40. B.O.J. had no safe placement after her grandmother's death. CP 40.

B.O.J. uses marijuana as a means of coping and relieving stress. GAIN-I Recommendation and Referral Summary 2. The government has never placed B.O.J. in a treatment program tailored to her specific needs. Probation Report 4. The only apparent placement noted by her counselor was in 2015 when the counselor tried to place B.O.J. in a program in Spokane. Probation Report 4, 9. The strangers she was exposed to probably added to her distress and eventual departure. The government has been unable to find another program that works for B.O.J. Probation Report 4.

B.O.J. was accused of stealing five bottles of liquor in April 2016. CP 6. Five months later, she was accused of taking diapers and Rice Krispie Treats. CP 6. She was charged with two counts of theft in the third degree. CP 6-7. Based on her offender score, B.O.J. was subject to local sanctions. RP 8; RCW 13.40.0357. B.O.J. pled guilty to these charges. CP 15. The prosecutor agreed to recommend a sentence of six months of community supervision, eight hours of community service, and credit for time served. RP 13.



The probation department proposed a manifest injustice sentence of fifty-two weeks. CP 40. Probation recommended the disposition because of her criminal history, treatment needs, and overall addiction to a “life of crime.” Probation Report 3. The probation officer also believed B.O.J. was not amenable to community-based treatment. Probation Report 2. He thought her treatment needs would be best served through incarceration. Probation Report 11.

The court released B.O.J. from juvenile detention on the condition she complete a Global Appraisal of Individual Needs (GAIN) assessment, continue treatment, submit to random urinalysis testing, a curfew, and reside in her foster care placement. RP 21. B.O.J. completed the GAIN assessment before her next hearing and did not commit any new crimes. RP 24.

When B.O.J. returned to court, the prosecutor argued she had violated the conditions of her release by running away from her foster care placement. 11/30/16 RP 4. The prosecutor never presented evidence that B.O.J. had breached the stipulated plea agreement by running away, although he alleged she had. 11/30/16 RP 4. B.O.J. denied the allegation. 11/30/16 RP 4. The prosecutor nevertheless argued that B.O.J.’s actions voided the plea agreement. RP 21. The

prosecutor then recommended a manifest injustice sentence of twenty-seven to thirty-six weeks of incarceration because the prosecutor believed this sentence would allow B.O.J. ample time to access and complete drug and alcohol treatment. RP 20. The prosecutor also argued that incarceration would “function as a housing option for B.O.J.” RP 20.

B.O.J., who was months away from turning 18, believed a year of incarceration would not help her. RP 28. B.O.J. wanted help in the community. RP 28. B.O.J. hoped to obtain her G.E.D. and get a job. RP 28. She recommended a sentence of sixty days of incarceration, four months of probation, placement in a local treatment program. CP 22. B.O.J. reiterated that institutionalization was counterproductive for her and that she needed community-based change. RP 28; 37.

The court imposed a sentence of forty-two to fifty-two weeks of incarceration, following no one’s recommendation. RP 34. The court stated that incarceration would provide B.O.J. with the “stable” environment necessary for rehabilitation. RP 34. The court found several aggravating factors existed, including B.O.J.’s previous non-compliance with the conditions of community supervision, her

uncharged criminal conduct, the seriousness of her criminal history, and her treatment needs. CP 40-41.

E. ARGUMENT

Incarcerating a youth for up to fifty-two weeks for the minor offense of shoplifting may provide that youth with temporary stability, but also raises the likelihood of increased recidivism, subjects the youth to institutional violence, and does not satisfy the goals of the Juvenile Justice Act. The Court of Appeals affirmation of B.O.J.'s sentence fails to address the modern jurisprudence of youthful culpability and is in conflict with decisions of this Court. RAP 13.4(b). B.O.J. asks this Court to accept review of the important issues raised in this case and ultimately, to remand this matter for a new sentencing hearing.

**1. This Court should decide whether institutionalizing children for minor offenses is contrary to the goals of the Juvenile Justice Act.**

The Court of Appeals determined that the goals of the Juvenile Justice Act do not conflict with a court's ability to sentence youth to lengthy sentences for minor crimes. Slip. Op at 6. This Court should accept review of this question and address whether legislative intent and the due process rights of juveniles prevent sentencing courts from sentencing youth to lengthy sentences for minor crimes. This question

satisfies RAP 13(b) because it is a significant question of federal and state constitutional law and involves an issue of substantial public interest that should be determined by this Court. The Court of Appeal's holding that it may only consider youthfulness in the context of the 8th Amendment is also in conflict with decisions of this Court, further requiring review under RAP 13.4(b).

