No. 99379-3

NO. 37166-2-III

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

I.A.S.,

Appellant.

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

APPELLANT'S REPLY BRIEF

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A. ARGUMENT.

A child who enters a deferred disposition is not obligated to submit to DNA collection unless the deferred disposition fails, not when entering a deferral that will be vacated and sealed when successfully completed

The prosecution ignores many of the arguments I.A.S. raised in his opening brief to explain why DNA collection is mandated upon the final disposition of a conviction in a juvenile case and confuses the question presented in this case.

1. The prosecution misrepresents the relevant statutes involving DNA collection.

The response brief starts with the proposition that "a conviction triggers" the requirement to provide a DNA sample under RCW 43.43.754. Then it ignores the actual language in this provision and other provisions of this same statute, contrary to the fundamental principles of statutory interpretation that a statutory provision is construed as a whole, and a penal statute is construed strictly. *State v. Weatherwax*, 188 Wn.2d 139, 155, 392 P.3d 1054 (2017); *State v. Flores*, 164 Wn.2d 1, 12, 186 P.3d 1038 (2008) ("a single word in a statute should not be read in isolation").

Preliminarily, the prosecution contends RCW 43.43.754 is not a penal statute subject to strict construction. However, this statute not only makes it mandatory for certain people to submit their DNA samples as a consequence of conviction, this statute also makes it a crime for a person to refuse to comply. RCW 43.43.754(12). As a statute defining a crime as well as mandating actions by people due to their criminal convictions, it is unreasonable to portray this statute as not criminal or penal.

The Response Brief misrepresents the language of RCW 43.43.754(1), and thereby misleads the Court about its operation. This statute actually says, in section one, that a "biological sample must be collected" for DNA analysis "from" a "juvenile convicted of a felony" or other specified offenses. RCW 43.43.754(1).

Then, in section five, this statute goes on to explain that these "[b]iological samples shall be collected in the following manner." RCW 43.43.754(5). This "manner" of collection occurs based on the nature of the sentence imposed, as explained in the Opening Brief, at 10-11. The statute does not direct or demand the person immediately submit to collection. RCW 43.43.754(5),

(6). For juveniles not serving a term of confinement, the statute provides they will supply DNA samples in a "reasonable time" as the court directs. RCW 43.43.754(6).

The prosecution ignores this statutory scheme in its discussion of RCW 43.43.754. Instead it turns to RCW 43.43.7541, which states the DNA collection fee is imposed at sentencing. Resp. Brief. at 3-4. It declares the legislature must have intended a difference between the conviction that triggers the DNA obligation and the sentencing where the fee is imposed because one statute refers to the convictions that render a person eligible for DNA collection and the other speaks of sentence as the time a person must pay an associated collection fee. *Id*.

The prosecution's distinction is illogical. It ignores collection statute's instruction directing the collection of DNA based on where and when a person is serving the sentence, within a "reasonable" time, and in no way contemplates DNA must be provided at the time of conviction. The imposition of a fee at the time of sentencing does not signal legislative intent to mandate the DNA sample be provided earlier than sentencing.

RCW 43.43.7541's fee imposed as part of a sentence does not indicate that DNA collection must occur before sentencing or unrelated to sentencing. RCW 43.43.754 triggers an obligation to provide a DNA sample but it also triggers the collection of this DNA after sentencing, and in the case of a child who receives a deferred disposition, after the deferral fails and a sentence is imposed.

2. Contrary to the prosecution, statutes governing firearm possession and licensing restrictions support I.A.S.'s explanation of when he must submit to DNA collection.

A deferred disposition entered by a child in a juvenile case is temporary, unlike an actual adjudication of guilt following a trial or guilty plea. It will be vacated and sealed if the deferral is successful, or it will be a permanent conviction if the deferral is unsuccessful. *State v. H.Z.-B.*, 1 Wn. App. 2d 364, 367, 405 P.3d 1022 (2017); RCW 13.40.127.

The premise of the prosecution's brief is that a "conviction" means only one thing. But the statutes it cites undermine its argument.

