No. 96894-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

M.S.,

Petitioner.

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

SUPPLEMENTAL BRIEF OF PETITIONER

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A. INTRODUCTION

M.S. was a sixteen-year-old foster child in the care of the State. He had no prior criminal convictions. M.S. agreed to a deferred disposition by which the court convicted him of a gross misdemeanor on stipulated facts.

A few months later, the court revoked the deferral and sentenced M.S. to the maximum possible exceptional sentence based on aggravating factors not identified in the statute and not supported by facts in the stipulated record. Before he entered the deferral, M.S. never received notice from the State that it would seek an exceptional sentence or of the facts the court would use to increase his punishment. The court imposed a sentence twelve times greater than the maximum standard range.

B. ISSUES FOR WHICH REVIEW HAS BEEN GRANTED

1. The constitutional rights to due process and notice limit a court's authority to increase the permissible range of punishment to aggravating factors identified by the Legislature. In addition, the Juvenile Justice Act (JJA) defines the parameters of permissible sentences for juveniles, establishes a presumptive standard range, and identifies an exclusive list of aggravating factors a court may rely on to impose an exceptional sentence. The court exceeded its authority when it sentenced M.S. to an exceptional sentence based on aggravating factors not identified in the JJA.

2. Due process requires notice of any fact on which a court relies to aggravate a sentence beyond the otherwise permissible range. Juveniles are entitled to the same process as adults, including the right to notice. There is no principled basis to exclude juvenile proceedings from the reaches of due process and notice, and the JJA and Supreme Court precedent require it. The court violated M.S.'s rights to notice and due process when it increased his range of punishment based on factors the State did not give him notice of or prove before he agreed to the deferral by which he was convicted.

3. The Legislature established standard range sentences that are presumed sufficient to appropriately punish and treat juveniles. Both the Legislature and this Court have recognized incarcerating children for minor offenses is rarely appropriate and that doing so "for their own good" is impermissible. The court violated the JJA and imposed a clearly excessive sentence when it sentenced M.S. to a maximum exceptional sentence for a single gross misdemeanor because it thought doing so would provide M.S. with helpful services and stability.

C. STATEMENT OF THE CASE

M.S. was a sixteen-year-old foster child with no prior convictions when he was arrested for assault in the third degree. CP 31. As part of an agreed upon deferred disposition, the State amended the information and

the court found M.S. guilty of assault in the fourth degree based on stipulated facts. RP 18-19; CP 7, 16. At no point did the State indicate it would seek an exceptional sentence if the court revoked the deferred disposition. M.S. had struggled in foster care and lived on the streets for a time. The Department supervising his foster care controlled him by securing "run warrants." RP 80, 92-94, 100-01. After M.S. agreed to the deferral, he primarily resided in his designated placement but objected to the rules he was required to follow. RP 79, 115.

Four months after entering the deferred disposition, the court found M.S. violated its terms and revoked it. CP 24; RP 153. M.S. faced a standard range sentence of no more than thirty days' confinement. RCW 13.40.0357; CP 17. The evidence offered at the sentencing hearing focused on M.S.'s inability to follow rules in his placements, his misbehavior, and his use of alcohol and marijuana. RP 75-137.

Although it had not given M.S. notice before the court found him guilty, the State recommended a manifest injustice disposition of 52 weeks, stating it "doesn't know what else to do." RP 148; CP 73-115. M.S.'s dependency social worker also urged the court to commit M.S. to the Juvenile Rehabilitation Administration (JRA), arguing, "[M.S.] needs help, and the best place to get that help is Juvenile Rehabilitation." CP 112. M.S. opposed an exceptional sentence. CP 55-63.

The court imposed a manifest injustice disposition based on five aggravating factors.[1] CP 32, 38-45. Four of those factors are not identified in RCW 13.40.150(3)(i). M.S. did not receive notice of any of the factors before he agreed to the deferred disposition by which the court found him guilty. The first notice M.S. had was when the State filed its request for an exceptional sentence days before the sentencing hearing. CP 73-115.

The court explained it imposed the exceptional sentence based on its assessment that jail would help M.S. The court told M.S. he had a better chance of not becoming an invisible person living in a homeless camp "if he spends some time in a place where . . . he will get an education, and where he will get three meals a day, and where he will get treatment that he needs, and where he will get the services that he absolutely needs." RP 152. The court concluded, "He needs those services, and the only place he's going to get them is at JRA." RP 156; CP 43.