Incarcerating juveniles has a negative and counterproductive impact. *See Graham v. Florida*, 560 U.S. 48, 71-73, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010); *Miller v. Alabama*, 567 U.S. 460, 472, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). And while the Court of Appeals discounts the Supreme Court's analysis of why detention is harmful to juveniles and holds it only applies to 8th Amendment cases, this Court has recognized these same principles beyond the 8th Amendment. *See State v. Houston-Sconiers*, 188 Wn.2d 1, 22, 391 P.3d 409 (2017); *see also State v. O'Dell*, 183 Wn.2d 680, 693, 358 P.3d 359 (2015). While *Houston-Sconiers* addresses the 8th Amendment right of youth, *O'Dell* is not decided on 8th Amendment grounds. Instead, *O'Dell* holds that the failure of a sentencing court to consider youthfulness for a young adult requires resentencing, relying on youthful culpability. *O'Dell*, 183

Wn.2d at 699. As such, the Court of Appeals decision is in conflict with this Court's jurisprudence and review is warranted. RAP 13.4(b).

The dangers of incarcerating children for minor offenses cannot be overstated. Approximately a third of young children engage in delinquent behavior before they grow up and mature. Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, 6 (2011).<sup>1</sup> When children are incarcerated, the patterns that lead to maturation are interrupted and delayed. *Id.* When children are incarcerated together, they are exposed to delinquency and contribute negatively to each other's development. See James Snyder, et. al., *Peer Deviancy Training and Peer Coercion: Dual Processes Associated With Early-Onset Conduct Problems* (2008). This can result in higher levels of substance abuse, difficulty in school, violence, and difficulty adjusting throughout adulthood for these youth. Justice Policy Institute, at 6 (*citing* Thomas J. Dishion, et. al., *When Interventions Harm: Peer Groups and Problem Behavior* (1999)).<sup>2</sup>

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<sup>1</sup>[http://www.justicepolicy.org/images/upload/06-11\\_rep\\_dangersofdetention\\_jj.pdf](http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf)

<sup>2</sup>[https://www.researchgate.net/publication/12789140\\_When\\_Interventions\\_Harm\\_Peer\\_Groups\\_and\\_Problem\\_Behavior](https://www.researchgate.net/publication/12789140_When_Interventions_Harm_Peer_Groups_and_Problem_Behavior)

These effects continue into adulthood. Incarcerating youth leads to higher levels of adult incarceration. Joseph Doyle, et. al., *Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-assigned Judges* (2015).<sup>3</sup> Additionally, the evidence shows that incarceration is not more effective than other sentencing alternatives. The Annie E. Casey Foundation, *No Place for Kids: The Case for Reducing Juvenile Incarceration*, 12 (2011). Incarceration may actually increase recidivism. *Id.*; Office of Juvenile Justice and Delinquency Programs, *Highlights from Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders*, 2 (2010).<sup>4</sup> This is especially true for youths like B.O.J., as evidence shows that incarcerating youth who commit low-level crimes makes it more likely they will re-offend than if they were placed in the community. *Id.*; see Center on Juvenile and Criminal Justice, *Study: Long-term Juvenile Incarceration Fails to Decrease Reoffending Rates* (2012).<sup>5</sup>

Incarceration itself exposes youth to physical and sexual abuse. 9.5 percent of youth held state facilities reported at least one incident of

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<sup>3</sup>[http://www.mit.edu/~jjdoyle/aizer\\_doyle\\_juvenile\\_incarceration\\_january2015.pdf](http://www.mit.edu/~jjdoyle/aizer_doyle_juvenile_incarceration_january2015.pdf)

<sup>4</sup><http://www.pathwaysstudy.pitt.edu/documents/Highlights%20from%20the%20Pathways%20to%20Desistance%20Study.pdf>

<sup>5</sup><http://www.cjcj.org/news/5476>

sexual victimization in the past 12 months or since admission. Allen Beck, *Sexual Victimization in Juvenile Facilities Reported by Youth, 2012*, U.S. Department of Justice, 9 (2013).<sup>6</sup> Of those who reported being victims of staff sexual misconduct, 85.9 percent reported more than one incident, while 20.4 percent reported being victimized more than 10 times. *Id.* at 24.

Incarcerated youth are also subjected to physical abuse. 13,000 claims of abuse had been reported from 2004 through 2007 in state-run juvenile facilities nationwide. Holbrook Moore, *AP: 13K Claims of Abuse in Juvenile Detention Since '04* (2008).<sup>7</sup> An estimated 45 percent of youth confined in secure correctional facilities and camp programs report staff use unnecessary force, while 30 percent of those youth report that staff uses solitary confinement as a discipline tool. *Id.*

Finally, incarceration exacerbates any problems the juveniles may already be suffering. A majority suffer from mental health issues, drug, and alcohol dependency. City of Seattle, Resolution 31614, Legislation Details (With Text), 4 (2015).<sup>8</sup> Ninety percent of

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<sup>6</sup> <https://www.bjs.gov/content/pub/pdf/svjfry12.pdf>

<sup>7</sup> [https://usatoday30.usatoday.com/news/nation/2008-03-02-juvenile-detention\\_N.htm](https://usatoday30.usatoday.com/news/nation/2008-03-02-juvenile-detention_N.htm)

<sup>8</sup> <https://seattle.legistar.com/View.ashx?M=F&ID=4019767&GUID=7C099120-9DED-4455-B5F9-81F0AA0D25E5>

incarcerated girls have been physically, sexually or emotionally abused. *Id.* When they are incarcerated, the abuse is not likely to stop. Moore.<sup>9</sup> B.O.J.'s circumstances mirror those of other youth in crisis. By sentencing youth like B.O.J. to lengthy sentences for minor crimes, her likelihood of future success is greatly diminished.

