

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

IN RE THE PERSONAL) NO. 49894-4-II
RESTRAINT PETITION OF)
)
RAYMOND WILLIAMS JR.) RESPONSE TO
) PERSONAL RESTRAINT
) PETITION

Comes now Jon Tunheim, Prosecuting Attorney in and for Thurston County, State of Washington, by and through Michael Topping, Special Deputy Prosecuting Attorney, and files its response to petitioner's personal restraint petition (hereinafter "PRP") pursuant to RAP 16.9.

A. STATEMENT OF THE CASE

The facts of this case depart from the typical PRP narrative. Our Appellant, Raymond Williams, Jr., is currently nine years into a life sentence from a 2008 assault conviction in Cowlitz County. *See* Petitioner's Appendix A. That conviction was counted as his third felony conviction for a most serious offense, or "third strike," which is the reason for the lengthy sentence. *See* RCW 9.94A.030 (38); 9.94A.570; Petitioner's Appendix A. At issue here however, is Williams' first

“strike,” a 1997 burglary conviction carried out when Williams was sixteen years old.¹ Petitioner’s Appendix F.

In that 1997 case, Williams was tried as an adult following a decline hearing in Thurston County. Petitioner’s Appendix F. Williams waived his right to be tried as a juvenile, and the juvenile court entered a brief finding of facts at the conclusion of the hearing. *See* Petitioner’s Appendix H; E. Under the policy of the Thurston County Clerk’s Office, and in compliance with RCW 36.23.070, audio recordings of juvenile hearings are eligible for destruction after six years, therefore whatever records of Williams’ decline hearing did exist became eligible for destruction in 2003, and are now unavailable. However, Christen Peters, an attorney who was part of Thurston County’s Juvenile Team in 1997 and who worked on Williams’ prosecution has stated that it was standard practice for courts to consider the best interest of the defendant, and intelligent waiver in the course of a decline hearing. *See* Appendix A, Declaration of Christen Peters. Following the decline hearing, Williams was convicted, and because he was tried as an adult, it counted as his first “strike.” Petitioner’s Appendix F.

¹ In 1997, Williams was convicted of burglarizing a home, and two counts of theft of a firearm. Petitioner’s Appendix F.

Following his incarceration for the 1997 burglary, Williams was again convicted of 1st degree burglary in King County in 2004, with the penultimate third strike occurring in Cowlitz County in 2008 for 2nd degree assault. Petitioner's Appendix A; B. The Cowlitz County conviction, with its accompanying persistent offender sentence was final as of Oct. 15, 2008. Petitioner's Appendix A.

B. ARGUMENT

Challenging his persistent offender sentence, Williams brought this PRP alleging that he was erroneously tried as an adult in his 1997 burglary conviction because 1) the record is insufficient to show the juvenile court considered relevant factors at his decline hearing, Petitioner's Motion at 5-8 (citing *Kent v. United States*, 383 U.S. 541 (1966)), and 2) the record is insufficient to show that Williams intelligently waived his right to be tried as a juvenile. Petitioner's Motion at 8-15 (citing *State v. Saenz*, 175 Wn.2d 167, 283 P.3d 840 (2012)). Whether or not the decline hearing actually addressed these issues is unknown, as any records of the hearing were destroyed in accordance with the county retention schedule, and little other evidence exists which could shed light on the dispute.² Nevertheless,

² Williams has claimed that at no point was he apprised of the consequences of waiving his right to be tried as a juvenile, whereas Christen Peters, an attorney involved in Williams 1997 prosecution, has offered a declaration stating that it was standard practice for courts to

by Williams' reasoning, these alleged errors in his decline hearing caused the superior court to lack jurisdiction, which in turn both means that his 1997 conviction cannot count as his first strike, and he is entitled to bring his collateral attack eight years after his sentencing. Petitioner's Motion at 20. However, because Williams did not challenge his persistent offender status at his 2008 sentencing; appeal his persistent offender status; or file a timely personal restraint petition, he now faces a heightened standard for obtaining relief, and he has failed to meet that standard.

