No. 97044-1
COA No. 35571-3-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SAWNAY TAW,

Petitioner.

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

PETITION FOR REVIEW

THOMAS M. KUMMEROW
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES

RULES

A. IDENTITY OF PETITIONER

Sawnay Taw asks this Court to accept review of the Court of Appeals decision terminating review designated in part B of this petition.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.4(b), petitioner seeks review of the unpublished Court of Appeals decision in *State v. Sawnay Taw*, No. 35571-3-III (February 14, 2019), finding the 2018 legislative amendments to RCW 13.04.030, regarding automatic decline, were not retroactive. A copy of the decision is in the Appendix.

The Court of Appeals denied Sawnay's motion to reconsider on March 14, 2019. A copy of the Court of Appeals denial is in the Appendix.

C. ISSUES PRESENTED FOR REVIEW

1. In 2018, legislative amendments to RCW 13.04.030 deleted the offense of first degree robbery from the automatic decline of juvenile court jurisdiction. Sawnay Taw was convicted of first degree robbery but denied a decline of jurisdiction hearing. Is an issue of substantial public interest that should be decided by this Court involved

requiring this Court to apply the amendments retroactively to Sawnay, thus requiring remand of Sawnay's matter to the juvenile court?

2. Are the 2018 amendments to RCW 13.04.030 remedial thus allowing retroactive application?

D. STATEMENT OF THE CASE

Sawnay Taw was 16 years old when he and others attempted to rob an individual with a firearm and the individual was shot during the course of the robbery. Sawnay was subsequently charged with first degree assault, first degree robbery and conspiracy to commit first degree robbery; all counts also alleged use of a firearm. CP 36-37. Because of the nature of the charges and his age, RCW 13.04.030 mandated automatic transfer of the case from juvenile to adult court without a hearing to determine whether such transfer was appropriate.

Sawnay objected to the automatic transfer and asked the trial court to find that a hearing was required before the juvenile court could decline jurisdiction. CP 4-10; 11/3/2016RP 3-6. In a written order, the court denied Sawnay's motion, relying on the decision in *In re Boot*, 130 Wn.2d 553, 925 P.2d 964 (1996).[1] CP 18-19.

[1] This Court subsequently reaffirmed the decision in *Boot*, finding the automatic decline statute did not violate the United States or Washington Constitutions. *State v. Watkins*, 191 Wn.2d 530, 546 47, 423 P.3d 830 (2018).

Sawnay subsequently pleaded guilty to one count of first degree robbery and one count of conspiracy to commit robbery. CP 130-40; 7/6/2017RP 403-19.

Sawnay asked for a sentence below the standard range based upon Sawnay's youth as authorized by the decision in *State v. Houston-Sconiers*.[2] CP 65-109. The trial court held an exhaustive sentencing hearing at the conclusion of which the court sentenced Sawnay to 75 months in prison, the low end of the standard range, on attempted burglary and 36 months for the firearm enhancement. CP 26; 2/17/2017RP 6.

Relying on *Watkins*, the Court of Appeals ruled that Sawnay's due process rights were not violated when he was automatically declined to adult jurisdiction. Decision at 4-5. In addition, while agreeing that the portion of *Watkins* purportedly finding the 2008 amendments were not retroactive was *dicta*, the Court of Appeals nevertheless found the amendments were not retroactive to Sawnay. Decision at 6-7.

---

[2] 188 Wn.2d 1, 391 P.3d 409 (2017).

E. ARGUMENT ON WHY REVIEW SHOULD BE GRANTED

This Court should grant review and rule the 2018 amendments to RCW 13.04.030 should be applied retroactively to Sawnay.

In March 2018, the Legislature passed, and the Governor signed, Engrossed Second Substitute SB 6160 (ESSSB), which amended RCW 13.04.030. Laws of 2018, Ch. 162. (A copy of ESSSB 6160 is in the Appendix). Specifically, the amendment deleted the offenses eligible for automatic decline of juvenile court jurisdiction, including first degree robbery. Laws of 2018, ch. 162, §§ 1-2.[3] Sawnay asserts these amendments are merely remedial in nature and should be applied retroactively to his matter.

