Supreme Court No. 101422-8
Court of Appeals No. 38556- 6-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW JASON ODEN,

Petitioner.

PETITION FOR REVIEW

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TABLE OF AUTHORITIES

A. IDENTITY OF PETITIONER

Petitioner, Matthew Oden, appellant below, asks this Court to accept review of the Court of Appeals' decision terminating review that is designated in part B of this petition.

B. DECISION OF THE COURT OF APPEALS

Oden seeks review of the unpublished opinion of the Court of Appeals in cause number 38556-6-III, 2022 WL 4869393 (Slip Op. October 4, 2022). A copy of the decision is attached as Appendix A at pages A-1 through A-6.

C. ISSUES PRESENTED FOR REVIEW

1. Should this Court grant review and reach a determination that the 2018 amendments to RCW 13.04.030 deleting first degree robbery from automatic decline of juvenile court "jurisdiction" are remedial, thus allowing retroactive application?

2. Should this Court grant review and determine whether the 2018 amendments to RCW 13.04.030, deleting first degree robbery from automatic decline of juvenile court jurisdiction, should apply retroactively to Mr. Oden?

D. STATEMENT OF THE CASE

1. Procedural history

The Pierce County Prosecutor charged Matthew Oden with one count of first-degree robbery in 1999. Clerk's Papers (CP) at 3. The date of the offense was November 12, 1999, and took place when Mr. Oden was sixteen years old. Because of the nature of the charge and Mr. Oden's age at the time of the offense, RCW 13.04.030 mandated automatic transfer of the case from juvenile to adult court without the hearing otherwise held to determine whether such a transfer is appropriate. Mr. Oden pleaded guilty to first degree robbery as charged in an amended information. CP at 3. Mr. Oden was also convicted of bail jumping and was sentenced for both offenses on November 16, 2001. CP at 5. The trial court imposed 36 months and 12 months of community placement. CP at 8, 9.

Mr. Oden filed a motion to extend time to file notice of appeal on July 7, 2020. CP at 22-29. The trial court ordered on July 29, 2020, that the case be transferred to the Court of Appeals

because the motion was based on RAP 18.8(b). CP at 33.

The Court found that the 2018 amendment to former RCW 13.04.030(1)(e)(v) is not remedial and not retroactive, and affirmed the 2001 adult conviction for first degree robbery in an unpublished opinion dated October 4, 2022. ***Oden***, 2022 WL 4869393, at *1, 15.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The considerations that govern the decision to grant review are set forth in RAP 13.4(b). Petitioner believes that this court should accept review of this issue because the decision of the Court of Appeals is in conflict with other decisions of this Court and the Court of Appeals (RAP 13.4(b)(1) and (2)).

1. RESPECTFULLY, THIS COURT SHOULD GRANT REVIEW AND REACH A DETERMINATION IF THE 2018 AMENDMENTS TO RCW 13.04.030 AUTOMATIC DECLINE ARE REMEDIAL SHOULD BE APPLIED RETROACTIVELY

Former RCW 13.04.030(1)(e)(v)(C) (1997) specified first degree robbery was an offense subject to automatic decline from juvenile court jurisdiction for defendants who had reached the age of

16 or 17 at the time of the alleged offense. RCW 13.04.030(1)(e)(v) mandates automatic declination of juvenile court jurisdiction for certain offenses if the defendant was aged 16 or 17 at the time of the alleged offense. RCW 13.04.030(1)(e)(v) provides an exception to juvenile court "jurisdiction" for certain identified offenses if "[t]he juvenile is sixteen or seventeen years old on the date the alleged offense is committed."

In 1999, Matthew Oden was charged with first degree robbery when he was 16 years old and was convicted following a guilty plea to first degree robbery and was sentenced to 36 months on November 19, 2001. CP at 3, 8. Seventeen years later after Mr. Oden's conviction and sentencing, the legislature in 2018 amended former RCW 13.04.030(1)(e)(v) (2009) to delete first degree robbery as an offense that required automatic declination.

The Washington Legislature passed Engrossed Second Substitute SB 6160 (ESSSB), which amended former RCW 13.04.030(1)(e)(v) to remove first degree robbery and several other crimes from the list of offenses that automatically subject a juvenile to adult court jurisdiction. LAWS OF 2018, ch. 162, § 1-2.

