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COURT OF APPEALS OF THE STATE OF WASHINGTON

2015 MAY 15 PM 3:02

DIVISION I

IN RE PERSONAL RESTRAINT OF

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ARMONDO THEODOR LAFORGE

PETITIONER,

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

No. 73178-5-I

CA# 03-1-03742-3

PETITIONERS RESPONSE TO

STATES RESPONSE FILED 4/15/2015

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2015 AUG -5 PM 1:20

A. AUTHORITY FOR RESTRAINT OF PETITIONER

Armondo T. LaForge is restrained pursuant to Judgment and Sentence in King County Superior Court No. 03-C-03742-3 SEA. LaForge Is Sentenced for Robbery and Rape in the second degree. LaForge was 17 years old at time of his sentence was rendered. March 23rd 2004

B. STATES CONCLUSION IN RESPONSE

(A.) THERE WAS NO PREACCUSATORIAL DELAY IN LAFORGES CASE AND DISMISSAL IS NOT AN AVAILABLE REMEDY.

(B.) THERE IS NO AUTHORITY THAT ALLOWS REMAND TO JUVENILE COURT FOR RESENTENCING AS A REMEDY.

CONCLUSION

FOR THE FOREGOING REASONS, LAFORGE'S PETITION SHOULD BE GRANTED AND THE CASE REMANDED FOR A HEARING IN THE ADULT DIVISION OF SUPERIOR COURT ON WHETEHER DECLINATION WOULD HAVE BEEN APPROPRIATE. IF SO, THEN HIS CONVICTIONS STAND. IF NOT, THEN LAFORGES CASE MUST BE REVERSED AND HE IS ENTITLED TO A NEW TRIAL AS AN ADULT.

(C.) States Arguments:

B: LaForge alleges that his case should be remanded for resentencing in juvenile court, relying

on State v. Posey, 174 Wn. 2d 131, 135-42, 272 p.3d 840 (2012) (Posey II). LaForge is incorrect.

Posey II does not apply. Nor was the defendant in Posey II granted the remedy of sentencing in juvenile court. In Posey's first appeal, the Washington Supreme Court held that the adult criminal court had lost jurisdiction to sentence Posey when he was acquitted of the offense which carried automatic adult jurisdiction, but convicted of two other offenses. State v. Posey, 161 Wn.2d 638, 647, 167 P.3d 560 (2007) (Posey I). Posey's case was remanded to juvenile court for sentencing. Id. At 649.

On remand, Posey objected to the juveniles court's jurisdiction to sentence him under RCW 13.40.300, because he had recently turned the age of 21. Posey, 174 Wn.2d at 140) (Posey II) The 'Sentencing court' agreed, but determined that it would temporarily assume its role as the adult division of superior court and sentence Posey. Id. at 133. While Posey was sentenced in 'Adult court', the court imposed a sentence which would have been consistent with the standard juvenile sentence.

(D.) ARGUMENT TO STATES RESPONSE

"However the Prosecutor seems to disregard that these cases are cited to supplement a "remedy" rather than arguing or disregarding what the Supreme Courts have concluded in Posey and Dalluge. The state argues that Posey I & Posey II "Do not Apply" Respectfully the state is Incorrect and partly correct, However the State is incorrect because in State v. Posey, (cite case) Posey originally appealed, claiming that the Adult criminal court did not have jurisdiction to render a sentence because adult court did not have jurisdiction to sentence Posey due to charges that no longer fit Automatic Declination, Posey was still under the age of 18.

RCW 13.04.030 Provides: Except as provided in this section, the juvenile courts in the state shall have exclusive original jurisdiction over all proceedings:

(v) The juvenile is sixteen or seventeen years old and the alleged offense is:

(A) A serious violent offense as defined in RCW 9.94A.030;

...

(B) Robbery in the first degree...

(l) In such a case the adult criminal court shall have exclusive original jurisdiction. As in Posey, adult criminal court did not have jurisdiction to render a judgment over LaForge due to amended information that did not meet Declination requirements.

