Supreme Court of the State of Washington

Opinion Information Sheet

Docket Number: 81573-9

Title of Case: In re Interest of Silva

File Date: 05/07/2009

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SOURCE OF APPEAL

Appeal from Yakima County Superior Court

Docket No: 07-7-00349-2

Judgment or order under review

Date filed: 05/15/2007

Judge signing: Honorable William D. Acey

JUSTICES

Gerry L. Alexander Signed Majority

Charles W. Johnson Majority Author

Barbara A. Madsen Concurrence Author Concurrence in result

Richard B. Sanders Signed Majority

Tom Chambers Signed Majority

Susan Owens Signed Majority

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Interest of)

) No. 81573-9

ESTEVAN SILVA, JR.)

) En Banc

)

_____) Filed May 7, 2009

C. JOHNSON, J. -- This case involves the judicial authority to incarcerate a child for contempt of court for failing to comply with court orders entered in at-risk youth (ARY) proceedings. We have previously analyzed a juvenile court's exercise of its inherent contempt authority in In re Dependency of A.K., 162 Wn.2d 632, 174 P.3d 11 (2007) (plurality opinion). A.K. dealt with dependency statutory proceedings, and we find, in all relevant respects, that case controls our analysis here. We accepted direct review of the juvenile court's decision imposing punitive sanctions for contempt of court and vacate that decision.1

1 This case is technically moot. However, we accepted review of this case because it, like A.K., involves matters of continuing and substantial public interest. A.K., 162 Wn.2d at 635. In deciding whether an issue of substantial public interest is involved, the court looks at three criteria: (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination that will provide future guidance to public officers, and (3) the likelihood that the question will recur. A.K.,162 Wn.2d at 643. As in A.K., each of the three criteria are met. First, the public has a great interest in the protection of juveniles, and the authority of the court in these cases

is a public matter. Second, a determination of how the court's inherent contempt power interacts with the statutory

contempt scheme in ARY proceedings will provide useful guidance to juvenile court judges. Third, the juvenile

court's exercise of inherent contempt authority in ARY proceedings is likely to recur.

Cause No. 81573-9

FACTS

Estevan Silva is an adjudicated at-risk youth. At Estevan's initial ARY

hearing, the Yakima County juvenile court commissioner issued an ARY

dispositional order requiring Estevan not to run away, to follow his parents' rules, to

avoid drugs and alcohol, and to participate in a drug/alcohol evaluation as well as

therapy and other services. Estevan failed to comply with the order. As a result, his

mother petitioned the court to hold her son in contempt.

Due to Estevan's failure to follow the court's order, the juvenile court placed

him in detention for at least five days. Subsequently, at Estevan's contempt hearing,

the commissioner found him in contempt of court.2 Additionally, the commissioner

further found Estevan to have a problem with alcohol that required more than 28

days of basic treatment. At the hearing, Estevan "agree[d] [that] he need[ed] long-

term treatment" and said that he would "cooperate with services." 3

In sanctioning Estevan, the commissioner found statutory remedial contempt

sanctions, under RCW 13.34.1654 and RCW 7.21.030(2)(e), which limit a youth's

2 This was the second time the juvenile court held Estevan in contempt for violation of an ARY dispositional order.

3 Neither the court's order nor the report of proceedings explicitly states Estevan voluntarily agreed to participate

in inpatient treatment.

4 The correct authority is the ARY contempt statute, RCW 13.32A.250.

detention to a seven-day maximum, inadequate. Additionally, the commissioner

found statutory punitive contempt sanctions, under RCW 7.21.040, unavailable.

Due to the inadequacy or unavailability of statutory sanctions, the commissioner invoked his inherent contempt authority to impose a punitive sanction. His order provided in part:

> Estevan is sentenced to 45 days in detention, starting now, which are not subject to purge. . . . On May 17th. . . Estevan will be released from detention, with the remaining days suspended. After release, he will still be under the prior court orders. He must . . . participate in such inpatient treatment program as his parents are able to arrange. . . . Noncompliance can result in imposition of more of the postponed days. Six months after discharge from i[n]patient treatment, if Estevan is following court orders and remaining sober, the contempt will be purged and any remaining days will be stricken.

Clerk's Papers at 13-14. The court did not afford Estevan full criminal due process and refused to give him credit for time served in detention prior to the contempt hearing.

