IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. E.W., Appellant.	No. 42813-0-II UNPUBLISHED OPINION

Van Deren, J. — EW appeals the superior court's entry of an order imposing sanctions for probation violations. Because his appeal is moot, we dismiss.[1]

FACTS

As a result of guilty pleas to two theft counts, the superior court imposed 12 months of community supervision on EW. The community supervision conditions included a requirement that EW spend every night at a residence approved by his probation counselor. A "Personal Responsibility Commitment" signed by EW included a condition that "EW will not use or possess firearms, guns including but not limited to: air-soft guns." Ex. 1.

On September 27, 2011, EW's stepmother contacted Nick Potter, EW's probation

[1] A commissioner of this court initially considered this appeal as a motion on the merits under RAP 18.14 and then referred it to a panel of judges.

counselor, and told him that EW failed to stay at her residence on September 18, 2011. He left at midnight and did not return until 5:00 a.m. She also told Potter that EW, along with a few other boys, possessed an airsoft gun on September 26.

On October 3, 2011, Potter spoke with EW about his stepmother's allegations. EW initially expressed to Potter that he felt like he was being blamed for "everything . . . in the home." Report of Proceedings (RP) at 55. They then spoke about the allegations. With respect to the airsoft gun, Potter testified that he told EW "you had possession of that" and "[EW] said yes." RP at 52. EW first denied the allegation that he had been out overnight. Potter explained that "even a few hours [out of the residence] overnight without permission is a violation, which you were, and [EW] said yeah." RP at 52. Potter also spoke to him about a third alleged violation, that EW possessed an "X-acto" knife and threatened his brother with it, and EW denied the allegation.

On October 5, 2011, Potter filed a motion to modify EW's disposition based on EW stepmother's allegations that he possessed an airsoft gun on September 26, 2011, and spent the night away from his house without permission on September 18, 2011.

On November 9, 2011, the superior court held a probation violation hearing. Potter testified that he reviewed the terms of community supervision with EW and that EW had no questions. He added that at the time EW's stepmother alleged EW left the residence, EW's court-ordered residence was with his father and stepmother.[2] He further testified as to the discussion he had with EW on October 3.

[2] The approved residence was changed to EW's mother's house on October 7, 2011, due to abuse allegations against EW's father and stepmother.

EW also testified at the hearing. He said that his stepbrother had the airsoft gun and that he did not touch it. He admitted to leaving the house on September 18, but only for a short time to get his dog from the backyard.

He stated he told Potter that he possessed the gun and left the house "[b]ecause I got threatened by my father" with a large wooden board. RP at 58. EW testified that he falsely admitted to probation violations at his meeting with Potter because he knew his father did not want him in the house, and wanted him in detention rather than with his mother.

The superior court found EW's testimony that his father and stepmother fabricated the allegations because they sought to have him detained was not credible in light of the fact that they did not immediately report his initial violation—leaving the house on September 18. The trial court commented, "[F]or me to believe that somehow . . . your father, would rather have you in juvenile detention, I would have wanted to see that he reported it immediately, not that they waited a week." RP at 64. The court then addressed the gun possession allegation. It found that although EW's stepbrother may have had the gun, "[EW] had the gun as well. I think that it was available to him." RP at 64. Ultimately, the court concluded that EW possessed the airsoft gun "either constructively or directly." RP at 65.

It sentenced him to one day of detention. EW appeals.

ANALYSIS

EW argues that even if he could violate his probation terms through constructive possession of the airsoft gun, he did not willfully refuse to comply with the directive prohibiting use or possession of the gun. Specifically, because the directive does not prohibit being in the same room with another person who possessed a gun or inform EW that possession could include

a gun used by another person, EW did not know that his stepbrother's possession or use of an airsoft gun in EW's presence would be deemed a violation.

The State responds that the case is moot, presumably because the superior court imposed only a single day of custody for the violations.[3] Next, the State contends that because EW does not allege any error related to the court's conclusion that he was absent from his approved residence, "[t]hat alone is sufficient to uphold the court's order in this case." Br. of Resp't at 2. Finally, the State relies on EW's admission of possession to Potter to support the gun possession violation.

Mootness

The State relies on *State v. Turner*, 98 Wn.2d 731, 658 P.2d 658 (1983) to argue that the appeal is moot because EW served his one-day sentence. Generally, if a court cannot grant effective relief, a case is moot. *Turner*, 98 Wn.2d at 733; *State v. Ross*, 152 Wn.2d 220, 228, 95 P.3d 1225 (2004). Challenges to a probation or community custody revocation are moot if the appellant "has served the time imposed as a result of the revocation." *In re McNeal*, 99 Wn. App. 617, 619, 994 P.2d 890 (2000). Here, EW served his sentence.

There are two exceptions to the mootness doctrine. We will hear an otherwise moot appeal if "'it involves matters of continuing and substantial public interest.'" *In re A.K.*, 162 Wn.2d 632, 643, 174 P.3d 11 (2007) (quoting *In re Det. of Swanson*, 115 Wn.2d 21, 24, 793 P.2d 962, 804 P.2d 1 (1990)). And, we will entertain an appeal if the trial court's ruling has collateral consequences. *Turner*, 98 Wn.2d at 733.

[3] The State devotes a single sentence to this argument in its brief. EW does not address this issue.

A. Public Interest

For an appeal to present a matter of public interest, we examine three criteria: "'(1) the public or private nature of the question presented; (2) the desirability of an authoritative determination which will provide future guidance to public officers; and (3) the likelihood that the question will recur.'" *A.K.*, 162 Wn.2d at 643 (internal quotation marks omitted) (quoting *Swanson*, 115 Wn.2d at 24-25).

Here, the matter is private, any determination on the specific violations will most likely not be of value to public officers and there is little likelihood that the questions raised by EW will recur. Thus, public interest does not counsel in favor of allowing EW's appeal to proceed.

B. Collateral Consequences

We will also hear this appeal if EW's probation violations have collateral consequences. *Turner*, 98 Wn.2d at 733. Here, were EW to be adjudicated guilty for a subsequent juvenile crime, a sentencing court could take into account the present violations during sentencing when considering whether to impose a manifest injustice sentence. *See State v. Meade*, 129 Wn. App. 918, 924, 120 P.3d 975 (2005) ("Violation of the terms of his probation qualifies as an aggravating factor supporting a manifest injustice determination.").

Nevertheless, although recidivism is common, it is not inevitable. We believe the commission and conviction of future crimes is frequently too speculative to require review of an otherwise moot challenge to a completed sentence. Washington appellate courts previously refused to "speculate as to possible or remote collateral consequences of sentencing." *State v. Finch*, 137 Wn.2d 792, 868, 975 P.2d 967 (1999); *see also State v. Bowman*, 36 Wn. App. 798, 807, 678 P.2d 1273 (1984); *State v. Briceno*, 33 Wn. App. 101, 102, 651 P.2d 1093 (1982).

Consequently, because any collateral consequence EW's present probation violations may have on a subsequent manifest injustice juvenile sentence is speculative, we will not review this otherwise moot appeal.

We dismiss.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Van Deren, J.

We concur:

Quinn-Brintnall, J.

Johanson, A.C.J.