Mr. Oden submits the 2018 amendments are remedial and procedural in nature and thus should apply retroactively to his case.

An amendment to a statute is generally presumed to apply prospectively unless the legislature specifically provides for retroactive application, or the amendment is curative or remedial. "An amendment is like any other statute and applies prospectively only," but an amendment may apply retroactively if: (1) the legislature so intended, (2) the amendment is curative, or (3) in certain circumstances, the amendment is remedial. ***In re F.D. Processing, Inc.***, 119 Wn.2d 452, 460, 832 P.2d 1303 (1992). In this case, the amendments to RCW 13.04.030 were procedural and remedial and therefore must be applied retroactively. See e.g., ***State v. Blank,*** 131 Wn.2d 230, 248, 930 P.2d 1213 (1997); ***State v. Humphrey***, 139 Wn.2d 53, 62, 983 P.2d 1118 (1999).

The amendments to RCW 13.04.030(1)(e)(v) went into effect on July 1, 2019, and deleted the offenses eligible for automatic decline of juvenile court jurisdiction, including first degree robbery. See Laws of 2018, ch. 162, §§ 1-2. Division III stated in its unpublished opinion that the 2018 amendment is remedial and that

"[w]hile the apparent goal of the amendment is to increase opportunities for rehabilitation and reduce punishment, this does not mean the statutory amendment is remedial in nature." ***Oden***, slip op. at *4.

When a statute is remedial in nature the presumption is it applies retroactively. ***State v. Blank***, 131 Wn.2d 230, 248, 930 P.2d 1213 (1997). Statutory language is remedial where it "applies to practice, procedure, or remedies and does not affect a substantive or vested right." ***Macumber v. Shafer***, 96 Wn.2d 568, 570, 637 P.2d 645 (1981); ***Blank***, 131 Wn.2d at 248. In ***Blank***, the defendants' appeals were pending when the legislature enacted RCW 10.73.160, which permitted appellate costs to be imposed against indigent individuals. ***Blank***, 131 Wn.2d at 234. The defendants argued that because they filed their appeals before the enactment of the statute, the statute did not apply to them unless imposed retroactively. ***Blank***, 131 Wn.2d at 249. They further argued the statute could not be applied retroactively because it created a financial liability that did not exist at the time they made the decision to appeal. *Id.* at 248. This Court rejected both assertions. *Id.* at 249-50. The Court found the

application of the statute was not retroactive because the triggering event (failing to substantially prevail on appeal) did not occur until the convictions were affirmed. *Id.* at 249. This Court further held the statute could be applied retroactively in any event because the statute was procedural and did not affect vested or substantive rights. *Id.* at 249-50.

In contrast, in ***Humphrey***, 139 Wn.2d 53, 62, 983 P.2d 1118 (1999), this Court held a statutory amendment was not remedial because it created a new liability for the defendants. 139 Wn.2d at 55. In that case, the individuals committed an offense before the victim penalty assessment was increased from $100 to $500 but were convicted after the effective date of the statutory amendment. 139 Wn.2d at 55. This Court found the amendments were not remedial, and therefore could not be applied retroactively, because the amendment increased the individuals' liability. *Id.* at 63.

When a court reviews whether a new statute applies prospectively or retroactively, the reviewing court considers "'whether the new provision attaches new legal consequences to events completed before its enactment.' " ***In re Flint***, 174 Wn.2d at

548 (quoting ***State v. Pillatos***, 159 Wn.2d at 471, 150 P.3d 1130 (2007)). If the "triggering event" for the application of the statute occurred before the effective date of the amendment, the court analyzes whether the change applies retroactively to the case. ***Pillatos***, 159 Wn.2d at 471. In this case, the triggering event for the operation of the statutory amendment was the offense itself, which took place in November, 1999. Unlike ***Humphrey***, the amendment to RCW 13.04.030 creates no new liability. Indeed, the amendment to RCW 13.04.030 is more clearly remedial than the amendments at issue in ***Blank***. Unlike the facts of ***Blank***, where the changes to the statute actually required defendants to repay costs they were previously led to believe would be absorbed by the State, the change to RCW 13.04.030 reflects a desire by the Legislature to grant more discretion to prosecutors and courts by eliminating specified offenses from automatic decline. The discretion regarding some juvenile offenses was removed by a now- discredited fear of juvenile "superpredators." "Many of the statutes that effectively recategorized some children as adults were predicated on the discredited theory that some children were "juvenile