**2. This Court should review whether a sentencing court may impose a manifest injustice sentence when it is not supported by clear and convincing evidence and is not necessary.**

The Court of Appeals held that the juvenile court's determination that B.O.J.'s need for treatment was an appropriate basis for a sentence of forty-two to fifty-two weeks. Slip. Op. at 9. This Court should accept review of the question of whether B.O.J.'s sentence can be justified by a reasonable view of the evidence. This question satisfies RAP 13.4(b) because juvenile sentencing is a significant question of federal and state constitutional law and the issue of whether a juvenile's sentence this far beyond the standard range is necessary involves an issue of substantial public interest that should be determined by this Court. The Court of Appeals affirmation of B.O.J.'s sentence, when the trial court relied on improper evidence, is also in

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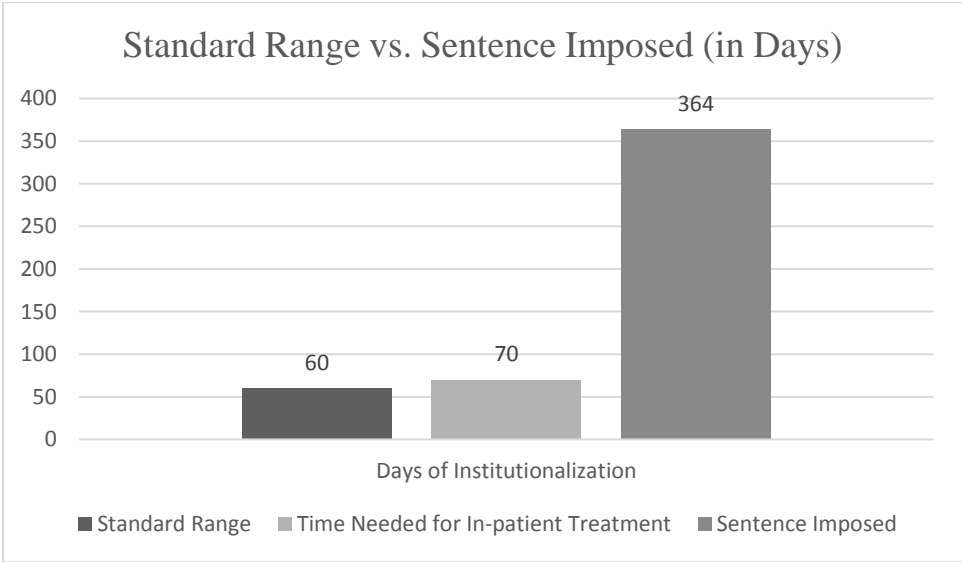
<sup>9</sup>[https://usatoday30.usatoday.com/news/nation/2008-03-02-juvenile-detention\\_N.htm](https://usatoday30.usatoday.com/news/nation/2008-03-02-juvenile-detention_N.htm)



conflict with decisions of this Court and the Court of Appeals, further satisfying RAP 13.4(b).

*a. The reasons for imposing a manifest injustice sentence were not clearly and convincingly supported by the record.*

B.O.J. faced up to sixty days of local time under the standard range guidelines established by the Juvenile Justice Act. CP 22. In recognizing her addiction issues, the prosecutor stated B.O.J. required drug treatment, which can generally accomplish in ten weeks by the Juvenile Rehabilitation Administration. CP 41. Instead, the court imposed a sentence of forty-two to fifty-two weeks. RP 36.



The court based the imposition of a manifest injustice sentence on the following findings: B.O.J.’s substance abuse and treatment

needs, her significant criminal history and continuing to re-offend, her failure to comply with court orders, and that the standard range was too lenient. CP 41-42. The court appears to have intended to provide B.O.J. with a “stable” environment to help her access the required treatment through the manifest injustice sentence. RP 30-31; CP 40. However, the court’s reference to B.O.J.’s lack of success in her treatment placements failed to acknowledge how the Department of Social and Health Services and the probation department were unable to provide placements that addressed her underlying trauma. CP 40. The failure of these institutions to adequately address B.O.J.’s treatment needs does not justify imposing a manifest injustice sentence.

And while the probation report cited B.O.J.’s life of crime, her criminal history suggested otherwise. Probation Report 3. B.O.J. had never been convicted of a felony offense. CP 40. Her record consisted of property crimes, false statements, and a misdemeanor assault. CP 40. B.O.J. had an offender score of two points. CP 18. B.O.J.’s previous convictions are low-level offenses that she committed in times of desperation and survival. CP 40. B.O.J. described her previous shoplifting behavior, as taking something she needs, but is not able to

afford. Probation Report 6. A result of deprivation and poverty, B.O.J.'s history does not support a manifest injustice sentence.

