

Court of Appeals No. 49894-4-II

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION TWO

In Re Personal Restraint of:

RAYMOND MAYFIELD WILLIAMS, JR.,

Petitioner.

PETITIONER'S REPLY BRIEF

Cowlitz County Superior Court No. 08-1-00735-6

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I. ARGUMENTS IN REPLY

- A. Williams' petition is not time barred because he has met his burden of proof under RCW 10.73.100 (5) that the sentence imposed was in excess of the court's jurisdiction when a) he was sentenced for a "third strike" and b) the first strike was imposed by adult court after an invalid transfer of jurisdiction from juvenile court.**

First and foremost, it is helpful to discuss what is not at issue. The State concedes that if Williams was improperly transferred, then the Superior Court lacked jurisdiction to count his 1997 conviction as his first strike. *See State's Resp.* at 6 FN 4. And it necessarily follows that Williams could not be sentenced under the Persistent Offender Act for a "third strike" in 2008. Instead, the State focuses largely on what may have been contained within the audio tape and other documents that were destroyed. *See State's Resp.* at 9. It argues that in absence of the audio, this Court should consider the document that mentions a decline hearing was scheduled and a declaration from Christen Peters that it was standard practice for Thurston County juvenile courts to address intelligent waiver and the best interest of the juvenile at decline hearings. *See State's Resp.* at 2, 9-10 FN 5.

The State further argues that even though it would have been the State's burden to prove that Williams was properly sentenced as a persistent offender in 2008, RCW 10.73.100 now shifts the burden to

Williams to prove that jurisdiction was improper. *See State's Resp.* at 6. But, that argument mischaracterizes Williams' burden under RCW 10.73.100 and overemphasizes the importance of extrinsic evidence and the impact of Mr. Peters' testimony.

First, the State reads a heightened standard into RCW 10.73.100 that is not there. To avoid the one year time limit outlined in RCW 10.73.190, Williams is only required to prove that the juvenile court lacked jurisdiction. Under Saenz, the decline order is facially invalid because it does not analyze the Kent factors with enough specificity to provide a meaningful review. Therefore, the adult court lacked jurisdiction to hear the case. Saenz, 175 Wn.2d at 170.

Second, this court does not need to "speculate that the decline hearing never addressed the required Kent factors or intelligent waiver..." as the State suggests because it need not look further than the order itself. *See State's Resp.* at 6-7. The Saenz court made it clear that if there are no written findings that the transfer was in the best interest of the juvenile or the public, then the transfer is invalid. State v. Saenz, 175 Wn.2d 167, 170, 283 P.3d 1094 (2012) ("Our juvenile justice code requires court to enter written findings before declining juvenile jurisdiction...Next, we hold that Saenz's case was not properly transferred to adult court because the commissioner transferring the case failed to enter findings that transfer

was in the best interest of the juvenile or the public as required by statute”).

The State concedes that the order is insufficient to provide a meaningful review in violation of well-established Washington law. *See* State’s Resp. at 9-10 (The written order in the instant case fails to “provide much of a basis for judicial review”); *In re Harbert*, 85 Wn.2d 719, 724, 538 P.2d 1212 (1975) (When a juvenile court declines jurisdiction, it must make written findings that analyze the factors with enough “specificity to permit meaningful review”). Yet, it would have this court overlook that omission simply because there may have been an audio recording of the decline hearing, which may or may not have taken place, which may have indicated that the court questioned Williams about intelligent waiver. *See* State’s Resp. at 13. The State concedes that its argument is speculative. *Id.* (“Granted this is speculative, but no more than any arguments offered by Williams...”).

Third, although a reviewing court may consider transcripts and statements in the record, the absence of such a record is not fatal. The State even concedes that *State v. Holland*, 98 Wn.2d 507, 518-19, 656 P.2d 1056 (1983), which is still good law, did not approve of the juvenile court’s omission of a written analysis. *See* State’s Resp. at 10. And even in *Saenz*, 175 Wn.2d at 179, our Supreme Court affirmed its disapproval of

omitting written findings. The State tries to cure this omission with a declaration from Mr. Peters, but it provides no authority whatsoever that would allow this court to replace the actual record with a declaration in which Mr. Peters is “unable to recall specific details” of Williams’ prosecution. *See* Decl. of Christen Peters at para. 3. And, in any event, providing a 20-year-old recollection of the standard practice is not a guarantee that the proper legal procedure took place. The State’s contention that “the juvenile courts [sic] decision to transfer Williams likely would have been upheld as a valid exercise of discretion” presumes that there actually was an exercise of discretion. And the only record that could confirm whether or not the decline hearing actually addressed the *Kent* factor and intelligent waiver is no longer available. Therefore, as the State concedes, it is unknown whether or not these issues were addressed. *See* State’s Resp. at 3. And the State would have this court assign the risk to Williams, but cites no authority authorizing such an assumption of risk. The State argues that the presiding judge should be taken at his word that he considered the Kent factors in making his decision to decline jurisdiction. *See* State’s Resp. at 10. But, in requiring that the analysis be done in writing, the Saenz court essentially rejected that argument. Simply stating that he considered the Kent factors does not equate to findings of fact, as the State suggests. *See* State’s Resp. at 2. The fact that Saenz was

an appeal and not a PRP does not distinguish it from the instant case. Saenz appealed his life sentence under the Persistent Offender Accountability Act (RCW 9.94A). That life sentence, was the immediate result of 22-year-old Saenz's decision to commit first degree assault and to unlawfully possess a firearm in 2008, knowing that he already had two strikes. At his three strikes hearing, Saenz challenged his 2001 "strike" for his conviction when he was only 15 years old. Despite the fact that the third strike was for a crime he committed as an adult, the Washington Supreme Court still applied all of the public policy considerations for sentencing a juvenile. Saenz, 175 Wn.2d at 170-71.

Given the Saenz court's analysis, it is irrelevant that "Williams is being punished for his actions as an adult, not what he may have done as a juvenile." *See State's Resp.* at 8. The fact is, Williams' life sentence is a direct result of the strike that he received from a court that lacked jurisdiction to impose it.

II. CONCLUSION

Regardless of what the record may have contained before parts of it were destroyed, the decline order itself survived. But, because there are no written findings that the transfer was in the best interest of the juvenile or the public, then the transfer is invalid and the adult court lacked jurisdiction to enter a conviction or a strike. Therefore, Williams' current

life sentence, which is based upon that strike, is invalid and his sentence must be reversed.

DATED this 19th day of June, 2017.

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CERTIFICATE OF SERVICE

I, Corey Evan Parker, certify under penalty of perjury under the laws of the United States and of the State of Washington that on June 19, 2017, I caused to be served the document to which this is attached to the party listed below in the manner shown next to their name:

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