Although the court cited one statutory aggravating factor, it was "not a huge factor in the Court's decision to impose a manifest injustice." RP 155. Instead, the court based the sentence "primarily on" M.S.'s "need[] to make progress" in treatment. CP 44. The court sentenced M.S. to 52 weeks in jail. CP 31.

[1] The court found these aggravating factors: (1) high risk to reoffend; (2) lacks parental control; (3) unable to obtain treatment and services in the community; (4) failure to comply with recent court orders; and (5) standard range is inappropriate. CP 32, 40-43.

D. ARGUMENT

The governing statute and the protections of due process bar the court from imposing a manifest injustice disposition based on aggravating factors not listed in the statute and without adequate notice and proof of the additional allegations.

1. Courts may impose manifest injustice dispositions based only on aggravating factors specifically identified in the JJA.

a. Sentencing courts must comply with constitutional requirements and statutory constraints.

Courts derive sentencing authority strictly from statutes, subject to constitutional limitations. *Blakely v. Washington*, 542 U.S. 296, 303-04, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); *State v. Bacon*, 190 Wn.2d 458, 464, 415 P.3d 207 (2018); *State v. Ammons*, 105 Wn.2d 175, 180-81, 713 P.2d 719 (1986); U.S. Const. amends. VI, XIV, § 1; Const. art. I, § 22.

> Sentencing is a critical step in our criminal justice system. The fact that guilt has already been established should not result in indifference to the integrity of the sentencing process. Determinations regarding the severity of criminal sanctions are not to be rendered in a cursory fashion. Sentencing courts require reliable facts and information.

State v. Ford, 137 Wn.2d 474, 484, 973 P.2d 452 (1999).

"[T]he fixing of legal punishments for criminal offenses is a legislative function." *Ammons*, 105 Wn.2d at 180. The Legislature historically has set the parameters of sentencing laws and authorized courts to impose sentences within its guidelines. *State v. Monday*, 85 Wn.2d 906, 909-10, 540 P.2d 416 (1975) (legislature not judiciary has power to alter sentencing process); *State v. Mulcare*, 189 Wash. 625, 628,

66 P.2d 360 (1937) (legislative function to fix penalties); *State v. Le Pitre*, 54 Wash. 166, 169, 103 P. 27 (1909) (legislature sets minimum and maximum terms and gives courts broad discretion within these limits).

In Washington, the Legislature delineated the court's sentencing authority for juveniles in the JJA. RCW 13.04.450. A juvenile court's authority to act is purely statutory. *State v. Watkins*, 191 Wn.2d 530, 538, 423 P.3d 830 (2018). As such, the JJA binds a court's sentencing authority to impose only those sentences permitted by the sentencing scheme. *Bacon*, 190 Wn.2d at 464.

b. The JJA limits a court's authority to exceed presumptive sentencing ranges and identifies the exclusive list of permissible aggravating factors.

The JJA created "very specific sentencing standards." *Bacon*, 190 Wn.2d at 465. These sentencing standards allow four sentencing options: standard range, suspended disposition alternative, chemical dependency/mental health disposition alternative, or manifest injustice. RCW 13.40.0357 (Options A-D). Courts must hold a disposition hearing prior to imposing sentence. RCW 13.40.150(3).

The standard range creates a presumptive sentence based on the current offense category and the number of prior convictions. RCW 13.40.0357 (Option A). A court may depart and impose an exceptional sentence above the standard range only where a standard range sentence

"would effectuate a manifest injustice." RCW 13.40.0357 (Option D). In this context, manifest injustice means "a serious, and clear danger to society in light of the purposes of [the JJA]." RCW 13.40.020(19).

The Legislature designed the sentencing scheme to limit a court's authority to impose exceptional sentences in order to avoid the "broad discretion" that can compromise "consistency and standardization" in juvenile sentencing. *State v. Beaver*, 148 Wn.2d 338, 347, 60 P.3d 586 (2002). To that end, RCW 13.40.150(3)(i) identifies eight aggravating factors a court must consider in determining whether an exceptional sentence is warranted. If a court finds the aggravating factors require a sentence outside of the standard range, given the purposes of the JJA, it may impose a manifest injustice sentence. RCW 13.40.160(2).