superpredators." ***State v. Gregg***, 196 Wn.2d 473, 474 P.3d 539 (2020) (González, J. (dissenting)) (citing S.B. REP. ON ENGROSSED SECOND SUBSTITUTE S.B. 6160, 65th Leg., Reg. Sess. (Wash. 2018); ***State v. Watkins***, 191 Wn.2d 530, 550, 423 P.3d 830 (2018) (Yu, J., dissenting)). "The theory that our nation was beset by "juvenile superpredators" was at best wrong and at worst deeply racist." ***Gregg***, 196 Wn.2d at 487 (González, J. (dissenting)).

Although not explicitly noted in the legislative history, the amendment to RCW 13.04.030 is clearly to correct the overreaction by the Legislature to remove discretion from charging supposed "superpredators" in adult court. Because the change to RCW 13.04.030 is remedial to correct the previous legislative "overreaction" to a discredited theory, it therefore applies retroactively. The automatic decline statute has repeatedly withstood constitutional challenges. ***In re Boot***, 130 Wn.2d 553, 571–72, 925 P.2d 964 (1996); ***Watkins***, 191 Wn.2d at 533 ("[A]utomatic decline does not violate due process because juveniles do not have a constitutional right to be tried in juvenile court."). Despite the substantial due process required by ***United States v. Kent***, 383 U.S.

541, 554, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966), before a case is transferred to adult court, the Court held automatic decline constitutional in ***In re Boot***, 130 Wn.2d 553, 557-58, 925 P.2d 964 (1996). In ***Watkins,*** supra, this Court held that automatic decline of juvenile court jurisdiction does not violate procedural or substantive due process. ***Watkins***, 191 Wn.2d 533. In ***Watkins,*** a 16-year-old charged with first degree burglary, who was then automatically transferred to adult court under former RCW 13.04.030(1). Before trial, the appellant objected to the automatic decline of juvenile court jurisdiction as a violation of his federal due process rights and as cruel and unusual punishment under the Eighth Amendment to the United States Constitution. The appellant challenged the constitutionality of former RCW 13.04.030(1) on due process grounds arguing that due process requires that all juveniles receive an individualized hearing before the juvenile court may decline jurisdiction. 191 Wn.2d at 537. The Court held that "automatic decline comports with procedural due process." 191 Wn.2d at 542. The Court noted that there is no constitutional right to be tried in juvenile court or to a hearing before declination of juvenile court

jurisdiction. 191 Wn.2d at 536 (citing ***In re Boot***, 130 Wn.2d 553, 569-72, 925 P.2d 964 (1996)). The Court held that automatic decline of juvenile court jurisdiction does not violate substantive due process because "adult courts have discretion to consider the mitigating qualities of youth and sentence below the standard range in accordance with a defendant's culpability." 191 Wn.2d at 542-43.

The appellant in ***Watkins*** also objected to the automatic decline of juvenile court jurisdiction as a violation of cruel and unusual punishment under the Eighth Amendment to the United States Constitution. The Court held that recent developments in jurisprudence regarding sentencing for juveniles and youthful offenders did not undermine its holding. 191 Wn.2d at 543-46. The Court recognized that recent state and federal cases emphasize "that juveniles are developmentally different from adults and that these differences are relevant to juvenile defendants' constitutional rights." 191 Wn.2d at 544. The Court noted that trial courts have discretion to consider the mitigating circumstances of youth to impose any sentence below the applicable range: "Put simply, automatic decline does not violate a juvenile defendant's substantive due process right

to be punished in accordance with his or her culpability because adult courts can take into account the 'mitigating qualities of youth at sentencing.' " 191 Wn.2d at 544-46 (quoting ***State v. Houston-Sconiers***, 188 Wn.2d 1, 21, 391 P.3d 409 (2017)).

Footnote 1 in Watkins states:

> The 2018 amendment to RCW 13.04.030(l)(e)(v)(D) removed first degree burglary and several other crimes from the list of enumerated offenses that would automatically subject a juvenile offender to adult court jurisdiction. The amendment did not moot the constitutional issue presented in this case because this amendment does not apply retroactively and because the amendment did not remove the automatic decline component of former RCW 13.04.030(1) (2009). The amendment narrowed the scope of juvenile offenders who would be charged automatically in adult court but still requires juvenile courts to automatically decline jurisdiction over juveniles charged with certain violent offenses. The amendment has no bearing on our resolution of this constitutional issue.

