NO. 96894-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

M.S.,

Petitioner.

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Whether a juvenile court's imposition of a manifest injustice disposition for a high-risk juvenile was within the court's discretion?

2. Whether any of the numerous aggravating factors relied upon by the court were valid and supported by the record?

3. Whether the juvenile was afforded due process?

B. STATEMENT OF THE CASE

1. SUBSTANTIVE FACTS

On the morning of November 1, 2017, 16-year old M.S. approached the driver's side of a parked metro bus. CP 13-15. When the driver opened his window to speak with M.S., M.S. squirted urine from a bottle into the driver's face, then struck the driver in the face with the bottle. The driver's clothes, seat, and control area were soaked in urine. M.S. picked the bottle up again and threw it at the front of the bus. M.S. walked away, punching a second bus as he left. Police responded, recognized M.S. from recent contacts, and identified him as the suspect.

2. PROCEDURAL FACTS

On November 7, 2017, the State charged M.S. with Assault Third Degree, a felony. Noting his other recent referrals, including assault and harassment, the trial court ordered M.S. detained pretrial. CP 46-54; RP

32. M.S. received three detention infractions for acts of aggression within the next month. CP 46-54.

On January 3, 2018, M.S. appeared before the trial court and requested a deferred disposition. RP 6-7; CP 7-20. The juvenile probation counselor (JPC) reported to the court on M.S.'s profoundly troubling social history, including a tendency to run from placements, his substance abuse needs, and his need for a mental health treatment. RP 19.

The trial court engaged M.S. in a colloquy to ensure he was aware of the standard range if the deferred disposition were to be revoked, and that a "higher sentence" called a "manifest injustice" could be imposed if the standard range proved to be insufficient. RP 14. M.S. signed the deferred disposition paperwork, further acknowledging that the judge could impose any sentence authorized by law. CP 17. At the same hearing, the court, recognizing the depth of M.S.'s difficulties, warned M.S. that a deferred disposition would give the court another disposition "option" if the court were to need it later after a revocation. RP 19.

The trial court adjudicated M.S. guilty of an amended charge of Assault Fourth Degree and granted M.S.'s request for a deferred disposition. RP 18-19. The court placed M.S. on six months of community supervision and required M.S. to comply with several conditions. CP 8. M.S. was released from custody after the hearing. CP 7-8; RP 18-25.

Almost immediately, M.S. failed to comply with the terms of the deferred disposition. He did not meet with the JPC and did not begin the case management process, obtain evaluations, or submit to UAs. CP 21. A warrant issued on February 5, 2018 because M.S. fled his placement.

On February 9, 2018, M.S. was booked and brought before the trial court. RP 29. Instead of sanctions, the JPC asked for time to develop more flexible supervision conditions to help M.S. succeed. A new placement was also located for M.S.: Cypress House, a therapeutic group home designed to serve youths with behavioral issues. RP 33. The trial court admonished M.S. that he needed to stay in placement and engage with services, then released M.S. to reside at Cypress House. RP 35.

By mid-February 2018, M.S. was living in Cypress House subject to modified and liberalized rules, but M.S. refused to follow even those rules. RP 114-15. On March 20, 2018, M.S. ran away from Cypress House and a second warrant issued. Because M.S. would not meet with his JPC, the necessary evaluations had not begun. CP 21; RP 131.

On March 22, 2018, M.S. was booked and brought back before the trial court for a modification hearing. RP 39. The court found that M.S. willfully violated the deferred disposition by failing to meet with the JPC and complete the case management process, to reside in approved housing, to attend school, and to submit to UAs. RP 39-40, 50; CP 21. The JPC

spoke at length about how difficult M.S. was to supervise, the dangers of M.S.'s lifestyle, and how M.S. was failing to engage with necessary services even under liberalized conditions. RP 55. The court inquired of the JPC why he was not requesting revocation and a commitment to JRA so that M.S. could receive services in a safe environment. Id. The JPC asked to give M.S. opportunities "not to get to that point." Id. The trial court lamented that M.S.'s dangerous behaviors were undermining the efficacy of supervision and warned M.S. that he could still be revoked and committed to JRA. RP 57-58. The court told M.S. directly that "something a lot different" from supervision and detention would occur if M.S. didn't soon comply. RP 60. M.S. was sanctioned to 10 days in order to meet with the JPC and facilitate a start to community-based services. RP 60-61.

During March and April 2018, M.S.'s behavioral problems worsened, threatening the health and safety of M.S. and those around him. RP 127. M.S. refused to follow the modified curfew or remain in contact with the JPC. CP 51-52; RP 105-08, 118, 129. He used alcohol and drugs excessively and brought drugs and paraphernalia into Cypress House. CP 52; RP 105, 135. He would become so intoxicated he would vomit all over the house, refusing to clean it up and sometimes sleeping in it. RP 104-16.

During this time, M.S.'s physical and mental health and hygiene also deteriorated. CP 52; RP 101, 103-04, 106. He began coughing up

blood in his room and in the communal areas of Cypress House after he contracted pneumonia. RP 104-05, 133-35. He refused medication and treatment, refused to meet with a doctor, and refused to shower or even wash his hands, which had turned black. CP 50; RP 104-08, 114. His teeth began to rot, but he refused dental services. RP 106. Nine teeth would later need to be pulled, and two root canals performed. RP 112.