RCW 13.40.150(3)(i) does not qualify the list as illustrative or direct courts to consider factors other than those listed. Therefore, the rule of expressio unius est exclusio alterius requires courts to consider the factors identified in RCW 13.40.150(3)(i) as the only aggravating factors a court may rely on to impose an exceptional sentence. "The express inclusion of specific items in a class impliedly excludes other such items that are not mentioned." *State v. Linville,* 191 Wn.2d 513, 520, 423 P.3d

842 (2018). Unlike the Sentencing Reform Act (SRA), the JJA has never authorized courts to consider aggravating factors not listed in the statute.[2]

Despite these statutory constraints, courts regularly use non-statutory aggravating factors to support manifest injustice dispositions without addressing their authority to do so. Caseload Forecast Council, *Juvenile Disposition Summary* 15-16 (2019).[3] But the plain language of the statute creates an exclusive list of aggravating factors, and the JJA does not authorize courts to create other factors.

This Court recognized a judge's lack of authority to deviate from the JJA's sentencing scheme in *Bacon*. In that case, the court imposed a suspended manifest injustice sentence even though the JJA did not authorize it. 190 Wn.2d at 463-67. The juvenile argued courts possess inherent authority to craft a sentence most appropriate for the child when it furthers the purposes of the JJA. *Id.* at 463-64.

This Court rejected that theory. *Id.* Instead, it recognized courts are bound by the JJA and "lack statutory authority" to impose a sentence not specifically authorized by the JJA. *Id.* at 459-60. The Court applied the

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[2] Prior to 2005, the SRA stated the identified aggravating factors were merely "illustrative factors . . . not intended to be exclusive reasons for exceptional sentences." Former RCW 9.94A.390, Former RCW 9.94A.535. The Legislature eliminated that disclaimer following *Blakely*. Laws of 2005, ch. 68, § 3. The Legislature understands how to create an illustrative list of aggravating factors when it intends to do so.

[3] https://www.cfc.wa.gov/PublicationSentencing/StatisticalSummary/Juvenile_Disposition_Summary_FY2019.pdf

rule of expressio unius est exclusio alterius to find the omission of manifest injustice sentences from the list of sentences a court could suspend "must be considered intentional." *Id.* at 466-67. Because the JJA did not explicitly authorize the sentence, the court lacked the statutory authority to impose it. *Id.* at 465-67.

The same is true here. RCW 13.40.150(3)(i) provides an exclusive list. Just as "the JJA clearly limits the juvenile court's authority to impose suspended manifest injustice dispositions to the specific situations listed in RCW 13.40.160(10)," the JJA clearly limits the juvenile court's authority to impose manifest injustice dispositions to those based on the specific aggravating factors listed in RCW 13.40.150(3)(i). *Bacon*, 190 Wn.2d at 468. The statute's careful delineation of aggravating factors must be considered intentional. *Id.* at 466-67.

c. <u>The court exceeded its authority when it imposed an exceptional sentence based on aggravating factors not identified in the JJA.</u>

Four of the five aggravating factors the court relied on are not authorized in RCW 13.40.150(3)(i). The court relied on only one statutory factor: failure to comply with recent court orders. CP 32, 42. This factor was not supported by sufficient evidence. *See* MDR at 19-20.

Regardless, the record belies the court's boilerplate disclaimer suggesting it would have sentenced M.S. to an exceptional sentence of the

same length based on any one of the five aggravating factors. CP 43-44. First, the court admitted it based the exceptional sentence primarily on M.S.'s need for treatment. RP 155; CP 44. A juvenile's need for treatment is not a ground for imposing a manifest injustice sentence. *State v. B.O.J.*, 194 Wn.2d 314, 325-29, 449 P.3d 1006 (2019). Second, here, where four of the five factors were impermissible, the "particular facts of th[e] record" fail to demonstrate the court would have imposed the same sentence without the improper reasons, and the Court need not accept the sentencing court's "bare conclusion" to the contrary.[4] *Id.* at 329.

The juvenile court exceeded its sentencing authority in imposing a manifest injustice disposition based on aggravating factors not identified in RCW 13.40.150(3)(i). The sentence is unlawful.

2. Due process and the JJA require the State to plead and prove the statutory aggravating factors the court relies on to impose an exceptional sentence.

a. <u>The right to notice is a core constitutional right that applies to all facts the State must prove to establish the offense and to all facts that increase the permissible range of punishment.</u>

Any person charged with a crime "has a constitutional right to be apprised of the nature and cause of the accusation against him. . . . This doctrine is elementary and of universal application, and is founded on the

[4] The same judge sentenced both M.S. and B.O.J. and stressed the juveniles' needs for treatment, as well as a desire to place the juveniles in the JRA to avoid them being on the streets, in both cases. *Compare B.O.J.*, 194 Wn.2d at 329-30 *with* RP 152-56; CP 44.

plainest principle of justice." *State v. Pry*, 194 Wn.2d 745, 751, 452 P.3d 536 (2019) (internal citations omitted); U.S. Const. amends. VI, XIV, § 1; Const. art. I, §§ 3, 22. Notice is critical in order to permit the accused to prepare a defense. *Pry*, 194 Wn.2d at 752.