We accepted review of this case after receipt of the Court of Appeals,

Division Three's order of certification seeking review of two issues involving the juvenile court's exercise of its inherent contempt authority to sanction Estevan. We

requested that the State of Washington submit an amicus brief on the issues in this case. Because the resolution of the first issue involving the court's invocation of inherent contempt authority resolves this case, we need not reach the other issues raised by the appellant.

ISSUE

Whether the juvenile court properly exercised its inherent contempt authority in an ARY proceeding when it imposed a punitive sanction without first finding statutory criminal contempt sanctions under RCW 7.21.040 inadequate.

ANALYSIS

ARY Statutes

As we recognized in A.K., the legislature designed the ARY statutes, under chapter 13.32A RCW, the Family Reconciliation Act (FRA), to provide parents of at-risk youth with tools and services to assist them in raising and keeping their children safe. A.K., 162 Wn.2d at 649; RCW 13.32A.010. ARY services were intended to provide legal processes by which parents who are experiencing problems with at-risk youth can request and receive assistance from juvenile courts in providing appropriate care, treatment, and supervision of the youth. RCW

13.32A.015. The legislature intends services under the FRA to be offered "on a

voluntary basis whenever possible to children and their families and that the courts [are to] be used as a last resort." RCW 13.32A.010. As we stated in A.K., when discussing the ARY statutory purposes, ARY services are also partially aimed at providing interventions to keep children out of detention. A.K., 162 Wn.2d at 649. In these ways, ARY services are consistent with the remedial nature of the juvenile court system, which focuses on rehabilitating and treating youth, rather than simply punishing children. See State v. Schaaf, 109 Wn.2d 1, 22, 743 P.2d 240 (1987).

As demonstrated by the language of the ARY statutes and our case law interpreting and applying them, the legislature enacted these provisions to help children. ARY statutes were intended to provide counseling, treatment, and available state resources to aid and protect at-risk youth, not to punish and jail them. Unfortunately, some children do not benefit from these available resources and will

continue behavior that places them at risk. However, where statutory provisions are intended to treat and rehabilitate children, the last option a judge should consider is jail, where few, if any, legislatively created programs do exist to help at-risk youth. As the remaining analysis demonstrates, only in the rarest of situations should

incarceration as punishment be considered an option. Further, when such a punitive sanction is ordered, a court must provide full due process protections.

Inherent Contempt Authority

A court's authority to impose sanctions for contempt is a question of law, which we review de novo. As a division of the superior courts, juvenile courts have inherent authority to impose contempt sanctions on youth. Juvenile court

commissioners possess the same inherent power as a superior court judge. A.K., 162 Wn.2d at 645-46.

"Because contempt of court is disruptive of court proceedings and/or undermines the court's authority, courts are vested with 'an inherent contempt authority, as a power necessary to the exercise of all others.'" A.K., 162 Wn.2d at 645 (internal quotation marks omitted) (quoting Int'l Union, United Mine Workers of Am. v. Bagwell, 512 U.S. 821, 831, 114 S. Ct. 2552, 129 L. Ed. 2d 642 (1994)). Inherent contempt power is separate from statutorily granted contempt power. The inherent contempt power is lodged permanently with the court, and the legislature may not, by its enactments, deprive the court of that power. The legislature may regulate that power, so long as such regulation does not render the court's contempt

power ineffectual.

As A.K. makes clear, a juvenile court's use of its inherent contempt power is not unrestricted: "its use is appropriate only in limited situations." 162 Wn.2d at 647. Moreover, the Constitution circumscribes the exercise of inherent authority by requiring courts to provide appropriate due process protections to contemnors. Due process protections are determined by whether the sanction is remedial or punitive. See A.K., 162 Wn.2d at 645-46.

Contempt Sanctions

A "[r]emedial sanction" is one "imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform." RCW 7.21.010(3). "Remedial

sanctions" are also known as "coercive" sanctions, and they are civil in nature.

In contrast, a "[p]unitive sanction" is "imposed to punish a past contempt of court for the purpose of upholding the authority of the court." RCW 7.21.010(2). Punitive sanctions are criminal in nature. When a court imposes a punitive contempt sanction, it must afford a contemnor full criminal due process. RCW 7.21.040. Statutory procedures establish the minimum due process protections a child must

receive when a juvenile court uses its inherent authority to impose a punitive sanction.