During this time, almost daily, M.S. engaged in dangerous and threatening behavior at Cypress House. RP 126-27. He brought weapons including a hatchet, a chain, and knives into Cypress House and threatened to hurt staff and residents. RP 105, 109, 11. He assaulted a staff member and broke the staff member's hand. RP 105. On March 28, 2018, he attempted to push a Cypress House staff member down a flight of stairs, and attempted to tie together with a zip tie the hands of a resident and a staff person. RP 108. Despite a brief booking into detention for that offense, M.S.'s violent behavior at Cypress House continued unabated. CP 4, 50. On April 4, 2018, he threatened to "beat up" another resident and grabbed a staff member's chair as a weapon. RP 108. On April 5, 2018, he provided drug paraphernalia to another resident. RP 105, 109. On April 8, 2018, he broke into Cypress House after hours, fought a resident, and almost hit a staff member in the face. CP 50. On April 16, 2018, he fashioned a homemade blowtorch from a lighter and an aerosol spray,

turned on a gas stove with his lighter, and threatened to set all of Cypress House on fire. RP 105-06, 121. By April 16, 2018, he had again run away and a third warrant issued for his arrest. Recognizing the danger M.S. posed, Cypress House requested M.S.'s removal. RP 122.

By April 20, 2018, M.S. was booked and brought back before the trial court. RP 65. The JPC requested revocation of the deferred disposition. CP 46-54. The State recommended revocation and a manifest injustice disposition (MI Up) at JRA, alleging multiple aggravating factors, and the defense responded by recommending community supervision. CP 73-115.

On April 30 and May 8, 2018, the trial court conducted an evidentiary hearing. RP 70-71, 97. The defense presented evidence first from M.S.'s dependency attorney. RP 71-74, 75. M.S.'s dependency attorney spoke at length about M.S.'s status as a dependent child. RP 75-82. The State called M.S.'s social worker in response to M.S.'s dependency attorney. Id. The social worker detailed efforts to find M.S. a suitable placement, M.S.'s deteriorating condition, the depths of M.S.'s substance abuse and mental health issues, and incidents illustrating how dangerous M.S. had become to himself and others. RP 98. The State called the JPC, who testified about how the combination of M.S.'s issues and behavior undermined probation's ability to supervise. RP 128. The JPC's

report, incident report, and treatment reports were entered into evidence. CP 64-67; RP 94. M.S. testified. RP 133. Thereafter, the trial court found that M.S. had violated the terms of the deferred disposition by failing to participate with the case management process and to follow through with services. CP 24. The court revoked the deferred disposition. Id.; RP 153.

The trial court then weighed the sworn testimony it had heard, the information it had received, the briefing and arguments of the parties, and found that a standard disposition of local sanctions would be manifestly unjust. CP 40-43; RP 153-56; Findings of Fact (FF), see Appendix A.

The court found by clear and convincing evidence that numerous factors supported an MI Up, including: 1) high risk to reoffend, 2) lack of parental/guardian control, 3) significant treatment needs that could not be addressed in the community, 4) recent failure to comply with court orders, and 5) that local sanctions were too lenient and would be insufficient to achieve any rehabilitation. The court noted multiple times that M.S. currently posed a danger to the community and that M.S.'s situation was the worst that the court had seen in years of presiding over juvenile cases. FF 6-11; RP 153-156, see Appendix B.

The court imposed an MI Up of 52-52 weeks in JRA, noting that M.S. desperately needed "numerous services" and that the structured setting of JRA was the only place he would be able to successfully access

those services. CP 43; FF 11. The court found that each of its bases, standing alone, would justify the MI Up. CP 43; FF 12.

M.S. has now served his JRA commitment, is over 18, and is no longer under the jurisdiction of the juvenile court.

The Court of Appeals affirmed M.S.'s disposition. This Court granted his petition for review.[1]

C. ARGUMENT

1. THE MANIFEST INJUSTICE DISPOSITION WAS JUSTIFIED BECAUSE M.S. POSED A SERIOUS AND CLEAR DANGER TO SOCIETY.

A juvenile court may deviate from a standard range disposition when it finds that the standard range would impose a manifest injustice. RCW 13.40.160(2). A manifest injustice occurs when the standard sanction "… would impose a serious and clear danger to society in light of the purposes of this chapter." RCW 13.40.020(19). The purposes of the Juvenile Justice Act (JJA) include community protection, accountability, punishment commensurate with culpability, rehabilitation, treatment under supervision, and restitution for victims. RCW 13.40.010(2).

Appellate courts will overturn a manifest injustice finding only where the decision was not supported by clear and convincing evidence

[1] As previously stated in the State's Supplemental Brief, this case is moot and no relief can be afforded to M.S. As M.S. has not stated any issues of "continuing and substantial public interest," his appeal should now be dismissed.

and the disposition imposed was either clearly excessive or clearly too lenient. RCW 13.40.230(2). The standard is manifest abuse of discretion. State v. Sledge, 133 Wn.2d 828, 844, 947 P.2d 1199 (1997).

a. Clear And Convincing Evidence Supports The Trial Court's Findings.