The constitutional right to notice applies equally to juvenile and adult proceedings. *In re Gault*, 387 U.S. 1, 33, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967); *see also* RCW 13.40.140(7). Notice applies to every fact that defines the crime or increases the permissible range of punishment. *State v. Recuenco*, 163 Wn.2d 428, 434, 180 P.3d 1276 (2008).

Due process requires notice of aggravating factors in some form prior to the entry of a guilty plea or the commencement of trial. *Id.* at 441. This Court has recognized facts that increase the permissible range of punishment are elements, even if labeled "aggravating factors." *State v. Allen*, 192 Wn.2d 526, 544, 431 P.3d 117 (2018) (aggravators are essential elements for double jeopardy purposes); *State v. McEnroe*, 181 Wn.2d 375, 385, 333 P.3d 402 (2014) (describing aggravators as "essential elements" requiring "constitutionally adequate notice").

The label a statute or a court assigns such facts is irrelevant. "The essential point is that the aggravating fact produced a higher range, which, in turn, conclusively indicates that the fact *is an element* of a distinct and aggravated crime." *Alleyne v. United States*, 570 U.S. 99, 115-16, 133 S.

Ct. 2151, 186 L. Ed. 2d 314 (2013) (emphasis added). People charged with crimes are constitutionally entitled to notice of elements prior to a guilty plea or the start of trial. *Recuenco*, 163 Wn.2d at 440-41.

"[T]he Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment," as applied to the states through the Fourteenth Amendment, require the government to prove "any fact (other than a prior conviction) that increases the maximum penalty for a crime" beyond a reasonable doubt to the fact-finder. *Apprendi v. New Jersey*, 530 U.S. 466, 476, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000) (quoting *Jones v. United States*, 526 U.S. 227, 243 n.6, 119 S. Ct. 1215, 143 L. Ed.2d 311 (1999)). In *Blakely*, the Court interpreted Washington's relevant "maximum penalty" as "not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose *without* any additional findings." 542 U.S. at 303-04. Thus, the State must plead and prove any fact that increases the permissible range of punishment beyond a reasonable doubt in order for an exceptional sentenced based on aggravating factors to be constitutional.

Whether by information or some other form, it is clear the State must at minimum give notice of the specific aggravating circumstances which allegedly justify an enhanced sentence prior to a trial or entry of a plea. *See Recuenco*, 163 Wn.2d at 440-41; *see also State v. Siers*, 174

Wn.2d 269, 277, 274 P.3d 358 (2012) ("[T]o allow the defendant to 'mount an adequate defense' against an aggravating circumstance . . . the defendant must receive notice.").

b. M.S. did not have adequate notice of the aggravating factors or the facts the court relied on to increase his permissible range of punishment.

The court found M.S. guilty as part of the agreed-upon deferred disposition. The State did not notify M.S. it would seek an exceptional sentence if the deferral failed. In addition, the State did not notify M.S. of any specific aggravating factors it would use as the basis of an exceptional sentence request until days before the sentencing hearing. CP 73-115.

When the court accepted the deferred disposition and found M.S. guilty, it noted as a general matter that it could impose "a higher sentence" if it found "special circumstances" created a manifest injustice. RP 14. This broadly stated advisement does not satisfy the standard of notice required by the Due Process Clause and the JJA.

The notice required by due process is more than the existence of a statutory scheme making an increase in sentence a possibility. It is instead the right to be told of the facts on which the State will rely in seeking that increased punishment and the facts upon which the court relies to impose that increased punishment. Similar boilerplate appears in adult plea forms, yet *Blakely* makes clear a court could not actually impose such a sentence

absent specific notice. 542 U.S. at 303-04. Rather, the notice to which juveniles are entitled, as are adults, is the State's intent to seek an exceptional sentence, as well as notice of the specific aggravating factors the State intends to prove to justify the aggravated sentence.

