

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

D.R.,

Appellant.

No. 39043-4-II

UNPUBLISHED OPINION

Houghton, J. — D.R. appeals his sentence on adjudications of guilt for third degree assault, resisting arrest, and third degree malicious mischief, raising arguments as to the manifest injustice disposition and credit for time served.<sup>1</sup> We affirm the manifest injustice disposition but remand to account for time served.

Facts

The State charged D.R. with third degree assault, resisting arrest, third degree malicious mischief, and fourth degree assault. The juvenile court found him guilty of the first three charges.

At D.R.'s disposition hearing, the State recommended a manifest injustice disposition in each of three adjudications based on his recent violent criminal history. The juvenile court ruled

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<sup>1</sup> D.R. also assigned error to the juvenile court's failure to enter findings of fact and conclusions of law, as required by JuCR 7.11(d). Before addressing the other issues on appeal, we remanded for entry of findings and conclusions, which have been entered. D.R. did not submit a supplemental briefing after entry of the findings and conclusions. If he had and had he raised an insufficiency of the evidence argument or claimed that the trial court tailored its findings to issues in the appeal, his arguments would have failed because a review of the record discloses sufficient evidence to support the adjudications of guilt and the findings and conclusions do not show tailoring.

that it would adopt the State's recommendation "on all of the sentencing matters and for purposes of appeal." Report of Proceedings at 121. The juvenile court referenced specific portions of the record factually describing other adjudications on which it was sentencing D.R. that day as support for the manifest injustice disposition. It found aggravating factors, including infliction or attempted infliction of serious bodily injury during commission of the offenses, a recent criminal history, other complaints not included within D.R.'s criminal history, and the excessive lenience of a standard range disposition in light of the seriousness of his prior adjudications.

D.R. had served 69 days. The trial court gave him credit for 30 days served. He appeals.

#### Analysis

##### Credit for Time Served

D.R. first contends that the juvenile court erred in failing to give him credit for time served prior to sentencing. The State concedes this error. We accept the State's concession, requiring us to remand for resentencing.

##### Manifest Injustice

D.R. next contends that the juvenile court entered insufficient findings of fact supporting the manifest injustice disposition. We disagree.

When sentencing a juvenile, a court may rely on all relevant and material evidence, including oral and written reports and the arguments of the parties, during a disposition hearing. RCW 13.40.150(1), (3). It may also consider aggravating factors. RCW 13.40.150(3)(i). It must impose a standard range sentence unless doing so would result in a manifest injustice. *State v. T.C.*, 99 Wn. App. 701, 703, 995 P.2d 98 (2000). Its reasons supporting a manifest injustice

disposition must set forth the portions of the record material to the disposition.

JuCR 7.12(e). We must find that clear and convincing evidence in the record supports the juvenile court's reasons for concluding that a standard range disposition would constitute a manifest injustice and that the sentence imposed was neither clearly excessive nor clearly too lenient. RCW 13.40.150(2). We review the sentence's length to determine whether the juvenile court abused its discretion by basing the sentence on unreasonable or untenable grounds. *State v. Strong*, 23 Wn. App. 789, 794, 599 P.2d 20 (1979).

Here, the juvenile court stated that it was adopting the State's recommendation for a manifest injustice disposition. The State gave a variety of reasons for its recommendation, including D.R.'s recent violent series of offenses, failure to improve his behavior after prior incidents and adjudications, and escalating pattern of behavior. Furthermore, the juvenile court referenced portions of the record regarding D.R.'s other adjudications in support of the disposition. Finally, the aggravating factors the juvenile court found were consistent with those listed in RCW 13.40.150(3)(i). Thus, clear and convincing evidence in the record supports the disposition. Likewise, given the aggravating factors, the juvenile court did not abuse its discretion by imposing the disposition.

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We affirm the manifest injustice disposition and remand for the juvenile court to credit D.R. for time served.

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.

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Houghton, J.

We concur:

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Hunt, J.

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Van Deren, C.J.