The record is sufficient to establish that M.S. was a high risk to reoffend, that his lack of parental/guardian control placed the community at risk, and that he was unable to receive substance abuse and mental health treatment in the community. The record is also abundantly clear that M.S. was unable or unwilling to follow court order, and that additional community supervision would be insufficient for his rehabilitation and would place the community at further risk.

Contrary to M.S.'s claims, the record does not support that the trial court committed M.S. to JRA because of factors prohibited under RCW 13.40.150(4)(e) and (5). M.S. was not committed because of his status as a dependent, but because his guardian proved incapable of adequately controlling him, which endangered others. FF 7. He was not committed solely because of the lack of community facilities, but because he was unable to engage with numerous available services. RP 92.

Additionally, it should be noted that M.S. repeatedly offered evidence (and was the first to present sworn testimony) to the court

regarding his status as a dependent child in order to minimize sanctions. Thus, to the extent he argues now that the trial court should not have considered his dependent status, that argument was invited error and should not be considered on appeal. State v. Boyer, 91 Wn.2d 342, 588 P.2d 1151 (1979).

b. Unlike B.O.J., M.S.'s Unmet Treatment Needs Posed A Serious And Clear Danger To Society.

This Court noted in B.O.J. that "a juvenile's need for … services *typically* does not impose a serious, and clear danger to society." State v. B.O.J., 194 Wn.2d 314, 325-27, 449 P.3d 1006, 1013 (2019) (italics added). B.O.J. was a nonviolent, juvenile shoplift offender whose failure to comply with drug treatment posed no danger to the broader community. In overturning B.O.J.'s MI Up, this Court reasoning that the JJA allows for an MI Up only where there is evidence of "a serious, and clear danger to society." B.O.J., at 327. M.S.'s case is therefore unlike the situation described in B.O.J. Unlike in B.O.J., M.S.'s underlying offense was a violent one, M.S. continued to act out violently and repeatedly, and it became obvious during supervision that M.S.'s unmet substance abuse and mental health treatment needs did pose a serious and clear danger to the community. His is the type of situation contemplated by the JJA when it authorized MIs Up. RCW 13.40.020(19), .160(2).

c. The Court Considered Proper Aggravators.

At a disposition hearing, the trial court is required to consider statutorily enumerated mitigating and aggravating factors. RCW 13.40.150(3)(h), (i). A court has wide discretion to consider "all relevant and material evidence" to realize the purposes of the JJA. See RCW 13.40.150(1); RCW 13.40.010(2). Aggravating factors may be relevant to both the threshold determination that a standard disposition would be unjust and the court's determination as to the form and length of a disposition. B.O.J., at 324-25. Trial courts are bound to follow the disposition scheme set down by the legislature. State v. Bacon, 190 Wn.2d 458, 415 P.3d 207 (2018). However, the court may consider unenumerated factors. B.O.J., at 325. For example, high risk to reoffend is a valid non-statutory factor. State v. J.N., 64 Wn. App 112, 838 P.2d 1128 (1992).

M.S. asserts now that trial courts should be prohibited from considering factors other than those specifically listed in RCW 13.40.150(3)(i), describing them as the only "permissible aggravating factors that may support a manifest injustice finding." Motion for Discretionary Review at 9. No language in the JJA limits the factors that would support an MI Up. Moreover, the plain language of RCW 13.40.150(4) (listing factors that "may *not* be considered") suggests that all the factors listed above in RCW 13.40.150(3) *may* be so considered.

M.S.'s reading of the statute would also render RCW 13.40.150(5) (which prohibits committing a juvenile to JRA solely because of the lack of community facilities) superfluous, since "lack of community facilities" is not listed above in RCW 13.40.140(3)(i). Statutes must be construed so that all language used is given effect, with no portions rendered meaningless or superfluous. State v. Roggenkamp, 153 Wn.2d 614, 106 P.3d 196 (2005).

Moreover, M.S. conceded to the trial court that "high risk to reoffend" and "lack of parental control" were valid bases upon which to order an MI Up, so that argument is waived. CP 58-59. RAP 2.5(a).

2. THE DURATION OF THE DISPOSITION WAS APPROPRIATE.

It is incumbent on the juvenile justice system to help its youthful offenders. B.O.J., at 327; State v. Rice, 98 Wn.2d 384, 391, 655 P.2d 1145 (1982). The duration of a disposition should be tied to a child's needs rather than to the level of the underlying offense. Rice, at 397. Suggesting otherwise would be to tell a juvenile court to ignore the needs of a juvenile until the State convicts him of a more serious offense. Id. That would be inimical to the rehabilitative purpose of the juvenile justice system. Id.

The legislature granted significant authority to trial courts to impose MIs Up where appropriate based upon the diverse purposes of the

JJA, and a trial court retains significant discretion in determining the length of an MI Up. State v. Beaver, 148 Wn.2d 338, 345, 60 P.3d 586 (2002). The legislature did not limit this discretion to certain offenses, prescribing only that the disposition must be determinate with appropriately limited ranges, RCW 13.40.160(2), and that it may not exceed the length an adult could receive. RCW 13.40.160(11).