Watkins, 191 Wn.2d at 533 n.1.

Footnote 1 is dicta; the issue of retroactivity was not raised nor briefed by the appellant in ***Watkins***, and the Court's ruling contains no analysis nor discussion of the retroactivity issue other than the pronouncement in Footnote 1 that it is not retroactive. Mr. Oden argues that the dicta in ***Watkins*** is not controlling and that the issue of retroactivity of the amendments to RCW 13.04.030 should

be addressed on the merits.

Mr. Oden submits that Division III has erred by affirming the condition and by finding that The 2018 amendment to RCW 13.04.030 is not remedial and should not be applied retroactively.

F. CONCLUSION

For the foregoing reasons, this Court should accept review and reverse the conviction and remand this matter to juvenile court for a decline hearing.

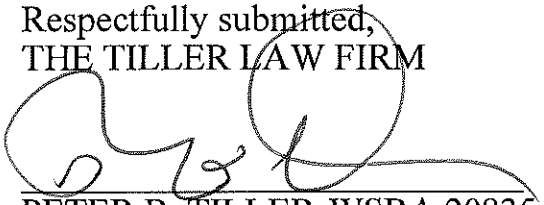
DATED: November 1, 2022.

Certification of Compliance with RAP 18.17:

This petition contains 2297 words, excluding the parts of the petition exempted from the word count by RAP 18.17.

DATED: November 1, 2022.

Respectfully submitted,
THE TILLER LAW FIRM



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CERTIFICATE OF MAILING

The undersigned certifies that on November 1, 2022, that this Petition for Review was sent by JIS link to the Clerk of the Court, Court of Appeals, Division III, 500 N. Cedar St, Spokane, WA 99201-1905, and Theodore Michael Cropley, Pierce County Prosecutor, and a copy was mailed by U.S. mail, postage prepaid to the appellant at the following:

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This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on November 1, 2022.

PETER B. TILLER

APPENDIX A

FILED
OCTOBER 4, 2022
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON, Respondent, v. MATTHEW JASON ODEN, Appellant.	)	No. 38556-6-III UNPUBLISHED OPINION

PENNELL, J. — Matthew Jason Oden appeals his 2001 sentence for first degree robbery, arguing he should be given the benefit of a juvenile court decline hearing based on recent changes to Washington's automatic juvenile decline statute. We disagree and affirm.

FACTS

In 1999, 16-year-old Matthew Oden was charged with first degree robbery. At that time, former RCW 13.04.030(1)(e)(v)(C) (1997) specified first degree robbery was an offense subject to automatic decline from juvenile court jurisdiction for defendants who had reached the age of 16 or 17 at the time of the alleged offense conduct. Mr. Oden's case was processed under this statute and he was convicted and sentenced as an adult in 2001. In 2018, the legislature amended former RCW 13.04.030(1)(e)(v) (2009) to remove first degree robbery as an offense that required automatic declination.

In 2020, Mr. Oden filed a motion with the trial court to extend time to appeal from his 2001 sentence, arguing he was not informed of his right to appeal the mandatory declination of juvenile court jurisdiction. The trial court transferred the motion to Division Two of this court pursuant to RAP 18.8(b). An appellate court commissioner subsequently accepted Mr. Oden's appeal over the State's timeliness challenge. Thereafter, Mr. Oden's case was administratively transferred to Division Three and submitted to a panel for consideration without oral argument.

The sole issue raised by Mr. Oden is whether he is entitled to the benefit of the 2018 amendment, thereby requiring his case be returned to juvenile court.

ANALYSIS

Washington law grants our juvenile courts exclusive jurisdiction[1] over all juvenile offenses, with exceptions. RCW 13.04.030. One such exception mandates automatic declination of juvenile court jurisdiction for certain offenses if the defendant was aged 16 or 17 at the time of the alleged offense. RCW 13.04.030(1)(e)(v). Former RCW 13.04.030(1)(e)(v)(C) included first degree robbery in the list of declination offenses. In 2018, the Washington legislature amended former RCW 13.04.030(1)(e)(v) to remove first degree robbery from the automatic decline offenses. LAWS OF 2018, ch. 162, §§ 1-2.