Initially, this Court in *Watkins*, purported to rule that the 2018 amendments do not apply retroactively. 191 Wn.2d at 533 n.1. The issue before this Court in *Watkins* was whether the auto decline statutes violated his right to due process: the 2018 amendments to the auto decline statute were not before the Court and its pronouncement regarding retroactive application was dicta. "A statement is dicta when it is not necessary to the court's decision in a case." *Protect the*

[3] Conspiracy to commit first degree robbery is not an offense for which automatic decline is available because it is neither a violent nor serious violent offense. RCW 9.94A.030(46), (55); RCW 13.04.030(1)(e)(v)(A-(C).

Peninsula's Future v. City of Port Angeles, 175 Wn.App. 201, 215, 304 P.3d 914 (2013).

It is generally presumed that a statutory amendment applies prospectively, absent some legislative indication to the contrary. *State v. McClendon,* 131 Wn.2d 853, 861, 935 P.2d 1334 (1997). But if the statute is remedial in nature, the presumption is it applies retroactively. *State v. Blank,* 131 Wn.2d 230, 248, 930 P.2d 1213 (1997). Courts will retroactively apply a statutory amendment if it is curative or remedial, even though the amendment is silent as to any legislative intent regarding retroactive application. *State v. Kane,* 101 Wn.App. 607, 613, 5 P.3d 741 (2000).

A statute is deemed remedial when it relates to practice, procedure or remedies, and the statute does not affect a substantive or vested right. *State v. Humphrey,* 139 Wn.2d 53, 62, 983 P.2d 1118 (1999); *In re Personal Restraint of Mota,* 114 Wn.2d 465, 471, 788 P.2d 538 (1990). The amendment should be applied retroactively when doing so would further the remedial purpose. *In re F.D. Processing, Inc.,* 119 Wn.2d 452, 463, 832 P.2d 1303 (1992). Remedial statutes are generally enforced as soon as they are effective, even if they relate to transactions predating their enactment. *Miebach v. Colasurdo,* 102

Wn.2d 170, 180-81, 685 P.2d 1074 (1984). "This is especially true when the remedial statute favorably reduces punishment laws applied to previously convicted criminal defendants." *Addleman v. Bd. of Prison Terms & Paroles*, 107 Wn.2d 503, 510, 730 P.2d 1327 (1986).

> An additional reason for holding the legislation to operate retroactively is that it, in effect, reduced the penalty for a crime. When this is so, the legislature is presumed to have determined that the new penalty is adequate and that no purpose would be served by imposing the older, harsher one. This rule has even been applied in the face of a statutory presumption against retroactivity ...

State v. Heath, 85 Wn.2d 196, 198, 532 P.2d 621 (1975).

Here, the amendments to RCW 13.04.030 were merely procedural in nature and thus, remedial. They did not impose an additional penalty or increase the quantum of punishment the State could impose on violators of the law. The amendments merely changed the method for determining whether a juvenile will be tried in adult or juvenile court. Therefore, the statute is remedial.

The amendments do not affect any substantive rights of the Sawnay or the State. There is no constitutional right for a juvenile to be tried in juvenile or adult court; the right attaches only if a court is given statutory discretion to assign juvenile or adult court jurisdiction. *Watkins*, 191 Wn.2d at 536; *In re Boot*, 130 Wn.2d at 570-71.

Juvenile courts are not separate and distinct from superior courts. Properly understood, "the superior court, sitting in juvenile court 'session,' grants to prosecuting officials the 'authority to proceed,' in an appropriate case, with the criminal prosecution of a child under 18 years of age." *Dillenburg v. Maxwell*, 70 Wnh.2d 331, 353, 413 P.2d 940, 422 P.2d 783 (1967). "[U]nder Article IV, § 6, the Legislature has not vested jurisdiction exclusively in some court other than the superior court by enacting RCW 13.04.030 because the juvenile court is a division of the superior court, not a separate court." *State v. Werner*, 129 Wn.2d 485, 493, 918 P.2d 916 (1996). It is only by statute that the juvenile division of the superior court has the power to hear and determine certain juvenile matters. RCW 13.04.030(1); *In re Pers. Restraint Petition of Dalluge*, 152 Wn.2d 772, 779, 100 P.3d 279 (2004).