Where it has been demonstrated that a juvenile has significant needs, the trial court retains discretion to tailor a disposition to meet those needs. Rice, at 397. The need for treatment is relevant to the length and form of the particular disposition imposed. B.O.J., at 327.

In this case, M.S. committed a felony-level assault but received the benefit of a misdemeanor reduction. That reduction, however, does not make the later sanction he received "clearly excessive" for a "minor offense." Motion for Discretionary Review at 17. To suggest so would undermine the important principles set forth in Rice. The trial court imposed 52 weeks at JRA because M.S. needed, *inter alia*, substantial substance abuse and mental health treatment in order "to have any hope of being on track upon his release." FF 8. Although an MI Up was required to protect the public, the court was not required to ignore M.S.'s need for rehabilitation. His combination of necessary services required approximately a year at JRA, and the record is clear that this time was

necessary to effectuate change, especially due to M.S.'s chronic intransigence.

3. M.S. WAS AFFORDED AMPLE DUE PROCESS.

The due process afforded to M.S. was exemplary. The trial court clearly informed M.S. about his standard range and what an MI Up could entail. RP 14, 19. M.S. acknowledged orally, in writing, and through counsel, that he understood the consequences. RP 14, 18. The court was not quick to revoke the deferred disposition. It gave M.S. multiple warnings and multiple chances to prove himself. RP 35, 55-61. M.S. was committed only after he repeatedly and violently acted out in the community. RP 65. M.S. received advanced written notice of the grounds for revocation and the specific bases for the MI Up. CP 73-115; RP 65. The court heard live, sworn testimony from numerous witnesses, M.S. was allowed to cross-examine them, and M.S. testified himself. RP 70, 90, 133. The court carefully parsed the testimony and found that a single ground for revocation had been proven. CP 24; RP 145. The court then laid out its findings in support of the MI Up. RP 146-56.

a. M.S. Was Informed Of The Direct Consequences Of His Deferred Disposition At The Time He Entered It.

RCW 13.40.127(3)(d) requires that a juvenile seeking a deferred disposition shall "[a]cknowledge… the direct consequences that will

happen if an order of disposition is entered." The phrase "direct consequences" refers to sanctions that have a "definite, immediate and largely automatic effect on the range of the defendant's punishment." State v. Mendoza, 157 Wn.2d 582, 141 P.3d 49 (2006).[2] Failure to advise of a direct consequence renders a plea involuntary. In re Bradley, 165 Wn.2d 934, 940, 205 P.3d 123 (2009).

Juveniles are certainly entitled to due process protections. In re Winship, 397 U.S. 358, 90 S. Ct. 1068 (1970); In re Gault, 387 U.S. 1, 87 S. Ct. 1428 (1967).

At the time of his motion, M.S. was told of his standard local sanctions range and was advised that an MI Up (with more time in custody) could be imposed if aggravating factors were found to be present at disposition. CP 17; RP 14-18. He acknowledged these concepts orally, in writing, and through counsel. Id.

M.S. now claims that he was also entitled to be informed at the time of his motion on January 3, 2018 of the *specific aggravating factors* that would be used to justify his MI Up four months later, on May 8,

[2] Mendoza recognizes length of commitment and community custody as direct consequences. See also In re Yung-Cheng Tsai, 183 Wn.2d 91, 101 (2015) (immigration consequences); State v. McDermond, 112 Wn.2d 239, 245 (2002) (restitution).

2018.[3] This argument should be rejected. Neither the court nor the State can prognosticate such a basis when the conduct that would drive such a disposition has not yet occurred.

Moreover, aggravating factors are not themselves "direct consequences." Although notice of the possibility of an aggravated sentence is required by due process, advance notice of the precise bases is not and, in cases such as this, cannot be. M.S. received the former here.

The procedural posture matters. On January 3, 2018, M.S. did not plead guilty and proceed to disposition; instead, he sought a deferred disposition. The primary benefit of a deferred disposition is dismissal of a juvenile case after a period of community supervision. RCW 13.40.127. Most deferred dispositions are dismissed. Certainly, the record in this case makes clear that the JPC and trial court strove to adjust supervision requirements to suit M.S. and achieve dismissal.

Once disposition became imminent and likely, M.S. *did,* prior to revocation, receive written notice of the aggravating factors that would be cited as bases for the MI Up, and he was able to defend against those allegations. CP 73-115. The factors largely manifested during the course of M.S.'s supervision, after he had entered the deferred disposition.

[3] Insofar as M.S. claims he had a statutory right to such an acknowledgement under the Act, he failed to object or preserve the issue before the trial court. RAP 2.5(a). He may only assert this claim, then, on due process grounds.

But aggravating factors are not "direct consequences" of a plea or disposition. They are the legal underpinnings and arguments that might be made *in support of* one direct consequence, but not direct consequences themselves. Adopting M.S.'s expansive interpretation of what constitutes a "direct consequence" would doom deferred disposition colloquies to failure. Trial courts would be required to preemptively list all legal arguments that could be made for or against every direct consequence. Instead of being straightforward discussions couched in easy-to-understand terms, colloquies would become cumbersome legal lectures.

