

NO. 50014-1-II

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

STATE OF WASHINGTON, Appellant

v.

JESSE CARL FRAME, Respondent

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO. 99-8-00904-1

BRIEF OF RESPONDENT

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ASSIGNMENT OF ERROR

- I. **Juvenile Court lacked jurisdiction to hear Respondent's Motion to Restore his Firearm Rights.**

ISSUE PRESENTED

- II. **Did Juvenile Court have authority to hear Respondent's motion to Restore Firearm Rights?**

STATEMENT OF THE CASE

A. STATEMENT OF THE FACTS/PROCEDURAL HISTORY

On September 9, 1999, Respondent, Jesse Carl Frame, when he was sixteen years old, pled guilty in Clark County Juvenile Court, to the crime of Child Molestation in the First Degree. (CP 1). On October 11, 1999, the Juvenile Court imposed a Special Sexual Offender Disposition Alternative. (CP 5). As a consequence of his conviction of a felony sex offense, Frame was prohibited from possessing a firearm and was ordered to Register as a Sex Offender. Frame filed a petition in Clark County Superior Court to be relieved of his Duty to Register as a Sex Offender under case number 06-2-04124-4. Respondent's request was granted on September 29, 2006. (CP 11).

On December 20, 2016, Respondent filed a motion in juvenile court to restore his right to own or possess a firearm. (CP 7). Respondent

filed this motion in juvenile court, using the same case number for which he originally pled guilty to the crime of Child Molestation and was placed on a Special Sentencing Offender Disposition Alternative.

On February 15, 2017, Respondent's motion to restore his firearm rights was heard in juvenile court. At the time the motion was heard, the State timely objected, and indicated that the juvenile court did not have jurisdiction to hear the matter, since juvenile Court was not a "Court of Record" pursuant to Article 4, section 11 of the Washington State Constitution, and that due to Respondent's age, juvenile court did not have authority to act. (RP 5-8) The Court instead ruled in favor of the Respondent, and determined that juvenile court was indeed a "Court of Record" because it is a division of Superior Court, and reinstated Respondent's firearm rights. (CP 20-21, RP 8-10) This timely appeal followed. (CP 22, RP 10, 11)

ARGUMENT

III. JUVENILE COURT DID NOT HAVE JURISDICTION TO HEAR THE MOTION TO RESTORE FIREARM RIGHTS.

- a. Juvenile court did not have jurisdiction to hear the petition to restore firearm rights because Juvenile court is not a "court of record" as defined by Art. 4 sec. 11 of the Washington Constitution.

Juvenile Court did not have jurisdiction to hear the petition to restore firearm rights filed in this matter. Such motion should have been filed in Superior Court.

Respondent was convicted of the crime of Child Molestation in the First Degree, a felony offense. RCW 9A.44.083; RCW 13.40.0357. Pursuant to RCW 9.41.040(1)(a) and (2)(a)(i), it is unlawful for both an adult and a juvenile to possess a firearm after that individual has been convicted or adjudicated of a felony or convicted or adjudicated of various gross misdemeanor and misdemeanor offenses against another family member.

Once convicted or adjudicated, RCW 9.41.040(4)(b) provides limitations as to where an individual must file his or her petition to regain the right to possession of a firearm. RCW 9.41.040(4)(b)(i) and (ii) specifically indicates that such petitions must be filed at the “court of record that ordered the petitioner’s prohibition on possession of a firearm” or the superior court in the county in which the petitioner resides. This is further supported by RCW 9.41.047(1)(a) that also indicates that a convicted person “may not possess a firearm unless his right to do so is restored by a court of record”.

Under Article IV, section 11, our Washington Constitution specifically identifies that “Courts of Record” are limited to the Supreme

Court and the Superior Court. Furthermore, under Article IV, Section 6, Superior Courts are granted original jurisdiction “in all criminal matters amounting to a felony”. In addition, Article IV, Section 6, “grants the Superior Court residual jurisdiction over non-enumerated cases and proceedings, providing that Superior Courts shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested inclusively in some other court...” State v. Posey, 174 Wash.2d 131,136 (2012); Wash. Const. Art.IV, section 6 (amend. LXXXVII); see also RCW 2.08.010. Juvenile courts are a separate division of the superior courts, and not a separate Constitutional Court. State ex rel. Campbell v. Superior Court, 34 Wash.2d 771, 775, 210 P.2d 123 (1949); RCW 13.04.021(1). The creation by the legislature of juvenile courts was not meant to establish an exclusive jurisdiction in a court other than the superior court. Juvenile court is simply a part of superior court. State v. Werner, 129 Wash.2d 485, 492, 918 P.2d 916 (1996). Furthermore, there was never an intent for juvenile court, created under Title 13, to supplant the authority and jurisdiction of the superior court. State v. Pritchard, 79 Wash.App. 14, 18, 900 P.2d 560 (1995).

Juvenile Courts, like District Courts and Municipal Courts, are not defined as a “Court of Record” under the Washington State Constitution. Juvenile Courts, District Courts and Municipal Courts are simply courts of

limited jurisdiction that have been created by statute. RCW 13.04.021 RCW 13.04.030, RCW 3.02.010 and RCW 35.20.030. The legislature then has the power to determine their jurisdiction and powers. Young v. Konz, 91 Wash.2d 532, 540, 588 P.2d 1360 (1979). The subject matter jurisdiction of such courts is therefore specifically limited to that which is affirmatively provided by statute. Jurisdiction is the power to hear and determine. State v. Werner, 129 Wash.2d 485, 493, 918 P.2d 916 (1996). When a court attempts to decide a matter over which it has no authority to decide, it lacks subject matter jurisdiction. Marley v. Dep't of Labor & Indus., 125 Wash.2d 533, 539, 886 P.2d 189 (1994). When the Washington State Constitution conflicts with statutory language, the Constitution prevails. State v. Werner, 129 Wash.2d 485, 496, 918 P.2d 916 (1996).