Were the mere existence of a statutory scheme sufficient to provide notice, defendants could be charged without filing an information, as all individuals would be on notice of what are crimes based on the mere existence of the RCWs. This is not the law. *See* RCW 13.40.070 (requiring filing of information). Indeed, even where a charging document directs the defendant to the specific statute at issue, such notice is insufficient.[5] *Auburn v. Brooke*, 119 Wn.2d 623, 627, 836 P.2d 212 (1992).

Here, the court advised M.S. of something it lacked the power to do – impose "a higher sentence" if the court found "special circumstances" that created a manifest injustice. RP 14. But a court may only impose a sentence authorized by the crime charged. Any fact that "alters the legally prescribed punishment so as to aggravate it . . . necessarily forms a constituent part of a new offense" that must be properly noticed to the defendant and proven to the trier of fact. *Alleyne*, 570 U.S. at 114-15.

[5] Here, the court relied on aggravating factors not identified in the statute. Therefore, even a statutory citation would have been meaningless.

The maximum punishment constitutionally available for a crime is the punishment a court may impose *without finding additional facts*. *Blakely*, 542 U.S. at 303-04. A court may not impose an exceptional sentence unless it finds at least one aggravating factor. *See* RCW 13.40.160(2) (manifest injustice sentence is "a disposition outside the standard range" for which additional findings must be made); RCW 13.40.150(3)(i) (listing available aggravating factors).

The court's advisement did not provide M.S. with the notice due process or the JJA entitles him to: notice of the specific aggravating factors on which the court may rely to impose an exceptional sentence, as well as notice of the State's intent to seek an exceptional sentence.

c. The rehabilitative purposes of the JJA do not permit the elimination of fundamental constitutional protections.

The Supreme Court long ago rejected attempts to deprive accused children of core constitutional rights in the guise of protecting them. *Gault*, 387 U.S. at 15-28. Nonetheless, the Court of Appeals minimized the due process rights M.S. was entitled to based on an alleged "critical distinction" between adult and juvenile cases, "namely the 'policy of responding to the needs of offenders' underlying the latter." Ruling at 14 (quoting *State v. Tai N.*, 127 Wn. App. 733, 744, 113 P.3d 19 (2005)).

In *Gault*, the Court held juvenile courts must afford children the right to notice and other protections notwithstanding the differences

between juvenile and adult court and rejected the "parens patriae" justification as a means of dispensing with due process. 387 U.S. at 26-28. The Court held that, as in adult proceedings, due process protections are required for juveniles because of the significant potential deprivation of liberty. *Id.* at 28. "Due process of law is the primary and indispensable foundation of individual freedom," *id.* at 20, and "the condition of being a [child] does not justify a kangaroo court," *id.* at 28. "[C]ivil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile courts." *In re Winship*, 397 U.S. 358, 365-66, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).

Winship's clarification of the demands of due process and notice in criminal proceedings, including juvenile proceedings, is the foundation upon which *Apprendi* and its progeny defined the constitutional protections guaranteed adults. *Apprendi*, 530 U.S. at 477-94. It is because "aggravating factors" increase the range of permissible punishment for an offense that the Supreme Court concluded they are elements triggering *Winship's* due process requirements of notice and proof beyond a reasonable doubt. It would be ironic that adults receive the protections of *Winship* while juveniles do not where it was the latter group with whom *Winship* was concerned.

This Court must afford children the same procedural protections as adults, including the right to notice. *Gault*, 387 U.S. at 33-34. Specifically, "[d]ue process of law requires . . . notice which would be deemed constitutionally adequate in a civil or criminal proceeding." *Id.* at 33. To satisfy "the essentials of due process and fair treatment," juveniles must receive "*timely notice*, in advance of the hearing, of *the specific issues* that they must meet." *Id.* at 30 (emphases added).

Moreover, the JJA provides juveniles with "the right to adequate notice." RCW 13.40.140(7). Similarly, the deferred disposition statute specifically requires the juvenile to acknowledge "the direct consequence that will happen if an order of disposition is entered." RCW 13.40.127(3)(d). Thus, the JJA itself requires a juvenile receive adequate and timely notice of the consequence of conviction.

d. Because M.S. did not receive proper notice of the factors that increased his permissible range of punishment, the exceptional sentence the court imposed on M.S. was unlawful.

Here, M.S. did not receive notice of the aggravating factors the State relied on to seek an exceptional sentence, and M.S. never received notice of the facts the court relied on to increase his permissible range of punishment. Because M.S. did not receive such notice, the exceptional sentence was improper.