Children are different. Our jurisprudence makes clear that children are entitled to different treatment under the law because, *inter alia*, they are still developing and are more susceptible to change. See State v. Bassett, 192 Wn.2d 67, 81, 428 P.3d 343 (2018). We therefore maintain a separate court system and disposition scheme for juveniles, with emphasis on rehabilitation. RCW 13.40.010. Most juveniles are also largely unfamiliar with basic legal concepts. Their colloquies should therefore be developmentally appropriate. Overwhelming juveniles in open court with myriad legal arguments that might one day be made about a direct consequence would not, as a practical matter, increase the odds of a more knowing and intelligent plea.

Moreover, it is more properly the role of defense counsel to address such advisements and potentialities in private with the juvenile, if the juvenile has questions about them. State v. S.M., 100 Wn. App. 401, 411, 996 P.2d 1111 (2000). In this case, the record is clear that M.S. and his counsel had multiple such discussions. RP 18.

b. Apprendi And Blakely Are Inapposite In This Context.

The federal constitution requires that any fact that increases the penalty for a crime beyond that authorized by the verdict alone, other than the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S. Ct. 2348 (2000). The Court later held that a jury must find facts that supported an exceptional sentence above the standard range. Blakely v. Washington, 542 U.S. 296, 305-06, 124 S. Ct. 2531 (2004). Those cases focused on the Sixth Amendment right to jury trial, and the role of the jury as a "circuitbreaker" was crucial to the Court's decision. Blakely, 542 U.S. at 305-06; State v. Siers, 174 Wn.2d 269, 274 P.3d 358 (2012).

The situation here is vastly different. "Cases in the juvenile court shall be tried without a jury." RCW 13.04.021(2). Time and again, this Court has noted the "well-defined differences" between the juvenile

justice and adult criminal systems,[4] with the former being focused to a greater extent on rehabilitation, and this Court has repeatedly rejected arguments that juveniles are entitled to jury trials. State v. Chavez, 163 Wn.2d 262, 267-71, 180 P.3d 1250 (2008).

Chavez had pointed to arguably-punitive 1997 amendments to the JJA as evidence that the juvenile justice system was no longer sufficiently different from the adult criminal system to deny juveniles jury trials, but this Court rejected that argument, holding that the 1997 amendments did not fundamentally change the juvenile system to the extent that a jury trial would be required. Chavez, at 270. The Washington legislature has since softened many of the more draconian 1997 amendments, meaning there is even less reason now to alter the holding in Chavez.[5] Id. This Court also noted that JRA offers numerous valuable services not otherwise available in the adult system, highlighting the juvenile justice system's commitment to rehabilitation. Chavez, at 271. Because they are fundamentally Sixth Amendment cases, Blakely and Apprendi did not change the analysis in Washington regarding juveniles and jury trials. See State v. Tai N,127

[4] This is epitomized by the fact that the procedural option M.S. pursued in this case— a deferred disposition— has no true adult equivalent in Washington.

[5] Some recent examples include greatly reducing "auto-adult" eligible offenses and discretionary declines, expanding juvenile case sealing, loosening registration requirements, lessening legal financial obligation burdens, and expanding the number and types of offenses that may be diverted.

Wn. App. 733, 740-41, 113 P.3d 19 (2005); State v. Childress, 169 Wn. App 523, 531, 280 P.3d 1144 (2012).

Similarly, despite the language in Apprendi and Blakely that aggravating factors must be proven beyond a reasonable doubt, this Court held last year that because no protectable liberty interest was created by the juvenile disposition guidelines, aggravating factors in juvenile dispositions must be proven instead by clear and convincing evidence. State v. T.J.S.-M., 193 Wn.2d 450, 463, 441 P.3d 1181, 1189 (2019). Neither of these decisions is clearly incorrect or harmful, and therefore they should not be disturbed. In re Stanger Creek, 77 Wn.2d 649, 653, 466 P.2d 508 (1970).

In this case, though M.S. does not demand a jury trial *per se*, he argues that Apprendi and Blakely conferred upon him a right to be formally informed prior to an adjudication of guilt of the aggravating factors that would eventually be used against him at disposition. Motion for Discretionary Review at 13.[6]

[6] It should be noted that there is no rational basis upon which to distinguish M.S.'s claimed right (notice at the time of guilt of the eventual aggravating factors) from the claimed-but-rejected rights of the juveniles in Chavez (the right to a jury trial) and T.J.S.-M. (the right to have aggravating factors proved beyond a reasonable doubt) vis-à-vis Apprendi and Blakely. In essence, M.S.'s argument would now pit this Court against its own holdings in Chavez and T.J.S.-M.

But Apprendi and Blakely did not create such a right. This was made abundantly clear in State v. Siers, that aggravating factors do not need to be pled in any official charging document. 174 Wn.2d at 277-78. Siers reiterated that Apprendi and Blakely are Sixth Amendment cases that do not confer upon a criminal defendant any particularized right to have aggravating factors pled at a certain time or in a certain form. Siers, at 363-64. It follows then that such cases do not confer an analogous right upon a juvenile.