Generally, "an amendment is like any other statute and applies prospectively only." *In re F.D. Processing, Inc.,* 119 Wn.2d 452, 460, 832 P.2d 1303 (1992). However, an amendment may apply retroactively if: (1) the legislature so intended, (2) the amendment is curative, or (3) in certain circumstances, the amendment is remedial. *Id.* "An amendment is curative only if it clarifies or technically corrects an ambiguous statute." *Id.* at 461. "A remedial statute is one which relates to practice, procedures and remedies

[1] While the statute is written in terms of "jurisdiction," the legislature lacks the power to deprive superior courts of jurisdiction over felony offenses. *State v. Posey*, 174 Wn.2d 131, 140, 272 P.3d 840 (2012). The juvenile court is not separate and distinct from the superior court. Thus, declining juvenile court jurisdiction does not involve a change in subject matter jurisdiction. *Id.* at 141.

and is applied retroactively when it does not affect a substantive or vested right." *State v. McClendon*, 131 Wn.2d 853, 861, 935 P.2d 1334 (1997). "Remedy" is defined as "[t]he means of enforcing a right or preventing or redressing a wrong; legal or equitable relief." BLACK'S LAW DICTIONARY 1547-48 (11th ed. 2019). "A 'right' is a legal consequence deriving from certain facts, while a remedy is a procedure prescribed by law to enforce a right." *McClendon*, 131 Wn.2d at 861 (quoting *Dep't of Ret. Sys. v. Kralman,* 73 Wn. App. 25, 33, 867 P.2d 643 (1994)). The "use of the present and future tense manifests an intent that the act should apply prospectively only." *Johnston v. Beneficial Mgmt. Corp. of Am.*, 85 Wn.2d 637, 641-42, 538 P.2d 510 (1975).

Mr. Oden claims the 2018 amendment to the statute applies retroactively because it is remedial in nature. He argues the intent of the amendment, although not explicitly written in its history, was to remedy the legislature's overreaction in creating an overinclusive list of crimes that juvenile courts automatically decline to adult courts based on the since-disproven belief that our nation was filled with child "'superpredators.'" Suppl. Br. of Appellant at 12. Mr. Oden claims the legislature corrected this overreaction by removing certain offenses, including Mr. Oden's charge, from the list and giving discretion back to prosecutors and the courts. Therefore, Mr. Oden asks this court to reverse and remand this matter to the juvenile court for a decline hearing.

We disagree that the 2018 amendment is remedial. While the apparent goal of the amendment is to increase opportunities for rehabilitation and reduce punishment, this does not mean the statutory amendment is remedial in nature. Notably, the amendment does not provide a remedy in the sense of providing a practice, procedure, or means for those previously tried as an adult under former RCW 13.04.030(1)(e)(v) to address their convictions. As the State points out, juvenile courts lose jurisdiction over adult defendants unless, prior to the defendant reaching their 18th birthday, the court enters an order to extend jurisdiction. RCW 13.40.300(3). The amendments to former RCW 13.04.030(1)(e)(v) do not provide an exception for individuals such as Mr. Oden, who turned 18 years of age prior to enactment. Given this circumstance, the amendment does not provide an effective retroactive remedy.

Nothing in the legislative history of the amendment indicates that the legislature intended for it to apply retroactively. In fact, the legislature's use of present and future tenses in its statement of intent provides support that the amendment only applies prospectively: "An act relating to revising conditions under which a person is subject to exclusive adult jurisdiction and extending juvenile court jurisdiction over serious cases to age twenty-five." LAWS OF 2018, ch. 162; *see also McClendon*, 131 Wn.2d at 861

(finding a statute's use of present and future tenses strengthened the presumption that it applies prospectively).

Nor did the 2018 amendment to former RCW 13.04.030(1)(e)(v) clarify ambiguous language. Rather, "it merely narrowed the scope of juvenile offenders who would be charged automatically in adult court." *State v. Watkins*, 191 Wn.2d 530, 533 n.1, 423 P.3d 830 (2018). Therefore, the 2018 amendment does not apply retroactively.

CONCLUSION

Mr. Oden's judgment and sentence is affirmed.

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

Pennell, J.

WE CONCUR:

Lawrence-Berrey, A.C.J.

Fearing, J.

THE TILLER LAW FIRM

November 01, 2022 - 4:49 PM

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