1. Williams' Petition Was Not Brought Within One Year of His Sentence, Therefore, His Claim is Barred Under RCW 10.73.090.

The question before this court is whether Williams is able to meet his required burden of proof, considering the fact that there is no evidence in the record to indicate whether jurisdiction was either proper or improper in 1997. Generally, a personal restraint petition is an extraordinary measure, even if brought in a timely fashion, *In re Pers. Restraint of Mines*, 190 Wn. App. 554, 562, 364 P.3d 121 (2015) ("Relief by way of a collateral challenge to a judgment and sentence is extraordinary."), but here, it is undisputed that Williams filed his petition seven years after the RCW 10.73.090 deadline, which requires collateral attacks to be brought

consider the *Kent* factors, and to ensure that defendants had made an intelligent waiver. *See* Appendix A; Petitioner's Appendix H at 4. Beyond that, there is no additional information.

within one year of a final judgment. Petitioner’s Motion at 20. As such, Williams has the burden of showing that an exception to the one year limitation is applicable under RCW 10.73.100 (providing six grounds by which the one year time limit may be bypassed). *In re Mulholland*, 161 Wn.2d 322, 332, 166 P.3d 677 (2007) (“If a petitioner is claiming a constitutional error, he or she has the burden of demonstrating [constitutional prejudice]; and if a nonconstitutional error is claimed, the petitioner has the burden of demonstrating [a complete miscarriage of justice]. Thus, a higher burden is upon the petitioner who files a PRP rather than a direct appeal, where upon a showing of constitutional error by the petitioner, the State has the burden of showing that it was harmless beyond a reasonable doubt.”).³ Citing the absence of court records and the insufficient findings of facts, Williams claims that the trial court lacked

³ Additional case law regarding RCW 10.73.100 makes it clear that the petitioners bear the burden of proving that one of the enumerated exceptions applies. *See In re Adams*, 178 Wn.2d 417, 422, 309 P.3d 451 (2013) (“The time bar may be avoided if the petitioner can establish one of six exceptions listed under RCW 10.73.100.”); *In re Snively*, 180 Wn.2d 28, 31, 320 P.3d 1107 (2014) (“But because Snively filed his personal restraint petition more than one year after his 1993 judgment and sentence became final, his collateral challenge is time barred unless he demonstrates that the judgment and sentence was entered without competent jurisdiction or is facially invalid, or he asserts only grounds for relief that are exempt from the time limit.”).

jurisdiction to sentence him as an adult,⁴ enabling him to bring this action even after the deadline has passed. *See* RCW 10.73.100 (“The time limit in RCW 10.73.090 does not apply to a petition or motion that is based solely on the following grounds... (5) the sentence imposed was in excess of the court’s jurisdiction.”).

However, this argument ignores the fact that Williams bears the burden of proving that jurisdiction was improper, yet he offers nothing more than speculation and twenty year old recollections. *In re Mulholland*, 161 Wn.2d at 332. Allowing Williams to bypass the time limit of 10.73.090 would improperly relieve him of his burden of proving that one of the 10.73.100 exceptions is applicable. *Id.* Had Williams challenged his sentence when it was issued in 2008, the State would have needed to prove that he was properly sentenced as a persistent offender, yet Williams failed to do so. As a result, the burden shifted.