Instead, Siers holds that as a matter of *due process*, a criminal defendant is entitled to "constitutionally sufficient notice" of the State's intent to allege aggravating factors, in order that a defendant may "mount an adequate defense." Siers, at 364. It follows then that M.S. was entitled to sufficient notice of the aggravating factors, in order that he could mount an adequate defense to them. That is precisely what happened in this case. CP 73-115, 58-59; RP 70-156. Ample due process was afforded to M.S.

D. CONCLUSION

For the reasons set forth above, the State respectfully asks this Court to affirm the imposed manifest injustice disposition.

DATED this 1st day of June, 2020.

Respectfully submitted,

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APPENDIX A

The Honorable Roger Rogoff

SUPERIOR COURT OF WASHINGTON
Juvenile Division

STATE OF WASHINGTON, Plaintiff, v. MASON SASNETT, DOB: 08/28/01, Respondent.	)	No. 17-8-01303-1 FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR MANIFEST INJUSTICE DISPOSITION UPWARD

Pursuant to RCW 13.40.160, and having reviewed all of the evidence, records, motion for deferred disposition, briefing provided by both parties, Temporary Service Plan, Youth Incident Report dated April 17, 2018, 60 Day Treatment Report, Probation Report dated April 20, 2018 authored by JPC Daryl Cerdinio, and the oral testimony provided on April 30, 2018 and May 8, 2018 by: (1) Respondent's Dependency Attorney, Colleen Shea-Brown; (2) Social Worker Alexandria "Lex" Puopolo; (3) JPC Daryl Cerdinio; and (4) Respondent Mason Sasnett, and having considered the arguments of counsel, the Court hereby imposes the manifest injustice disposition upward as requested by the State of 52 weeks at the Juvenile Rehabilitation Administration (JRA). This disposition is based on the following findings of fact and conclusions of law.

A. FINDINGS OF FACT

1. The Court makes the following findings of fact by a preponderance of the

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evidence.

2. The respondent entered into a Deferred Disposition by agreement of the parties on January 3, 2018 on one count of Assault in the Fourth Degree. The behavior for which he was found guilty and placed on a deferred disposition occurred on November 1, 2017. On that date, Respondent approached the driver's side of a Metro Bus. See Certification for Determination of Probable Cause, #17-8-01303-1 (Appendix A to State's Brief). When the driver leaned out the window to speak with Respondent, Respondent squirted the contents of a bottle of urine at the driver. Id. The liquid hit the driver in the face. Id. Respondent then threw the bottle itself at the driver, hitting the driver in the face. Id. Originally, Respondent was charged with Assault in the Third Degree for assaulting a metro bus driver acting in the course of his duties. Id. Respondent failed to comply with the conditions of his deferred disposition. Id.

3. Following a revocation hearing that commenced on April 30, 2018 and concluded on May 8, 2018, the Court finds by clear and convincing evidence that the respondent violated the terms of his deferred disposition by failing to participate with the case management process, failing to comply with case management, and not following through with his service providers (Allegation #2).

4. The respondent has a juvenile offender score of 0 (Zero).

5. The respondent's standard range is local sanctions.

6. The Court adopts the testimony of the four witnesses, as set forth above, in support of its finding of a Manifest Injustice upward in this case. The Court finds the testimony of the witnesses credible. The testimony of the witnesses supports statutory and non-statutory aggravating factors that support the court's finding that, by clear and convincing evidence, a manifest injustice sentence is appropriate.

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6. Based upon the testimony of the witnesses and the evidence before the Court, the Court finds by a preponderance of the evidence that the respondent is a high risk to reoffend. State .v J.N., 64 Wn.App. 112 (1992). Although Respondent has no prior convictions, he has two recent King County criminal matters from 2017 that were sent to diversion programs. Further, the Court heard testimony regarding the respondent being arrested in Snohomish County on or about April 17, 2018 for a Felony Harassment charge. It is unknown at this time whether that incident will be charged and this Court does not consider the substance of those allegations as support for either revocation or as the basis for its disposition. There was additional testimony regarding the respondent's general inability to follow rules, get along with staff, and comply with instructions while at his placement at Cypress House. Specifically, he used a can of Axe hairspray and a lighter as a blowtorch, threatening staff at Cypress House. On March 28, 2018, he tied a resident's and staffperson's hands together with a ziptie at Cypress House. On the same date, he assaulted a resident and tried to push a staff person down the stairs. On April 4, 2018, he threatened to beat up a resident. He has often been seen obviously intoxicated or high, to the point of making himself physically ill.

The Court finds that Respondent spends most of his days on the street, not in any structured school or other setting. Without the means or willingness to support himself, combined with a serious drug/alcohol addiction, Respondent is a high risk to reoffend.