Additionally, the court improperly considered B.O.J.'s uncharged criminal conducted as an aggravating factor. CP 40 (Finding of Fact 12). The use of uncharged conduct is an improper aggravating factor, as it is a violation of the presumption of innocence. *State v. Melton*, 63 Wn. App. 63, 71–72, 817 P.2d 413 (1991). Without other substantial and compelling reasons to justify the sentence, especially where the court places considerable weight on this factor, remand for resentencing is appropriate. *State v. Fisher*, 108 Wn.2d 419, 429, 739 P.2d 683 (1987).

The court further erroneously considered the fact that B.O.J. was a dependent. RCW 13.34.030(6)(a), (b), (c). A juvenile court cannot consider a juvenile's economic circumstances and factors indicating that the child is dependent when determining her sentence. RCW 13.40.150(4)(d) and (e). Notably, the court cannot impose a punishment solely on the basis that a lack of facilities exists in the community. RCW 13.40.150(5). However, this sentencing court characterized incarceration as a way to provide B.O.J. with stability after the prosecutor admitted he saw it as "a housing option." RP 34,

20. B.O.J.'s lack of economic and familial resources should never weigh in favor of a manifest injustice sentence.

*b. The sentence imposed by the court was clearly excessive in light of the seriousness of the offense and the sentences imposed on other youth for similar or more serious property offenses.*

The Court of Appeals also found B.O.J.'s sentence was not clearly excessive. Slip Op. at 11. But compared to other children charged with similar crimes, or even adults charged with more serious property crimes, it is clear that a sentence of up to a year for a minor property offense is clearly excessive.

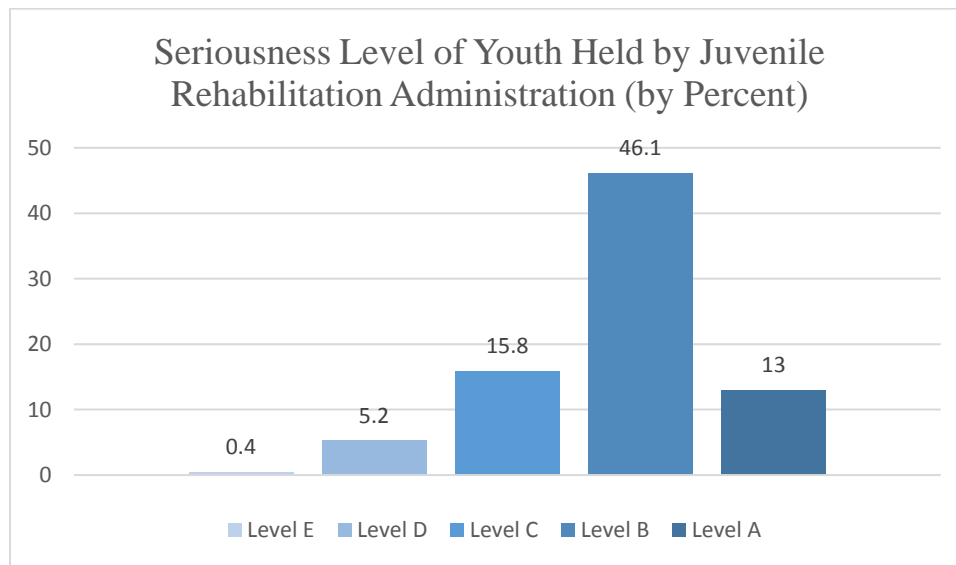
There can be no denying that B.O.J. received an extraordinarily high sentence for her crime. In Washington, less than one-half a percent of all youth convicted of offenses like shoplifting receive institutional sentences. Juvenile Rehabilitation Administration, *Demographic Snapshot on 1/11/2016*, 5 (2016).<sup>10</sup> For all offenders who are sentenced to the institution, the average stay is 143 days, less than half B.O.J.'s sentence. Juvenile Rehabilitation Administration, *Average Residential Stay (In Days)* (2016).<sup>11</sup> The average adult who is convicted of felony

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<sup>10</sup><https://www.dshs.wa.gov/sites/default/files/JJRA/jr/documents/Reports/2016DemographicsOn1-11-16.pdf>

<sup>11</sup><https://www.dshs.wa.gov/sites/default/files/JJRA/jr/documents/Reports/2016AverageLOS-FY15.pdf>

property offense serves three months. Caseload Forecast Council, *Statistical Summary of Adult Felony Sentencing*, 1 (2015).<sup>12</sup> B.O.J.'s convictions are for level E offenses. Her sentence is a statistical anomaly. She does not belong in a juvenile institution.



B.O.J.'s incarceration for such a long time is also unnecessary.

The prosecutor argued for a thirty-six-week sentence, believing this would be ample time for treatment, even if there was a delay in placing B.O.J. into treatment. RP 20. The treatment itself was only ten weeks long. CP 41. There was no evidence that it took a long time to begin treatment once a child was at the institute. A sentence well beyond the

<sup>12</sup>[http://www.cfc.wa.gov/PublicationSentencing/StatisticalSummary/Adult\\_Stat\\_Sum\\_FY2015.pdf](http://www.cfc.wa.gov/PublicationSentencing/StatisticalSummary/Adult_Stat_Sum_FY2015.pdf)

prosecutor's recommendation, and beyond the time needed for treatment was clearly excessive.