Now, to put it simply, Williams argues that because the record is unavailable, we should speculate that the decline hearing never addressed

⁴ Williams’ brief devotes considerable discussion to the nature of juvenile jurisdiction, whether superior courts lack original jurisdiction over juveniles, and analysis of *Posey II*. Pet. Brief at 15-19 (*citing State v. Posey*, 161 Wn.2d 638, 167 P.3d 560 (2007)); *State v. Posey*, 174 Wn.2d 131 272 P.3d 840 (2012)). Case law on the topic is convoluted, but the State does not contest that if Williams was improperly transferred, then the superior court lacked jurisdiction to count Williams 1997 conviction as his first strike. However, it is the State’s position that Williams was in fact properly transferred, therefore the superior court had proper jurisdiction.

the required *Kent* factors or intelligent waiver, but speculation is not proof. *State v. Rohrich*, 149 Wn.2d 647, 659, 71 P.3d 638 (2003) (holding that speculation is insufficient to establish prejudice). Beyond the absence of a record, William's sole support is his own declaration, in which he offers his recollections of a hearing occurring twenty years ago. Petitioner's Appendix H. The assertions in that declaration are contested by the declaration of Christen Peters, an attorney who worked on Thurston County's Juvenile Team in 1997, and who was involved in Williams' prosecution. *See* Appendix A, Declaration of Christen Peters. Peters has stated that it was standard practice for decline hearings to address the best interest of juvenile defendants and intelligent waiver. *See* Appendix A. Mere speculation, and contested recollections from twenty years ago are insufficient to prove that jurisdiction was improper.

Moreover, while it is unfortunate that Williams may spend a significant portion of his life in prison, his life sentence was given in 2008, following his decision to commit 2nd degree assault; a decision made when he was twenty-eight years old. Petitioner's Appendix A. Knowing that he had two strikes, a twenty-eight year old Williams chose to commit violent assault. His actions as an adult are the direct cause of his current circumstances, and cannot be blamed upon "a lack of maturity and underdeveloped sense of responsibility." *See Miller v. Alabama*, 132 S.Ct.

2455, 2464-65 (2012). The purpose behind *Miller*, and cases relying upon it such as *Saenz* and *Bailey*, is both the recognition that adolescents have greater possibility for reform, and the hope that troubled children might not grow up to become troubled adults. *Id.* Both admirable ideals, but neither is implicated here. Simply put, Williams is being punished for his actions as an adult, not what he may have done as a juvenile.

Finally, while records which could shed greater light on the questions raised are now lost, they were not maliciously destroyed. Rather they were kept, and destroyed in accordance with Washington statutes. *See* RCW 36.23.070. The legislature also imposed time limits on both appeals and collateral attacks, and did so knowing that potentially meritorious claims could be denied as a result. *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 140, 267 P.3d 324 (2011) (“This right [to an appeal or collateral attack], however, is not unlimited.”) (rejecting a personal restraint petition, despite noting that it likely would have prevailed, had it been brought in a timely fashion). These rules recognize the practical constraints of a functioning legal system, and to grant Williams’ PRP would punish the State for complying with these rules, and reward Williams for failing to challenge the 1997 conviction in a timely fashion.

In conclusion, Williams failed to initially challenge his 2008 sentence, or bring his claim within the prescribed time limit, and as a

result, he now must establish that the superior court lacked jurisdiction in 1997. If Williams can offer nothing more than disputed recollections from twenty years ago, or speculation that issues must not have been addressed if they cannot be found in the record, then he has not met his burden under RCW 10.73.100. Accordingly, his claim must be denied.

2. There Is Nothing In the Record to Indicate One Way or Another Whether Williams' Alleged Errors Are Correct. Without Support in the Record, Williams Cannot Meet His Burden of Proof, Therefore, His Claims Must Be Denied.

a. The ruling from Williams' decline hearing indicates that the juvenile court did consider relevant factors prior to transferring the case to superior court. Williams' also acknowledged that he wished to be tried as an adult in 1997. In light of those facts, it seems clear that the court's transfer of Williams was a valid exercise of its discretion.

Even presuming his claim isn't time barred under RCW 10.73.090, what facts do exist indicate that the juvenile courts decision to transfer Williams likely would have been upheld as a valid exercise of discretion. *State v. Furman*, 122 Wn.2d 440, 447, 858 P.2d 1092 (1993) ("The court's decision [to decline jurisdiction] will be reversed only if there has been an abuse of that discretion.").