7. Based upon the testimony of the witnesses and the evidence before the Court, the Court finds by a preponderance of the evidence that the respondent lacks parental control. State v. T.E.H., 91 Wn.App. 908 (1998). This finding is not based on Respondent's homelessness. Rather, it is based upon the testimony that Respondent cannot be controlled by those supervising and caring for him. His legal guardian is DSHS. DSHS, though their placement of him at

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Cypress House, has set rules that he is required to follow. His social worker, Alex Puopulo, works with Cypress House staff to help Respondent follow those rules. DSHS has supervised Respondent in precisely the manner one would hope – by creating a flexible set of rules designed to help Respondent succeed. DSHS has not imposed a set of inflexible and unattainable rules on Respondent that ensures failure. Despite the very hard work of many people on Respondent's behalf, he has failed to meet his legal guardians halfway, and has consistently taken advantage of the freedoms provided to him by using drugs, running the streets, and putting himself in danger of exploitation. He does not follow the rules of his DSHS placement, even when that placement has modified the rules to make compliance easier for him. He refuses to care for his own physical safety and hygiene. He has declined to attend school or counseling as directed by the adults in his life, and essentially lives an emancipated, dangerous life. As a result, he puts himself and others in danger.

8. Based upon the testimony of the witnesses and the evidence before the Court, the Court does NOT find that the respondent has exhibited a pattern of runaway behavior. While he is not complying with the curfew rules that apply to general residents of Cypress House, the Respondent has a "Temporary Service Plan" which sets forth a different curfew schedule for him. While there were issues with this initially where he often violated the curfew, more recently the respondent has been in compliance with curfew as required. The court notes that his compliance is primarily the result of DSHS' and Cypress House's willingness to bend their own rules around Respondent's behavior rather than Respondent changing his dangerous behavior to comply with DSHS' rules.

9. Based upon the testimony of the witnesses and the evidence before the Court, the

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Court finds by a preponderance of the evidence that the respondent is unable to obtain the services he needs if he remains out in the community. State v. J.V., 132 Wn.App. 533 (2006). Respondent is unable or unwilling to engage in any structured program designed to address his ongoing drug/alcohol addiction. Respondent is unwilling or unable to maintain proper hygiene as well as his pending and unaddressed medical issues. Respondent himself testified he had been vomiting recently because he did not know he had pneumonia and further acknowledged that he did not follow through with or attend the medical appointments that were scheduled for him. The Court further finds that Respondent would sometimes return to Cypress House under the influence of liquor or drugs. Additionally, Respondent was not attending schooling at the Orion House as directed, and thus was not receiving any educational services. Efforts to redirect Respondent or find alternative ways to provide such services were tried and failed. Without a structured setting where Respondent has no choice but to attend school and counseling, he simply will not attend.

10. Based upon the testimony of the witnesses and the evidence before the Court, the Court finds by a preponderance of the evidence that the respondent has failed to comply with recent court orders. RCW 13.40.150(3)(i)(iv). The Court bases this finding on previous court findings that Respondent violated the terms of his pretrial release on the current matter, as well as his violations of the Court's Order on Deferred Disposition. See Appendices B-I, State's Memorandum Recommending Manifest Injustice Upward to JRA.

11. The Court finds that the standard range disposition of "local sanctions" is too lenient in this case and would effectuate a "manifest injustice" because the respondent's needs cannot be met if he remains out in the community. A standard range disposition of 30 days in detention with credit for time served will not provide any meaningful opportunity for services or

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rehabilitation. Without the structure of JRA, Respondent will not get an education. He will not be physically safe. He will not receive drug/alcohol treatment that he desperately needs. He will not be medically safe. He will likely commit new offenses and hurt other people. In the two years and six months that the undersigned judge has presided over cases in juvenile court, no other child has presented this low level of structure and protective factors in his life. No other child is less capable of ensuring his own health and safety. Without the structure of JRA, Respondent will simply subsist, scrounging for food on the streets, using drugs when he can access them, and looking for places to sleep when they are made available. The respondent has not been successful in having his needs met while remaining out in the community since the entry of his deferred disposition on January 3, 2018. The Court finds that the respondent is in need of numerous services and that the only place he will be able to successfully access those services is at the structured setting of JRA. Without JRA, this system condemns Respondent to a life as an uneducated, drug-addicted, homeless youth.

12. Any of the bases as set forth above, standing alone, is sufficient for the Court to impose a Manifest Injustice Upward.

13. The Court further adopts its oral findings of fact as articulated on the record in open court.

B. CONCLUSIONS OF LAW

1. The Court makes the following conclusions of law by clear and convincing evidence.

2. Considering the purposes of the Juvenile Justice Act, the aggravating circumstances specified in the Findings of Fact are substantial and compelling reasons justifying a "manifest injustice" disposition.

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3. The respondent's behavior demonstrates that he is a high likelihood to reoffend. This is a basis to depart upward from the standard range.

4. The respondent cannot be controlled or managed by those supervising him, which puts both the respondent and others in danger. This is a basis to depart upward from the standard range.

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

6. The respondent is unable to comply with the court's orders. This is a basis to depart upward from the standard range.

7. Any of these separate conclusions of law is a substantial and compelling reason, standing alone, sufficient to justify the length of the disposition imposed. In the event that an appellate court affirms at least one of the substantial and compelling reasons, the length of the disposition should remain the same.