**3. This Court should review whether the prosecutor could breach the plea agreement when the sentencing court was not presented with evidence B.O.J. also breached the agreement.**

The Court of Appeals held that the prosecutor's failure to present evidence B.O.J. breached the plea agreement does not entitle B.O.J. to specific performance. Slip. Op. at 12. Because this holding is in conflict with decisions of this Court and is a significant question of federal and state constitutional law RAP 13.4(b) is satisfied and this Court should accept review.

The Court of Appeals recognized that where there is a genuine factual dispute, an evidentiary hearing is required. *In re Pers. Restraint of James*, 96 Wn.2d 847, 850, 640 P.2d 18 (1982). The Court of Appeals failed, however, to recognize that B.O.J. contested that she violated the terms of the plea agreement. Because there was an issue of dispute between the parties that requires an evidentiary hearing, the Court of Appeals decision is in conflict with this Court's previous rulings that require a hearing under these circumstances.

B.O.J. was released at the disposition hearing based on her completion of various conditions including completion of a Global

Appraisal of Individual Needs (GAIN) assessment, submission of a urinalysis, and compliance with Department of Social and Health Services placements. When she returned to court, the government accused B.O.J. of violating a condition of their stipulated agreement by running away from her placement. B.O.J. denied that the violation occurred. 11/30/16 RP 4.

There was no actual evidence presented to show B.O.J. ran from a placement. Despite its failure to prove B.O.J. actually violated the plea agreement, the prosecution breached the plea agreement and recommended that the court impose a manifest injustice sentence. RP 21.

In order to vacate a guilty plea on the basis of a defendant's breach of the stipulated agreement, the government must establish that the breach occurred in an evidentiary hearing. *James*, 96 Wn.2d at 850. Plea agreements inherently implicate fundamental due process rights; therefore the prosecution must adhere to bargained-for terms until breach of the agreement is proven by a preponderance of the evidence. *Id.* An evidentiary hearing must be held where due process is complied with, including affording the defendant the opportunity to call witnesses. *Id.* Merely accusing a defendant of misconduct or of a

violation does not relieve the State of its bargained-for duty. *Id.*; *State v. Sledge*, 133 Wn.2d 828, 838-39, 947 P.2d 1199 (1997).

The remedy for a prosecutor's breach is either specific enforcement of the original agreement or withdrawal of the plea. *State v. Schaupp*, 111 Wn.2d 34, 41, 757 P.2d 970 (1988). In B.O.J.'s case, the prosecution relieved itself of its agreed-on commitments, without proving by a preponderance of the evidence that B.O.J. violated the agreement. This was improper. This Court should accept review of whether B.O.J. is entitled to specific enforcement of the original plea agreement. CP 15.

#### F. CONCLUSION

Incarcerating youth for minor offenses does not reduce crime. It increases the likelihood the youth will commit future crimes and subjects the youth to the probability of institutional violence. As such, it is contrary to the goals of the Juvenile Justice Act.



The questions presented in this petition address significant issues of public policy and constitutional law. The decision of the Court of Appeals is also in conflict with decisions of this Court. B.O.J. respectfully requests that her review be granted. RAP 13.4(b).

DATED this 20th day of February 2018.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Stearns', with a long horizontal flourish extending to the right.

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Washington Appellate Project (91052)  
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## APPENDIX

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

THE STATE OF WASHINGTON,  
Respondent,  
v.  
BREAUNA O. JONES,  
Appellant.

No. 76258-3-I  
DIVISION ONE  
UNPUBLISHED OPINION  
FILED: January 22, 2018

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2018 JAN 22 PM 9:55

APPELWICK, J. — Jones challenges the manifest injustice disposition imposed by the juvenile court following her guilty plea to two counts of theft in the third degree. The record supports the manifest injustice disposition and length of the disposition. We affirm.

FACTS

On November 15, 2016, at age 17, Breauana Jones pleaded guilty to two counts of theft in the third degree. The underlying charges were based on two shoplifting incidents that took place at Safeway stores in 2016. After accepting her plea, the court set over the disposition for one day in order to consider a recommendation from Jones's juvenile probation counselor (JPC). Jones was previously declared dependent under RCW 13.34.030(6) and when the court released her pending disposition, it imposed conditions of release, including the requirements that she abide by curfew and reside in the placement approved

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However, by the next day, Jones had absconded from the Department's approved placement. The court issued a warrant and law enforcement detained Jones a couple of weeks later.

The State had initially agreed to recommend a standard range disposition of local sanctions, consisting of 6 months of community supervision. However, at the disposition hearing on December 13, 2016, the State argued that it was not bound to recommend that disposition, because Jones violated conditions of her release. The State sought a manifest injustice disposition of 27 to 36 weeks of secure detention at a Juvenile Rehabilitation Administration (JRA) facility. The State's recommendation was based on Jones's "inability to comply with community supervision terms, [and] her rather extreme needs that have been untreated so far and cannot be treated in the community."