To begin, there actually is a written order from Williams' decline hearing.⁵ While very brief, and failing to provide much of a basis for

⁵ Williams states in his brief that there is no evidence that a decline hearing actually occurred. Petitioner's Motion at 7. To the contrary, there

judicial review, the order does state “Pursuant to *State v. Holland*, adopting *U.S. v. Kent*, 383 U.S. 541 (1966), court finds that respondent shall be declined to adult superior court.” Petitioner’s Appendix E. The presiding judge should be taken at his word that he considered the *Kent* factors in making his decision to decline jurisdiction. Presumably, those factors were further discussed in the audio records.

Furthermore, although the language of some cases may suggest that consideration of *Kent* factors must take place within the written findings, *see Saenz*, 175 Wn.2d at 179-80, courts have repeatedly shown that they are willing to consider audio recordings and transcripts to determine whether a decline hearing was proper. For instance, *Holland* held that oral hearings may be considered due to the informal nature of the decline hearings. *State v. Holland*, 98 Wn.2d 507, 518-19, 656 P.2d 1056 (1983) (holding that the court’s oral opinion can be considered when analyzing the sufficiency of the court’s decision to decline jurisdiction, though it did not approve of the court’s omissions in its written findings). More recently, in both *Bailey* and *Saenz*, courts reviewed the transcripts and statements in the record to determine whether the defendant had

is a notice that the decline hearing was scheduled for May 19, 1997, Petitioner’s Appendix D, in addition to an order declining jurisdiction dated May 19. Petitioner’s Appendix E. Based on these documents, it seems clear that a decline hearing did actually occur.

intelligently waived his right to be tried as a juvenile. *Saenz*, 175 Wn.2d at 171; *State v. Bailey*, 179 Wn.App. 433, 335 P.3d 942 (2014). Thus, had any record of Williams' decline hearings survived, they would certainly be considered in the current proceedings.

Lastly, the present case can also be distinguished from past instances where juvenile courts failed to consider necessary factors at decline hearings, even despite the present case's paucity of records. In *Saenz*, no decline hearing was held prior to transfer to adult court, whereas here, although there is no record of what was discussed, a decline hearing was held. *Saenz*, 175 Wn.2d at 179-80. Every other case cited by Williams was a contested decline hearing, *see State v. Massey*, 60 Wn. App. 131, X, 803 P.2d 340 (1990); *Kent*, 383 U.S. at 136-39; *In re Harbert*, 85 Wn.2d 719, 721-22, 538 P.2d 1212 (1975); *State v. Furman*, 122 Wn.2d 440, 447 858 P.2d 1092 (1993), and while Williams' waiver did not excuse the juvenile court from its duties, Williams' own stated desires should factor heavily into whether the transfer was in his best interest. Additionally, the cases cited by Williams are primarily appeals, not PRPs, therefore they dealt with a lower standard for overturning a verdict, and are distinguishable from the present facts. *See In re Coats*, 173 Wn.2d 123, 132, 267 P.3d 324 (2011) ("Relief by way of a collateral challenge to a

conviction is extraordinary, and the petitioner must meet a high standard before this court will disturb an otherwise settled judgment.”).

Considering that a decline hearing was held, and that Williams, by his own words, wished to be tried as an adult, anything beyond a cursory discussion of Williams’ best interest likely would have satisfied the court’s duty. Consequently, to overturn Williams sentence in spite of the high likelihood that the transferring juvenile court properly exercised its discretion would be simply rewarding Williams for his failure to challenge his 1997 conviction in a timely manner.

b. Without facts indicating that he did not intelligently waive his right to be tried as a juvenile, Williams is unable to meet his burden of showing the trial court lacked jurisdiction.