Additionally, in 2018, the Legislature amended the statutes concerning the superior court's ability to impose costs on defendants following their conviction. *State v. Ramirez*, 191 Wn.2d 732, 749, 426 P.3d 714 (2018). In *Ramirez*, this Court determined that the amendments would be prospective for those whose matters were still on appeal. *Id.* Those individuals would be entitled to the benefit of the

statutory change because their matters were not final when the statutory changes became effective. *Id* at 749-50.

Here, Sawnay's matter is not final and is still on appeal when the amendments were enacted. Following *Ramirez*, Sawnay is entitled to the benefit of the statutory changes. Further, the 2018 amendment to RCW 13.04.030 is remedial in nature and should be applied retroactively.

Accordingly, this Court should grant review and find the 2018 amendments to RCW 13.04.030 retroactive, thus entitling Sawnay to reversal of his conviction and sentence and remand for a decline of jurisdiction hearing.

F. CONCLUSION

For the reasons stated, Sawnay asks this Court to grant review, reverse his convictions and remand for a decline hearing.

DATED this 5th day of April 2019.

Respectfully submitted,

s/Thomas M. Kummerow

THOMAS M. KUMMEROW (WSBA 21518)
tom@washapp.org
Washington Appellate Project – 91052
Attorneys for Petitioner

APPENDIX

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

STATE OF WASHINGTON, Respondent, v. SAWNAY TAW, Appellant.	)	No. 35571-3-III ORDER DENYING MOTION FOR RECONSIDERATION

THE COURT has considered Appellant's motion for reconsideration and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion for reconsideration of this court's decision of February 14, 2019, is hereby denied.

PANEL: Judges Siddoway, Lawrence-Berrey, Pennell

FOR THE COURT:

Lawrence-Berrey, C.J.

ROBERT E. LAWRENCE-BERREY
Chief Judge

FILED
FEBRUARY 14, 2019
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. SAWNAY TAW, Appellant.	))))))))))	No. 35571-3-III UNPUBLISHED OPINION

SIDDOWAY, J. — Under former RCW 13.04.030(1)(e)(v) (2009) of the Basic Juvenile Court Act, the juvenile division of superior court was required to automatically decline jurisdiction over a juvenile who was charged with a serious violent offense and certain enumerated violent offenses. In 2016, 16 year old Sawnay Taw robbed and shot C.P.M. during a drug transaction. The State charged him with first degree assault, first degree robbery, and conspiracy to commit first degree robbery. The first two of these charges subjected him to the automatic decline provisions of former RCW 13.04.030(1),

and his case was transferred to adult court. Mr. Taw pleaded guilty in adult court to first degree robbery and conspiracy to commit first degree robbery. Subsequently, however, the legislature amended former RCW 13.04.030(1) and removed first degree robbery as an offense subject to automatic declination. *See* LAWS OF 2018, ch. 162, § 1.

Mr. Taw contends the juvenile court's automatic declination of jurisdiction under former RCW 13.04.030(1) violated his due process rights. He also argues that the amendment of RCW 13.04.030(1) applies retroactively, requiring reversal of his convictions and remand to juvenile court. We affirm, holding that automatic declination of juvenile court jurisdiction did not violate Mr. Taw's due process rights, and that the amended statute is not retroactive.

FACTS

On October 8, 2016, Mr. Taw and three friends arranged the purchase of prescription cough syrup containing codeine from C.P.M, a known dealer. In actuality, however, they intended to rob C.P.M. instead. Mr. Taw and his friends met C.P.M. in north Spokane. After C.P.M. showed them four baby bottles filled with cough syrup, Mr. Taw pulled out a handgun, shot him in the neck, and fled with the four bottles. C.P.M. survived the shooting and identified his assailant. Mr. Taw was arrested and held in juvenile detention pending his arraignment.

On October 10, 2016, the Spokane County prosecutor charged Mr. Taw by information with one count of first degree assault. Because first degree assault is a

serious violent offense (RCW 9.94A.030(46)), his case was automatically transferred to adult court under former RCW 13.04.030(1)(e)(v). Defense counsel moved for remand to juvenile court for a decline hearing, arguing that the auto-decline statute violates the Eighth Amendment to the United States Constitution and due process safeguards. The trial court denied the motion to remand.