The JPC recommended a 52 week term of detention at a JRA facility. The JPC submitted a report to the court supporting its recommendation. The JPC's report detailed Jones's personal and criminal history and her need for treatment and intervention. The attachments to this report included numerous court records, Department records, results of a 2015 global appraisal of individual needs (GAIN) assessment, a 2015 mental health assessment, and records related to her education and her 2015 admission to a drug treatment program.

Jones's counsel advocated for local sanctions of 12 months of supervision, and 60 days of detention with a pass for inpatient substance abuse

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treatment. The defense pointed out that Jones's offenses were low-level property crimes and that her conduct neither caused nor threatened serious bodily injury. See RCW 13.40.150(h)(i) (mitigating factor). Jones's counsel primarily argued that incarcerating juveniles was harmful and counterproductive.

The juvenile court imposed a manifest injustice disposition, entered findings of fact, and adopted the JPC's recitations in the probation report regarding Jones's "family situation, educational situation, mental and physical health issues, drug and alcohol issues, and performance while previously on supervision and on conditions of release." The court found that Jones had 11 prior convictions, and in the span of 2 years, she had 19 warrants for violating probation or conditions of supervision and 18 warrants resulting from running away from prior placements. The court also found that Jones failed to appear for mandatory court hearings resulting in bench warrants on 12 occasions in the same 2 year span. This behavior made it "impossible" to provide Jones with the services she needed in the community. Based on court records, the court also found that Jones committed other criminal offenses that were uncharged, that additional charges were dismissed through negotiations, and that she continued to reoffend while cases were pending.

The court determined that Jones had a "substantial" need for substance abuse treatment, noting that she did not dispute her need for treatment, but argued that she could successfully complete that treatment in the community.

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The court found that the standard range of local sanctions would not allow sufficient time for Jones to complete the services she needed and that she would not engage in those services outside of confinement.

The court imposed a manifest injustice disposition of 42 to 52 weeks of confinement at a JRA facility on the following bases:

The respondent's significant substance abuse and welfare needs will require more treatment and counseling than can be accomplished with local sanctions. This is a basis to depart from the standard range.

The respondent has significant criminal history, some of which is of a similar nature to this offense, and has continuing, uncharged and dismissed criminal conduct. The respondent continued to offend while cases were pending. The respondent also failed to comply with court orders. In light of these reasons, the standard range is too lenient.

The court also stated that "[e]ither one of these conclusions regarding aggravating circumstances is a substantial and compelling reason, standing alone, sufficient to justify the length of the disposition imposed."

Jones appeals.

#### DISCUSSION

A juvenile court may depart from a standard range disposition only if it concludes, and enters reasons for its conclusion, that a standard range disposition would effectuate a manifest injustice. RCW 13.40.160(2); State v. Tai N., 127 Wn. App. 733, 741, 113 P.3d 19 (2005); State v. J.N., 64 Wn. App. 112, 113-14, 823 P.2d 1128 (1992). A "manifest injustice" results if a standard range disposition "would impose a serious, and clear danger to society in light

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of the purposes” of the Juvenile Justice Act of 1977 (JJA), chapter 13.40 RCW. RCW 13.40.020(19). These purposes include protecting citizens from criminal behavior, making the juvenile offender accountable for her behavior, providing rehabilitation and reintegration of juvenile offenders, and providing necessary treatment for juvenile offenders. RCW 13.40.010(2)(a), (c), (f), (g); State v. K.E., 97 Wn. App. 273, 279, 982 P.2d 1212 (1999). In other words, “[t]he need for rehabilitation or treatment, the need to protect society from dangerous offenders, and the previous failure of noncustodial treatment or supervision are reasons that can support a sentence outside the standard range.” State v. Taula, 54 Wn. App. 81, 86, 771 P.2d 1188 (1989).

I. Detention of Juveniles

Jones contends that, as a matter of policy, incarcerating juveniles for minor offenses is contrary to the purposes of the JJA. She relies on a series of United States Supreme Court cases including Roper v. Simmons, 543 U.S. 551, 568, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005); Graham v. Florida, 560 U.S. 48, 76, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010); and Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). She also relies on a number of statistical studies and scholarly articles calling into question the effectiveness of incarcerating youthful offenders.

Roper, Graham, and Miller involve the application of the Eighth Amendment to the sentencing of juveniles as adults in the context of the death penalty or life without parole sentences. These cases provide no support for

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the position that the detention of juveniles for any duration is unconstitutional or otherwise impermissible. As the State points out, the purposes of the JJA include the facilitation of treatment and accountability and secure detention is one of the endorsed means toward achieving those ends. RCW 13.40.0357. The ability of courts in juvenile proceedings to deviate from the recommended standard range is not limited to particular crimes; juvenile courts have the discretion to impose manifest injustice dispositions in any type of case in recognition of the myriad of factors that may be relevant to the purposes of the act. As here, where the legislature has weighed the competing policy considerations, we decline to substitute our judgment for its determination.

## II. Aggravating Factors

Jones next contends that the record does not support the court's reasons for imposing a manifest injustice disposition. She claims that while the trial court imposed detention primarily to provide access to treatment, its determination that she would not be successful in community-based treatment was unfounded. According to Jones, she was previously unable to engage in treatment only because the Department did not provide appropriate "placements that addressed her underlying trauma." Furthermore, she contends that the nature of her criminal history did not warrant a manifest injustice disposition, because her convictions involved minor offenses and she had no prior felony convictions.