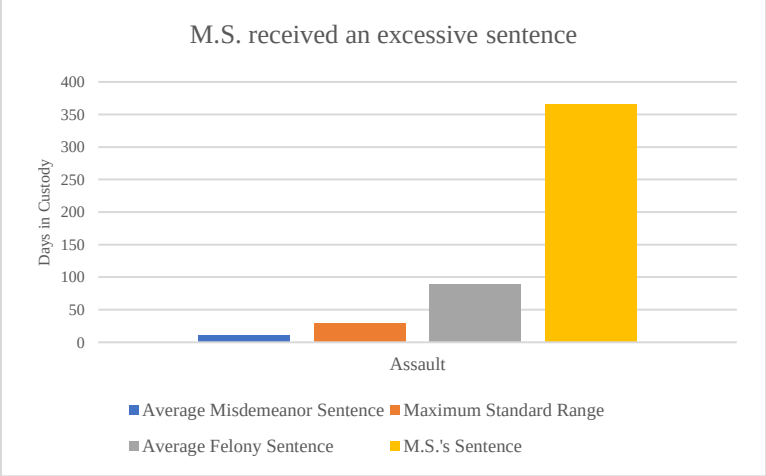
3. The court improperly sentenced M.S. to a maximum exceptional sentence for a gross misdemeanor based on facts related to his dependency status and treatment needs.

Courts may not incarcerate children "for their own good." *B.O.J.*, 194 Wn.2d at 326-28. Simply put, "the misguided belief that incarceration is good for children may not be the basis for a manifest injustice disposition. Incarceration harms children." *Id.* at 332 (González, J., concurring). Incarcerating children for minor offenses may actually increase recidivism and hinder their ability to reintegrate successfully into the community. *Id.* at 327, 332 n. 1 (recognizing empirical studies).

The court's failure to adhere to the statutory scheme and due process requirements permitted the court to exercise the sort of unbridled discretion the Legislature intended to prevent. The Legislature intended "to promote accountability and proportionality" in the sentencing of juveniles through the presumptive sentencing guidelines created in the JJA. Caseload Forecast Council at 17 (2019); RCW 13.40.010. It also intended to avoid JRA commitments when the standard range does not include it. RCW 13.06.010. Despite these legislative declarations, according to the Department, "[a]pproximately 35% of youth in JR care are serving Manifest Injustice Up sentences."[6]

[6] https://www.dcyf.wa.gov/services/juvenile-rehabilitation

M.S.'s exceptional sentence is not proportionate to other similarly charged juveniles, and it exceeds the sentence an adult convicted of even a more serious assault would receive. In 2019, the average juvenile sentence for "assaults or other crimes involving physical harm" was 11 days' confinement for misdemeanors and 10.4 to 15.3 weeks' confinement for felonies. Caseload Forecast Council at 9-10 (2019).[7] Not only is M.S.'s 52-week sentence 12 times greater than the maximum presumptive sentence of 30 days' confinement, it is 33 times greater than the average juvenile sentence for misdemeanor assaults, and three-to-five times greater than the average juvenile sentence for felony assaults.



Even if M.S. had been convicted of the original charge of assault in the *third* degree, the maximum standard range sentence for a juvenile was

[7] Data for 2017 and 2018 reflects similar averages of 11 and 10.2 days for misdemeanors and 13-18 and 15-20.1 weeks for felonies. Caseload Forecast Council 2017, 2018.

30 days' confinement. RCW 13.40.0357. A similarly situated adult convicted of assault in the third degree faces a standard range sentence of 1-3 months. RCW 9.94A.510, 9.94A.515. M.S., sentenced for a misdemeanor assault, received a sentence four-to-twelve times greater than an adult could have received if he was sentenced to the standard range on the felony. The court imposed this disproportionate exceptional sentence because it thought it would be better for M.S. to be in the JRA than in the care of the Department in the community. This was improper. *B.O.J.*, 194 Wn.2d at 347.

This Court may provide M.S. with effective relief by striking the improper manifest injustice and the impermissible aggravating factors from the order of disposition. Courts and prosecutors rely on criminal history in making decisions on cases. A court gives effective relief to appellants by providing an accurate criminal history. *State v. Turner*, 98 Wn.2d 731, 733, 658 P.2d 658 (1983); *State v. Ford*, 99 Wn. App. 682, 687, 995 P.2d 93 (2000).

E. CONCLUSION

This Court should reverse.

DATED this 1st day of June, 2020.

Respectfully submitted,
/s Kate R. Huber
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
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	)	
M.S.,	)	
	)	
Juvenile Petitioner.	)	

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