In December 2016, the State filed amended charges of first degree assault, first degree robbery, and conspiracy to commit first degree robbery. First degree robbery was one of the enumerated serious offenses subject to automatic declination of juvenile court jurisdiction. Former RCW 13.04.030(1)(e)(v)(C).

Mr. Taw pleaded guilty in July 2017 to first degree robbery and conspiracy to commit first degree robbery. At sentencing, the trial court considered defense arguments for an exceptional sentence downward due to Mr. Taw's youth and immaturity. Evidence showed that Mr. Taw came from a Burmese refugee family that had moved to the United States in 2010, he attended English as a second language classes in high school, he was younger than his chronological age in sophistication and maturity, he had peers whose values were not in line with his family's and who induced him to commit the crime, and he had no prior criminal history. Based on this information, the court found substantial and compelling reasons to justify an exceptional sentence downward. On August 16, 2017, Mr. Taw was sentenced to the high end of the standard range—54 months—with a reduced firearm enhancement of 22 months, for a total of 76 months of confinement, with

no community custody. Additionally, the court provided that Mr. Taw would have the opportunity to serve most of that confinement in juvenile detention:

> The Court heard testimony regarding services available to a youth sentenced to serve time at a JRA[1] facility and, based on Mr. Taw's good behavior and prior amenability to services while in Spokane County Juvenile Detention, the Court supports Mr. Taw remaining in a juvenile facility until 21 if he is deemed eligible and appropriate by JRA and the Department of Corrections.

Clerk's Papers at 164.

DISCUSSION

Mr. Taw raises two issues on appeal. First, he reprises his pretrial argument that he was deprived of his substantive and procedural due process rights when he was automatically declined jurisdiction in juvenile court without a hearing. Second, he contends the 2018 amendments to RCW 13.04.030, which deleted first degree robbery from the enumerated crimes subject to automatic decline of juvenile court jurisdiction, apply retroactively to his case.

Deprivation of Due Process Rights

Recently, the Washington Supreme Court settled Mr. Taw's first issue in *State v. Watkins*, 191 Wn.2d 530, 423 P.3d 830 (2018). The appellant in *Watkins* was a 16-year-old charged with first degree burglary who was automatically transferred to adult court under former RCW 13.04.030(1). Before trial, he objected to the automatic decline of

[1] Juvenile Rehabilitation Administration.

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. *Watkins* noted that there is no constitutional right to be tried in juvenile court or to a hearing before declination of juvenile court jurisdiction. *Id.* at 536 (citing *State v. Boot*, 130 Wn.2d 553, 569-72, 925 P.2d 964 (1996)). 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." *Id.* at 544. But 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.'" *Id.* at 544-46 (quoting *State v. Houston-Sconiers*, 188 Wn.2d 1, 21, 391 P.3d 409 (2017)). The court also held that automatic decline comports with procedural due process. *Id.* at 542.

Watkins controls here. Thus, Mr. Taw's due process claims are without merit.[2] Furthermore, the trial court considered the mitigating circumstances of Mr. Taw's youth at sentencing and authorized detention in the juvenile facility—precisely the process contemplated in *Watkins*.

[2] As in *Watkins*, Mr. Taw does not specifically invoke state due process protections. *See Watkins*, 191 Wn.2d at 535 n.2.

Retroactivity of the 2018 amendments to RCW 13.04.030

After Mr. Taw's convictions and sentencing, the Washington Legislature 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. Mr. Taw contends the 2018 amendments are remedial in nature and thus should apply retroactively to his case. As a result, he argues, his judgment and sentence should be reversed and remanded for a decline of jurisdiction hearing. *See In re Pers. Restraint of Dalluge*, 152 Wn.2d 772, 783, 100 P.3d 279 (2004) (Once the juvenile is charged with an offense that does not qualify for automatic adult court jurisdiction, the adult court loses jurisdiction over the proceedings and the matter must be remanded to the juvenile court for a decline hearing.).