LaForge's charges were amended in 2003, Former RCW 13.40.110 Provided:

(1) The Prosecutor, respondent, or the court on its own motion may, before a hearing on the information on its merits, file a motion requesting the court to transfer the respondent for adult criminal prosecution and the matter shall be set for a hearing on the question of declining jurisdiction. Unless waived by the court, the parties, and their counsel, a decline hearing shall be held when:

(a) The respondent is fifteen, sixteen or seventeen years of age and the information alleges a class A felony...

(b) the respondent is seventeen years of age and the information alleges...robbery in the second degree...

The prosecutor seems to disagree that neither Posey I, Posey II "does not apply". The state argues that in Posey II the defendant was not granted the remedy for sentencing in juvenile court. Correct, however in Posey's first appeal, the Washington Supreme Court held

that the adult criminal court lacked jurisdiction, but convicted of two other offenses. State v. Posey, 161 Wn.2d 638, 647, 167 P.3d 560 (2007) (Posey I). Posey's case was remanded to juvenile court for sentencing. Id. At 649.

On remand, Posey objected to the juvenile court's jurisdiction to sentence him under RCW 13.40.300, because he had recently turned age 21. The sentencing court agreed, but determined that it would temporarily assume its role as the adult division of superior court and sentence Posey. Id. At 133. While Posey was sentenced in the adult court, the court imposed a sentence which would have been consistent with the standard juvenile sentencing range. Id. Posey appealed again, arguing that neither the juvenile court or the adult court had jurisdiction over him. Id. At 140. The Washington Supreme Court disagreed, holding that the adult division of the superior court retained jurisdiction over Posey in order to sentence him. Id. At 141-4

B. The State agrees that the trial court was required to hold a decline hearing once the charges were amended and that the appropriate remedy is to remand LaForge's case so that the court may hold a hearing to determine whether decline would have been appropriate. In re Personal Restraint of Dalluge 152 Wn.2d 772, 775, 100 P. 3d 279 (2004). At 17 years old, Dalluge was charged in adult court with first degree rape. In re Dalluge, RCW 13.04.030(1)(e)(v)(A), because Dalluge was over 16 years old and the charged crime was a Serious Violent Offense. As in Posey I & II. The state later amended Dalluge's charges to one count of third degree rape as an accomplice and added a second charge of second degree rape or, in the alternative, third degree rape. Id. These charges no longer required exclusive adult criminal court jurisdiction, but the parties did not request remand to the juvenile court for a

decline hearing. Id. Dalluge was convicted of two counts of third degree rape and sentenced. Id. After his direct appeals were final, Dalluge filed a personal restraint petition , alleging that he had been denied his right to a decline hearing in juvenile court once the charges were amended. Id. At 777. The Supreme Court held, first, that once the charges had been amended to charges which did not require automatic adult jurisdiction under RCW 13.04.030(1)(e)(v), the adult court did not have jurisdiction over Dalluge's case. Id.

Facts:

As in Dalluge and in Posey I, Posey II The supreme court held that the transfer's were faulty. Dalluge granted A De Novo Hearing (Dillenburg Hearing) and Posey The supreme court also held that the adult criminal court lacked jurisdiction and remanded Posey back to Juvenile Superior Court for further proceedings where Posey was Later sentenced given a Juvenile imposed sentenced consistent with the juvenile range. The prosecutor seems to agree that LaForge's case should be remanded back to court but for a dillenburg hearing as in Dalluge should be the controlling remedy in this case. The state is *Incorrect. Correct on Opinion. But incorrect, on What is a "controlling" remedy in this case. In Posey* The question was whether legislation relating to juvenile courts can deprive the superior courts of their constitutional jurisdiction to sentence him. Article IV, Section 6 of the constitution vests in the superior courts 'jurisdiction' in all criminal cases amounting to felony. The supreme court held that legislature does not have the power to alter this constitutional grant of felony jurisdiction. Thus, Affirming Posey's sentence that was imposed on remand for resentencing in adult court as a juvenile. The state argues that this should not apply. When clearly this was a remedy resulting from a faulty transfer to adult court. The State argues that Dalluge's outcome should be the controlling 'remedy'. The state fails to argue that this should be the controlling 'remedy' but seems to agree that LaForge's case should be remanded back

to court for further proceedings on faulty jurisdiction but to determine if he would have been tried as an adult or not? Only continues to deprive LaForge of his constitutional rights to due process².