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RCW 13.40.150(3)(h) provides a list of aggravating factors which the juvenile court should consider to determine whether a manifest justice disposition is justified. Our courts have also consistently approved the consideration of nonstatutory factors. See, e.g., State v. T.E.H., 91 Wn. App. 908, 917-18, 960 P.2d 441 (1998) (high risk that a juvenile will reoffend is a valid ground for a manifest injustice disposition); State v. S.H., 75 Wn. App. 1, 11-12, 877 P.2d 205 (1994) (high risk to reoffend and the need for treatment are valid grounds for a manifest injustice disposition), abrogated on other grounds by State v. Sledge, 83 Wn. App. 639, 922 P.2d 832 (1996). Juvenile courts may consider both statutory and nonstatutory factors. State v. J.V., 132 Wn. App. 533, 540-41, 132 P.3d 1116 (2006). In reviewing a manifest injustice disposition, the appellate court determines whether (1) the record supports the reasons given by the juvenile court to depart from the standard range, (2) those reasons clearly and convincingly support the manifest injustice disposition, and (3) the disposition imposed is neither clearly excessive nor too lenient. RCW 13.40.230(2); State v. Moro, 117 Wn. App. 913, 918-19, 73 P.3d 1029 (2003); State v. Tai N., 127 Wn. App. at 743.

The record here amply supports the juvenile court's determination that Jones was in need of treatment and was not amenable to community-based treatment. Jones does not dispute that she has untreated substance abuse and mental health issues. And, as explained, responding to a need for treatment is an appropriate basis for a manifest injustice disposition. State v. Duncan, 90

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Wn. App. 808, 812, 960 P.2d 941 (1998); S.H., 75 Wn. App. at 12; J.N., 64 Wn. App. at 114-15.

Jones had an extensive record of noncompliance with conditions of supervised release and behavior that made it impossible for the Department to provide community-based treatment. She was admitted to an inpatient treatment program in 2015, but refused to participate and left the facility after two days. According to the record, on every occasion that she was released from detention, Jones immediately ran away to live a transient lifestyle and refused to live in any placement approved by the Department. Unless Jones was in detention, her whereabouts were generally unknown and the Department was unable to provide any services to her. Jones's counsel acknowledged that it was not a matter of the appropriateness of any particular placement. Rather, Jones simply "doesn't like being around people," would not voluntarily stay in any placement arranged by the Department, and will only stay where she chooses.

The seriousness of the juvenile's current offenses need not be a determinative factor. In State v. Taylor, 42 Wn. App. 74, 75, 709 P.2d 1207 (1985), the juvenile was convicted of a property crime and faced a standard range disposition of 30 days detention, but received a sentence of 65 weeks of confinement. According to the court, the juvenile had

a recent criminal history[;] he has a record of delinquency and incorrigibility; . . . he was on parole when he committed the instant offenses [second degree criminal trespass and vehicle prowling] and has violated conditions of parole and rules set by various

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authority figures, including parents, schools, courts; . . . he has received leniency and other treatment and has not been receptive; he has not been made accountable for his actions; he has no regard for the property or safety of others; he has a drug and alcohol problem; he needs the structure, intensive treatment, training and supervision that only an institution can provide.

Id. at 77.

These facts were sufficient to support the manifest injustice disposition and a term of 65 weeks was not “clearly excessive.” Id. at 77-78. Likewise here, in addition to Jones’s need for treatment, she had a substantial history of repeated criminal conduct and noncompliance with court orders and conditions of supervision. The juvenile court judge, who was well acquainted with Jones and her history, reasonably found that further local sanctions would be futile.

Jones’s need for treatment in a secure a stable environment, independently justified a manifest injustice disposition. This court may affirm a manifest injustice disposition as long as one of the factors supported by the record clearly and convincingly supports the disposition and the court can determine that the juvenile court would have entered the same disposition based on that valid aggravating factor. K.E., 97 Wn. App. at 284; S.H., 75 Wn. App. at 12; see State v. N.E., 70 Wn. App. 602, 607, 854 P.2d 672 (1993). In this case, the court made an explicit finding that it would have imposed the same disposition based on either one of the aggravating factors.

### III. Impermissible Factors

Jones claims that the court erred by relying on uncharged criminal conduct, considering her economic and dependent status, and committing her

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to a JRA facility simply to provide a "housing option." See RCW 13.40.150(4)(e) (court may not consider dependency status in considering punishment); RCW 13.40.150(5) (a court may not commit a juvenile to a state institution *solely* because of a lack of facilities in the community).

The trial court found that according to court records, Jones committed other criminal offenses that were either uncharged or dismissed in accordance with global negotiations that did not affect her offender score. RCW 13.40.150(1) mandates that a juvenile court consider the State's argument, all predisposition reports, and "all relevant and material evidence." Nothing in the statute prohibits consideration of criminal acts, including dismissed charges and police contacts, that do not result in adjudications. See State v. Strong, 23 Wn. App. 789, 791-92, 599 P.2d 20 (1979).