Generally an amendment to a statute is presumed to apply prospectively unless the legislature specifically provides for retroactive application or the amendment is curative or remedial. *In re Pers. Restraint of Flint*, 174 Wn.2d 539, 546, 277 P.3d 657 (2012). "A remedial change relates to practices, procedures, or remedies without affecting substantive or vested rights." *Id.* A "right" is a legal consequence, while a "remedy" is a legal procedure to enforce a right. *State v. McClendon*, 131 Wn.2d 853, 861, 935 P.2d 1334 (1997).

Nothing in the legislative purpose section of Laws of 2018, chapter 162, indicates that the amendments are to apply retroactively. The presumption that the amendments

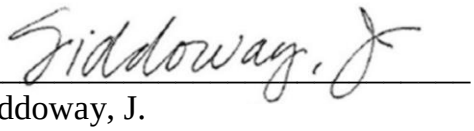
apply prospectively is strengthened by the section's use of present and future tenses: "AN ACT Relating to revising conditions under which a person is subject to exclusive adult jurisdiction and extending juvenile court jurisdiction over serious cases to age twenty-five." LAWS OF 2018, ch. 162; *McClendon*, 131 Wn.2d at 861. The amendment does not clarify prior ambiguous language and does not relate to a practice, procedure, or remedy. It merely narrows the scope of juvenile offenders who will be charged automatically in adult court. *Watkins*, 191 Wn.2d at 533 n.1. Consequently, the amendments to RCW 13.04.030(1) do not apply retroactively to Mr. Taw's case. *See Watkins*, 191 Wn.2d at 533 n.1 (stating in dicta that the amendments to RCW 13.04.030(1) do not apply retroactively).

CONCLUSION

Following precedent established in *Watkins*, we hold that Mr. Taw was not deprived of his substantive or procedural due process rights when he was automatically declined jurisdiction in juvenile court without a hearing. We also hold that the 2018 amendments to RCW 13.04.030(1) do not apply retroactively. Accordingly, we affirm Mr. Taw's convictions in adult court of first degree robbery and conspiracy to commit first degree robbery.

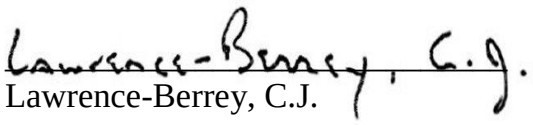
Affirmed.

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.

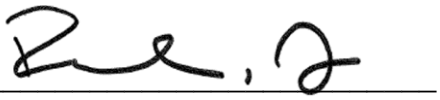


Siddoway, J.

WE CONCUR:



Lawrence-Berrey, C.J.



Pennell, J.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	COA NO. 35571-3-III
	)	
SAWNAY TAW,	)	
	)	
PETITIONER.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 5TH DAY OF APRIL, 2019, I CAUSED THE ORIGINAL **PETITION FOR REVIEW TO THE SUPREME COURT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X]	GRETCHEN VERHOEF [SCPAappeals@spokanecounty.org] SPOKANE COUNTY PROSECUTOR'S OFFICE 1100 W. MALLON AVENUE SPOKANE, WA 99260	( ) ( ) (X)	U.S. MAIL HAND DELIVERY E-SERVICE VIA PORTAL
[X]	SAWNAY TAW GREEN HILL SCHOOL 375 SW 11TH ST CHELAIS, WA 98532	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 5TH DAY OF APRIL, 2019.

X_____

Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, Washington 98101
Phone (206) 587-2711
Fax (206) 587-2710

WASHINGTON APPELLATE PROJECT

April 05, 2019 - 3:54 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	35571-3
Appellate Court Case Title:	State of Washington v. Sawnay Taw
Superior Court Case Number:	16-1-03942-2

The following documents have been uploaded:

- 355713_Petition_for_Review_20190405155303D3226569_4767.pdf
  This File Contains:
  Petition for Review
  The Original File Name was washapp.040519-05.pdf

A copy of the uploaded files will be sent to:

- bobrien@spokanecounty.org
- greg@washapp.org
- gverhoef@spokanecounty.org
- scpaappeals@spokanecounty.org

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org
Filing on Behalf of: Thomas Michael Kummerow - Email: tom@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 610
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20190405155303D3226569