8. The length of the Court's manifest injustice sentence is based primarily on the fact that Respondent needs to make progress in both mental health and drug/alcohol treatment programs. He also needs a sustained period of schooling in a structured setting to have any hope of being on track upon his release. Finally, vocational and job training is also essential to help Respondent succeed once released. The combination of these needed services requires a

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sentence of approximately one year. It is based on this finding that the Court imposes it's manifest injustice sentence of 52-52 weeks.

DATED this 1 day of June, 2018.

Roger Rogoff
Judge, King County Superior Court

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APPENDIX B

RESPONDENT: Both, but mainly other kids, and once because staff. And I don't really -- and I know that I do have a potential placement. I just need a phone so I can call them, and I need Lexi to be there so she knows that it's a placement back up in Bellingham. I've already talked with them before I got locked up. They told me what the deal was, what I had to do, and I've told them that I'd follow it, and they said okay.

THE COURT: Okay.

RESPONDENT: That's all, Your Honor.

THE COURT: Mason, I like you so much. Every time you're in here you bring a little bit of your own energy to the courtroom, and I always appreciate it, and so I thank you for that.

I read about Mason and I see him as one step, one bad thing happening, from becoming one of those in invisible people you see on the street, and he lives a life in a homeless camp somewhere under the freeway. And maybe that's where he ends up no matter what I do today. I think that he has a better chance of that not happening if he spends some time in a place where he can where -- 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.

And it's not what he wants right now, and it will probably be a bumpy beginning to that, but I'm hopeful that by the time he walks out, that he'll at least have been given the opportunity to make a choice to do something different. Because I think he's living right now without much of a choice, because he can't get himself educated, he can't get himself drug and alcohol treatment, he can't get himself any of the services he needs.

And if he can't do any of those things, there's no way he's getting off this path. And I agree with Ms. Findley-Wolf that he has made progress in some ways and that he is laying his head down at night in the same place, but I don't believe that that is the -- I don't believe that that is the end game for Mason. I think there should be more and we should want more and hope for more from him.

So I'm going to revoke the deferred disposition, finding that he violated the conditions as I described earlier, specifically not participating in the case management process by violating the rules of where he was supposed to be living. And given that violation, I'll revoke the disposition.

Pursuant to the State's briefing, I'll make the following findings, and I will indicate that I am

making these findings based upon the testimony of all of the witness who testified during the modification or revocation hearing, as well as the confidential report from Mr. Cerdinio ahead of that hearing, which is dated April 20th, 2018 and is signed by Mr. Cerdinio.

I will number one find that Mason is a high risk to reoffend, given the allegations of behavior at Cypress House including the use of the Axe spray with a lighter in addition to his inability to follow the rules there, his inability to get along with staff and other residents, that he is a high risk to reoffend.

With regard to no parental control, I agree that the Court cannot make a manifest injustice finding based on his homelessness, and I don't make that finding. What I do find is that he right now is -- he can't be controlled by the people who are supposed to be caring for him, and they are unable to get him to follow rules in a way that keeps him safe and hygenic and not a danger to himself or to others.

I will not find that there's pattern of runaway behavior for the reasons that have been set forth by Ms. Findley-Wolf. I will find that he is not able to get the services that he needs in the community, that he can't get drug and alcohol treatment, he can't get

mental health treatment, both of which he desperately needs. He can't get any other kind of services that are required in addition to just simple education, because he is going to do what he wants to do when he's on the street or when he's not in a structured setting, and therefore, that particular aggravating factor, refusal to undergo substance abuse treatment or refusal to get substance abuse treatment or other treatment is committed.

He has failed to comply with recent court orders, although that's not a huge factor in the Court's decision to impose a manifest injustice. It does exist. He's been given court orders to follow conditions of probation and he has not followed them.

And then a standard range disposition in this case of 30 days with 30 days credit for time served isn't going to do anything meaningful for Mason at this point. He is 16 years old, he's getting on to 17 years old. Juvenile court is going to lose an opportunity to provide him the services he needs relatively quickly. He has so many needs that it is hard to know even where to begin, and the idea that he is going to get those needs while living at Cypress House or some other placement and consistently wanting to be on the street is a dream world. I mean, it's

not going to happen.

He needs those services, and the only place he's going to get them is at JRA, and therefore, I'll impose the 52 weeks, the range being 52 to 52. To me, that means he gets a year of education, a year of treatment, a year of services, and I hope that at the end of that year he is in a better place than he is now and is able to take care of himself. And that will be the order of the Court.

MR. WONG: Yes, Your Honor. One moment to complete the order.

THE COURT: Do you want to sign or do you want to go back?

RESPONDENT: I'll do my initial.

THE COURT: All right. Well, hold up. She's going to get it ready for you.

MS. FINDLEY-WOLF: Is it ready?

MR. WONG: Very soon.

Mr. Cerdinio, in terms of credit, your last brief indicated 46 days as of 4/20 so I added the days to today, which I believe is 64, if I'm counting correctly.

THE COURT: Miss Findley-Wolf, the order revoking deferred disposition is ready, even though the --

MS. FINDLEY-WOLF: Oh, sorry.

KING COUNTY PROSECUTOR'S OFFICE-JUVENILE DIVISION

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