To determine whether sanctions are punitive or remedial, the courts look not to the "'stated purposes of a contempt sanction,'" but whether it has a coercive

effect -- whether "'the contemnor is able to purge the contempt and obtain his release by committing an affirmative act.'" A.K., 162 Wn.2d at 646 (quoting Bagwell, 512 U.S. at 828).

In this case, neither party disputes that the commissioner exercised his inherent contempt authority punitively: the juvenile court imposed a 45-day suspended sentence, which far exceeded the seven-day statutory remedial contempt sanction maximum under RCW 7.21.030(2)(e) and chapter 13.32A RCW, and the court conditioned the purge of that punitive sanction on submission to inpatient treatment for more than 28 days and compliance with all other court orders.5 Further, the State correctly concedes that A.K.'s ruling regarding dependency

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Inpatient treatment is an invalid purge condition on an otherwise punitive sanction. Purge conditions are valid only if they are in the contemnor's capacity to immediately purge. In re Interest of J.L., 140 Wn. App. 438, 447,

166 P.3d 776 (2007). Here, it is not in Estevan's capacity to immediately purge his contempt. His admission into

a treatment facility is outside of his control: his parents must arrange the treatment, a treatment facility must have

availability, and that facility must accept Estevan as a patient.

contempt proceedings should apply to the ARY contempt proceedings.

A.K.

At the time the court sanctioned Estevan, In re Interest of A.L.H., 116 Wn.

App. 158, 64 P.3d 1262 (2003) was good law. Similar to Estevan's case, A.L.H

involved an ARY order. In that case, the juvenile court held that remedial, but not

punitive, statutory contempt sanctions may be imposed on a juvenile for violating an

ARY order. A.L.H., 116 Wn. App. at 164.

In A.K., we disagreed with A.L.H. on the above issue, though we did not

explicitly overturn the case on that point. A.K. involved a dependency contempt proceeding wherein the court punitively sanctioned two juveniles to 30 days in detention without affording them full criminal due process pursuant to RCW 7.21.040. In contrast to A.L.H., in A.K., we held that statutory punitive contempt sanctions were available to juvenile courts. However, we also held that before a juvenile court may exercise its inherent authority to impose a punitive sanction in a dependency proceeding, it must first find all statutory contempt sanctions inadequate. A.K., 162 Wn.2d at 652 (plurality), 653 (concurrence).

In reaching our conclusion in A.K., we found that the ARY and dependency

civil contempt provisions were substantially identical, were amended by the same

legislation, and that the general remedial contempt statute by its terms applies equally to ARY and dependency cases. Both ARY and dependency coercive contempt statutes state:

> [f]ailure by a party to comply with an order entered under this chapter is civil contempt of court as provided in RCW 7.21.030(2)(e).

A.K., 162 Wn.2d at 648 (quoting RCW 13.32A.250(2) and RCW 13.34.165(1)). In 1998, both statutes were amended by the same legislation. Laws of 1998, ch. 296, §§ 35-38. Considering the statutes' similarity in texts and legislative history, we interpret the ARY statutory language as we do the identical language in the dependency contempt statute. Therefore, A.K.'s holding applies to Estevan's ARY proceeding.

Accordingly, in Estevan's case, because the commissioner failed to find all

statutory contempt remedies inadequate before exercising his inherent power to impose a punitive contempt sanction on the child, we hold the exercise of his inherent contempt power was premature and vacate Estevan's contempt order.

While the parties agree that A.K. applies to this case, the State seeks clarification of and guidance on several points stemming from A.K. The State asks for clarification on two related points in A.K.: (1) whether the court's use of inherent power to impose a coercive contempt sanction requires finding all statutory sanctions inadequate, and (2) whether a finding of inadequacy means that each type of sanction must have been tried and proven ineffective. Amicus Br. at 14-16.

From the State's perspective, the plurality and concurring opinions in A.K.

have generated some confusion about what a court is required to do before resorting to inherent contempt sanctions. The plurality holds that a juvenile court possesses the inherent authority to impose remedial or punitive sanctions; "[h]owever, before exercising that power, the court must specifically find all statutory contempt remedies inadequate." A.K., 162 Wn.2d at 652 (emphasis added). The concurrence "disagree[s]" "to the extent that [the plurality] may be read to require a dependency court to resort to criminal contempt before exercising its inherent authority to impose a coercive contempt sanction." A.K., 162 Wn.2d at 653 (Madsen, J., concurring).