(2). Though Juveniles have a right to a procedural due process, they do not necessarily have a right to a juvenile court decline hearing in every case; juveniles have a right to a decline hearing only when the statutes authorize the juvenile court to exercise discretion to determine juvenile or adult court Jurisdiction. U.S.C.A Const.Amend.14.

E. ARGUMENT

However, 'Dismissal with Prejudice' should be the outcome in this case. The state fails to argue its delay in transferring the case back to the proper jurisdiction when it amended the information to a non-serious violent subjecting LaForge to a decline hearing in Juvenile court. LaForge was 17 years old at the time his Judgement and sentence was rendered. Id. RCW 13.04.030 requires: Once a prosecutor amends an information to charge a juvenile with offenses that do not result in automatic adult court jurisdiction, the adult criminal court must remand the matter to the juvenile court for a decline hearing. The prosecutor in this response seems to disregard the delay that deprived LaForge's Decline hearing and proper transfer. LaForge's J&S was rendered on On March 23rd 2004 at 3:11pm. But plea agreement to amended information was reached on December 12th of 2003. Exactly 29 calendar days The state had to Remand back to Juvenile court for proper disposition. The state fails to argue this delay. LaForge's Counsel, Trial court and Prosecutor Failed to remand matter for proper proceedings. Dixon, 114 Wn.2d at 860, citing United States v. Lovasco, 431 U.S 783, 788-96, 97 S.Ct. 2044, 52 L.Ed.2d 752 (1977). "This can test provides: (1) that the defendant show prejudice resulting from delay; (2) that there are reasons for the delay which the court must consider; and (3) where the State can justify the delay, that the court engage in balancing the state's interest against the prejudice to the accused." Id. The prosecutor fails to explain reasons for delay. However, What was decided in Posey Should be the controlling 'remedy' if the

court finds that 'dismissal' is not the controlling 'remedy' in this case. And LaForge should be Remanded back to Superior Court and Re-Sentenced consistent with the Juvenile standard range as in Posey.

3. LaForge's counsel Matthew Hale was ineffective and failed to protect LaForge by failing to raise this issue.

Again, the state agrees that this case should be remanded back to superior court to be determined if LaForge should be charged as an adult or juvenile. But fails to argue this remedy rather suggesting Dalluge is the resulting remedy in this case. Dalluge should not be the controlling 'remedy'.

4. LaForge's case should be dismissed with prejudice due to delay in prosecutors judgment and ineffective assistance in counsel for the petitioner for failing to protect LaForge.

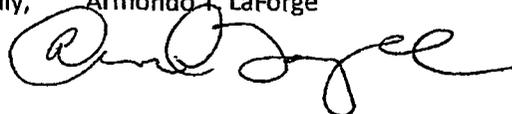
5. LaForge is under a Judgment and sentence That is invalid on it face

Laforge was sentenced to a minimum term of 95 months for rape in the second degree with a lifetime term of community custody. RCW 9.94A.712(see Judgment and sentence) and 14 months for robbery in the second degree charges ran concurrent. LaForge is under a restraint that he should not be placed under. LaForge was under the age of 18 at the time of his Judgment and Sentence was rendered. LaForge was sentenced under RCW 9.94A.712 carrying a lifetime term of community custody.

(See AlabamaV. Mille 554 U.S 407, 83 crl 511) No Juvenile shall be sentenced to Life term sentence

I, Armondo T. LaForge hereby Find that this form of response cause #03-1-03742-3, case# 73178-5-1 was submitted with king county superior courthouse on May 15th 2015.

Respectfully, Armondo T. LaForge

A handwritten signature in black ink, appearing to read 'Armondo T. LaForge', written in a cursive style.