Finally, Williams argues that the record fails to show he intelligently waived his rights to be tried as a juvenile, but again, his argument falls short of proving that he was not warned of the consequences of intelligent waiver. In both *Saenz* and *Bailey*, the reviewing courts looked to the record to determine whether the defendant had intelligently waived his rights. *See Saenz*, 175 Wn.2d at 171; *Bailey*, 179 Wn. App. at 433. In the present case, Christen Peters, a Deputy Prosecuting Attorney on Thurston County’s Juvenile Team in 1997, and who participated in William’s prosecution, has stated that it was standard practice for courts to address intelligent waiver in the record. Thus, if the

records of the decline hearing were available, they would most likely indicate that the court did question Williams about intelligent waiver. Granted this is speculative, but no more so than any arguments offered by Williams, and he is the party bearing the burden to show jurisdiction was improper.

Additionally, both *Saenz* and *Bailey* can be distinguished by the fact that they were appeals, not PRPs. *See Saenz*, 175 Wn.2d at 167; *Bailey*, 179 Wn. App. at 433. As a result, they were subject to a lower standard than what Williams now faces, and therefore are not dispositive. *See In re Coats*, 173 Wn.2d at 132 (“Relief by way of a collateral challenge to a conviction is extraordinary, and the petitioner must meet a high standard before this court will disturb an otherwise settled judgment.”).

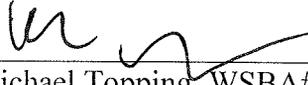
In light of these facts, Williams’ claim that the superior court lacked jurisdiction for lack of intelligent waiver must be denied.

C. CONCLUSION

For these reasons, the State asks that this court deny Williams’ Personal Restraint Petition.

Respectfully submitted this 21~~st~~ day of April, 2017.

JON TUNHEIM, Prosecuting Attorney
Thurston County

A handwritten signature in black ink, appearing to read "Michael Topping", written over a horizontal line.

Michael Topping, WSBA# 50995
Attorney for Respondent

APPENDIX A

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**IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION II**

In re Personal Restraint of:

RAYMOND MAYFIELD WILLIAMS, JR.

COA DIV II NO. 49894-4

DECLARATION OF CHRISTEN ANTON
PETERS

I, Christen Anton Peters, duly solemnly swear and affirm that the following is true and correct:

1. I am the Chief of Staff for the Thurston County Prosecuting Attorney's Office.
2. In 1997, I was employed as a Deputy Prosecuting Attorney at the Thurston County Prosecuting Attorney's Office and assigned to the Juvenile Team, where I worked on juvenile cases, including the prosecution of Raymond Williams.
3. I am unable to recall specific details of Raymond Williams' prosecution, however, during decline hearings, it was standard practice at the time for courts to meaningfully consider the *Kent* factors, and to ensure that defendants had intelligently waived their rights to be tried as a juvenile.

1 I do solemnly swear and affirm, under the penalty of perjury under the laws of the State
2 of Washington, that the above is true and correct.

3 Signed this 19th day of April, 2017, in Olympia, Washington.

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5 Christen Anton Peters, WSBA# 23559
6 Senior Deputy Prosecuting Attorney
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CERTIFICATE OF SERVICE

I certify that I served a copy of the Response to Personal Restraint Petition on the date below as follows:

ELECTRONICALLY FILED AT DIVISION II

TO: DEREK M. BYRNE, CLERK
COURT OF APPEALS DIVISION II
950 BROADWAY, SUITE 300
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VIA E-MAIL

TO: COREY EVAN PARKER
LAW OFFICE OF COREY EVAN PARKER
7700 IRVINE CENTER DR STE 800
IRVINE WA 92618-3047

COREY@COREYEVANPARKERLAW.COM

I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Dated this 21st day of April, 2017, at Olympia, Washington.


CYNTHIA WRIGHT, PARALEGAL

THURSTON COUNTY PROSECUTOR
April 21, 2017 - 2:09 PM
Transmittal Letter

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