There is nothing in the record to suggest that the juvenile court imposed a manifest injustice disposition because of Jones's dependent status or economic circumstances. Instead, the court found that Jones lacked stability in the community and was not compliant with the Department's placements. The record, including statements of Jones's family members, caseworkers, and Jones herself, supports the court's finding. And, the finding, in turn, supports the court's determination that Jones would not be amenable to treatment outside of a secure and structured environment.

In addition, the record does not indicate that the court imposed detention because of a lack of treatment facilities or placement options in the community.

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Jones claims that the court characterized JRA detention as a “housing option.” But, in fact, she quotes the prosecutor’s statement, who was making the point that JRA detention would primarily serve the purpose of providing access to needed treatment and services before Jones turned 18.

IV. Length of Disposition

Jones contends that her disposition is clearly excessive in comparison with the average adult sentence for a property offense. She also maintains that only a small percentage of juveniles are detained for the commission of low-level offenses and points out that the prosecutor recommended a shorter term of detention than the court imposed. Even if a manifest injustice disposition was appropriate, Jones argues that the disposition was beyond what was required to meet her treatment needs and was therefore, clearly excessive.

A manifest injustice disposition is excessive when the disposition cannot be justified by any reasonable view taken from the record. State v. E.J.H., 65 Wn. App. 771, 776, 830 P.2d 375 (1992). Once a manifest injustice disposition is legally supported, the court reviews the length of disposition imposed for manifest abuse of discretion. State v. M.L., 134 Wn.2d 657, 660, 952 P.2d 187 (1998).

At the disposition hearing, the State explained that that the drug and alcohol program available at a JRA facility generally requires 10 weeks. But, youth who have been “historically resistant” to treatment often must repeat the program. The State further explained that mental health programs generally

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run sequentially to the drug and alcohol programs. The JCP's recommendation was based on estimates that Jones would require 24 weeks of substance abuse treatment and support, 24 weeks of mental health treatment, and 24 weeks of academic and vocational intervention. The manifest injustice disposition of 42-52 weeks was neither clearly excessive nor unsubstantiated in light of these estimates.

V. Breach of Plea Agreement

Jones claims that, because the State failed to present evidence and prove that she violated the terms of the plea agreement, the State was required to adhere to its agreement to recommend probation.

"Due process requires a prosecutor to adhere to the terms of the [plea] agreement." State v. Sledge, 133 Wn.2d 828, 839, 947 P.2d 1199 (1997). "The State fulfills its obligations if it acts in good faith and does not contravene the defendant's reasonable expectations that arise from the agreement." State v. McInally, 125 Wn. App. 854, 861-62, 106 P.3d 794 (2005). A defendant who fails to comply with the terms of a plea agreement, loses the right to enforce it. Id. at 867.

If there is a genuine factual dispute as to whether the agreement was breached, remand for an evidentiary hearing is required. In re Pers. Restraint of James, 96 Wn.2d 847, 850, 640 P.2d 18 (1982). But, if no question exists as to breach, we need not order an evidentiary hearing. See State v. Hall, 32 Wn.

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App. 108, 110, 645 P.2d 1143 (1982) (where defendant did not object to sentence and admitted breach, remand was not necessary).

The agreement between Jones and the State allowed the State to increase its recommendation if she violated conditions of release. This is exactly what happened. There was no dispute that Jones did not remain in her approved placement, which was a condition of her release pending disposition. The defense did not request an evidentiary hearing in its briefing or at the hearing. Jones's counsel merely pointed out that she did not commit any new crimes while released, which, from her perspective, was the most important condition of release. In these circumstances, there is no need to remand for an evidentiary hearing. Jones conceded that she did not stay in her approved placement and based on the terms of the plea agreement, the State had the discretion to increase the sentencing recommendation.

VI. Statement of Additional Grounds

In a statement of additional grounds, Jones argues that she "should have [her] time dropped" because she was not prosecuted for another charge, a violent offense involving a firearm. While not entirely clear, she appears to refer to burglary and robbery offenses stemming from an incident that occurred around the same time as the current offenses. When the JPC created his report, these offenses had been referred to the prosecuting attorney's office.

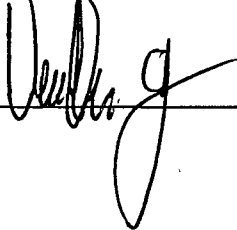
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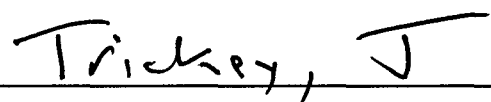
The fact that a more serious charge was apparently dismissed does not support any of the statutory mitigating factors. If anything, this fact weighs in favor of, not against, the manifest injustice disposition imposed by the court.

Jones also reiterates counsel's argument that the court imposed detention due to a lack of placement options in the community. However, as explained, the court's disposition was based on its assessment of Jones's significant treatment needs and its determination that those needs could only be addressed by a period of confinement in a JRA facility.

We affirm.

WE CONCUR:

  
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