The prosecution points to the unlawful possession of a firearm statute, RCW 9.41.040(3). This statute states that a

person may not possess a firearm if previously "convicted" of a serious offense. RCW 9.41.040(1). It further explains what it means by "convicted." RCW 9.41.040(3). It sets out various circumstances under which a person has been "convicted" for purposes of this offense "[n]otwithstanding" other provisions of law. *Id*. It defines a conviction as including when there is a plea or guilty verdict "notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition . . . and further says, "[c]onviction includes a dismissal entered after a period of probation, suspension or deferral of sentence . . . ." *Id*.

This explanation of when a person has been convicted in RCW 9.41.040(3) demonstrates there is not one straightforward definition of "conviction" that applies in all scenarios. It supports I.A.S.'s explanation of when his obligation to submit to DNA collection occurs. Being convicted may mean different things in different circumstances. This statute also demonstrates that the legislature knows how to ensure the entry of a deferred disposition is treated as a "conviction" that triggers other obligations. The absence of such language in the

DNA collection statute further supports the notion that the legislature was not intending to demand DNA collection from a child who successfully completes a deferred disposition. *State v. Delgado*, 148 Wn.2d 723, 728, 63 P.3d 792 (2003).

The prosecution also misleadingly cites a driver's license statute as evidence of when a conviction occurs, omitting key language that undermines its argument. Resp. Brief at 6-7. RCW 46.20.285 provides for the revocation of a person's license to drive after a conviction for certain offenses. This revocation occurs only after the department receives "a record of the driver's conviction" *and* "when the conviction has become final." RCW 46.20.285.

The prosecution incorrectly claims "conviction triggers the revocation" under RCW 46.20.285. Resp. Brief at 7. In fact, the conviction must be "final" and the record of its finality received by the DOL. As RCW 46.20.285 illustrates, the legislature uses the term conviction to mean the final disposition in a case, and not the temporary entry of a deferral where the finality of a conviction is contingent on other acts occurring.

The prosecution misrepresents the language of the statutes on which it relies. These statutes show that the legislature adopts a specific view of a conviction by explicit language, such as in the firearm possession statute. Otherwise it treats the collateral consequences of a conviction, such as driver license revocation or DNA collection, as actions that occur as part of a sentence or when the conviction is final.

3. Under RCW 43.43.754 and based on the terms and intent of the deferred disposition scheme for juveniles, a child's DNA should not be permanently placed in the DNA database until the conviction is final.

Juvenile courts and statutes protect children and seek their rehabilitation in ways adult proceedings do not. *State v. S.J.C.*, 183 Wn.2d 408, 422, 352 P.3d 749 (2015). Their records are given "more confidentiality than other types of records." *Id.* at 417.

Once a person submits a DNA sample, it is entered into a database and made available to law enforcement. It cannot be retracted. When a child completes a deferred disposition successfully, the statutory scheme requires immediate sealing

and the vacation of the conviction. *H.Z.-B.*, 1 Wn. App. 2d at 371; RCW 13.40.127.

The entry of a deferred disposition does not finally settle a criminal case. *State v. M.C.*, 148 Wn. App. 968, 972, 201 P.3d 413 (2009). Instead, "the actual disposition will occur at some future time, depending on the juvenile's future conduct." *Id.*

Based on the statutory scheme and the plain language of RCW 43.43.754, a child who enters into a deferred disposition is not required to provide a DNA sample unless the deferral is unsuccessful. This Court should adopt the analysis used by other trial court judges, as explained in the Opening Brief, and hold that DNA collection occurs in conjunction with a failed deferred disposition, not when the deferred disposition is successfully completed.

B. CONCLUSION.

Based on the statutory scheme and the purposes of the deferred disposition, the court should not mandate a child submit a DNA sample upon the entry of a deferred disposition that is subject to dismissal, vacation and sealing if successfully completed. Instead, the sample is properly collected upon entry of a final order revoking the disposition and imposing sentence.

DATED this 1st day of June 2020.

Respectfully submitted,

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

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	)	
RESPONDENT,	)	
	)	
v.	)	NO. 37166-2-III
	)	
I.S.,	)	
	)	
JUVENILE APPELLANT.	)	

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June 01, 2020 - 4:27 PM

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Appellate Court Case Title:	State of Washington v. I.A.S.
Superior Court Case Number:	19-8-00481-5

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