As A.K. explicitly states, a juvenile court is required to find all statutory

contempt sanctions, remedial and punitive, inadequate before resorting to its inherent power. A.K., 162 Wn.2d at 652. Further, that finding of inadequacy requires a juvenile court to try all statutory contempt sanctions and specifically find them ineffective before a court can exercise its inherent contempt powers to sanction a youth.

In clarifying these points, we emphasize that remedial sanctions are the favored juvenile contempt sanction. As we have long-held, "'[o]nly under the most egregious circumstances should the juvenile court exercise its contempt power to incarcerate a status offender in a secure facility.'" A.K., 162 Wn.2d at 647 (quoting State v. Norlund, 31 Wn. App. 725, 729, 644 P.2d 724, review denied, 98 Wn.2d 1013 (1982)); see also In re Pers. Restraint of King, 110 Wn.2d 793, 802, 756 P.2d 1303 (1988). Consistent with this long-standing position and the FRA's aim of

keeping children out of detention, juvenile courts should rarely, if ever, impose punitive contempt sanctions on at-risk youth. As we stated in A.K., if punitive incarceration is necessary, "'the record should demonstrate that all less restrictive alternatives have failed.'" A.K., 162 Wn.2d at 647 (emphasis added) (quoting Norlund, 31 Wn. App. at 729). Punitive incarceration should be used as a last

resort.

While the State agrees that we have determined that a juvenile court should use punitive sanctions sparingly, it contends that A.K. did not determine what due process protections are required when a court uses its inherent authority to impose a punitive sanction. In such an instance, the State argues that a court does not have to

grant a child the full criminal due process protections established in RCW 7.21.040 because a court's inherent contempt power, unlike a court's statutory contempt power, does not depend on a legislative grant of authority. See Amicus Br. at 16-20.

Although the State is correct that inherent authority does not derive from the legislature, due process constrains the exercise of both statutory contempt authority and inherent contempt authority. See A.K., 162 Wn.2d at 646. As we stated in A.K., before a juvenile court imposes a punitive contempt sanction, full criminal due process protections attach. A.K., 162 Wn.2d at 646 n.4 (citing Bagwell, 512 U.S. at 833; see also King, 110 Wn.2d at 800). In RCW 7.21.040, the legislature established the due process protections and procedures for imposing statutory punitive contempt sanctions. When a statutory procedure exists for imposing a

particular type of sanction, a court exercising its inherent contempt power to impose that type of sanction must, at minimum, follow those statutory procedures. Thus, the processes set out in RCW 7.21.040 establish the minimum due process a child must receive when the court imposes a punitive sanction.

Finally, the State seeks guidance as to what a juvenile court should do after it has found all statutory contempt sanctions inadequate and has properly invoked its inherent power. Because the legislature, not the judiciary, establishes the laws and procedures for juveniles' treatment and rehabilitation, we can provide only limited guidance.

In providing guidance, we acknowledge that parents of at-risk youth often

face difficult challenges in raising and keeping their children safe, and we encourage struggling parents to use ARY services and juvenile court processes to assist them. We further recognize that courts face challenges in rehabilitating and treating youth given the State's limited resources. However, courts do not make public policy determinations regarding the sentencing and treatment of youth. That is distinctly the province of the legislature. Therefore, we confine our guidance to a summary of our holdings: a juvenile court's inherent power is very limited, punitive sanctions

should be utilized as a last resort, and existing statutory procedures must guide the judiciary in their determination of both the proper sanction and the due process protections necessary for the imposition of that sanction.

CONCLUSION

We hold that a juvenile court in an ARY proceeding must find all statutory contempt sanctions inadequate before it may exercise its inherent contempt power to sanction a youth. In this case, the juvenile court failed to do so. Accordingly, we vacate Estevan's inherent contempt order.

AUTHOR:

Justice Charles W. Johnson

WE CONCUR:

Chief Justice Gerry L. Alexander

Justice Susan Owens

Justice James M. Johnson

Justice Richard B. Sanders

Justice Debra L. Stephens

Justice Tom Chambers