Juvenile Court did not have jurisdiction to hear the motion because it is not a court of record. As indicated in the Washington State Constitution, only the Supreme Court and Superior Courts are defined as Courts of Record. Further, the limitations as to the authority of juvenile courts as created by the legislature, further limits the powers of juvenile court jurisdiction and its power to hear and adjudicate cases against juveniles. As indicated above, juvenile court is simply a division of Superior Court, and is not a "Court of Record". As a result, this petition

should have been filed in the adult division of the Superior Court because it is a court of record and it has appropriate residual authority to address the motion.

- b. Due to Respondent's current age, Juvenile court lacked statutory authority to hear this motion to restore firearm rights.

Juvenile Court did not have authority to hear this motion. The limitations of Juvenile Court are provided in RCW 13.04.030. At age 18, juvenile status terminates, and the juvenile court's exclusive jurisdiction ends. RCW 13.40.020(15). Juvenile court derives jurisdiction over a particular proceeding based upon the date, the crime, and age of the offender. Absent an extension of jurisdiction, the general jurisdiction of the superior court takes over when the individual turns 18. RCW 13.40.020. Furthermore, RCW 13.40.300 provides "in no event may the juvenile court have authority to extend jurisdiction over any juvenile offender's twenty-first birthday, except for the purpose of enforcing an order of restitution or penalty assessment".

In State v. Posey, the State charged the then 16 year old defendant with multiple counts of second degree rape and one count of first degree assault. 174 Wash.2d 131, 133-134, 272 P.3d 840 (2012). Due to the defendant's age and the charge of assault in the first degree, juvenile jurisdiction was automatically declined, and the case was heard in

Superior Court. Id. at 134. Posey was found not guilty on the Assault charge, but found guilty on two counts of Rape in the Second Degree. Id. Posey was then sentenced by the trial court judge under adult sentencing guidelines. Id. These convictions were later affirmed on appeal, but the matter was referred back to the trial court for a decline hearing. See State v. Posey, 161 Wash.2d 638, 647, 167 P.3d 560 (2007). The mandate on that decision was issued after Posey had turned 21. Posey II, 174 Wash.2d at 134. On remand, Posey argued that juvenile court no longer had jurisdiction over him due to his age. Id. The trial court agreed, however, and indicated that she was transforming the courtroom, and was now acting as a superior court judge, and sentenced Posey. Id. at 135.

The Supreme Court affirmed the ruling, and held that when “a person is no longer subject to the procedures governing juvenile adjudications, the superior court retains such constitutional jurisdiction”. Id., at 135, 142. The Court in its reasoning noted that superior court’s jurisdiction derives from the constitution, and that since juvenile jurisdiction had lapsed, the superior court retained jurisdiction to sentence him. Posey, at 141.

In State v. Golden, 112 Wash.App. 68, 71, 47 P.3d 587 (2002), a youth pleaded guilty in juvenile court to Arson. After the youth turned 18, the youth brought a motion to withdraw his guilty plea. Id. The

motion in this case was filed in superior court, but filed under the original juvenile cause number for which the youth had originally pleaded guilty. Id. The superior court in granting the motion to withdraw the guilty plea, relied upon the fact that the superior court maintained general jurisdiction which allowed it to hear the matter. Id. at 72. The Appellate Court, upon review, found that the Superior Court had retained jurisdiction to hear the motion. Id. at 76. The court reasoned that due to the age of Golden at the time of the offense that the juvenile division of the court had jurisdiction over the matter at that time. However, since Golden had turned 18 when his motion was filed, and if juvenile court did not retain authority over him, Superior Court retained general jurisdiction over Golden and could appropriately address his motion. Id. at 76.

Similarly, based upon the current age of the Respondent, older than 30, Juvenile Court did not have authority to hear this motion. Because general juvenile status terminates at 18 (RCW 13.04.011), and then ceases at the age of twenty one (RCW 13.40.300), the juvenile court was not the proper forum to file and hear the Respondent's motion to Restore his firearm rights. As is clear, from the Washington State Constitution and case law, when juvenile court jurisdiction lapses, Superior Court retains jurisdiction, and is the appropriate forum for his motion to restore firearm rights to be filed.

- c. Plain language of RCW 9A.41.040(4) indicates that the petition to restore firearm rights must be made to a Court of record.

In examining the legislature's intent as to a particular statute, courts' consider various elements of the provision. In evaluating the particular provision, courts' examine, the statute's plain language, as well as the text of the particular provision in question, the context of the statute in which the provision is located, associated provisions, and the statutory scheme as a whole. State v. Bliss, 191 Wash.App. 903, 909, 365 P.3d 764 (2015).

In examining this issue, it is important to note, that RCW 9A.44.130 requires juveniles convicted of sex offenses to register as sex offenders. Further, under RCW 9A.44.143, juvenile offenders who are required to register, may petition the Superior Court to be relieved of such obligation to register. Under 9A.44.143(4), a petition for relief from registration "shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register" or to the court in the county in which the person is registered at the time the petition is filed. Unlike petitions requesting relief from registration, that may allow juvenile offenders to petition the juvenile court (convicting court) to request relief from registration, such language is not present in the statute for regaining their right to possess a firearm. Instead, as

illustrated above, the provisions dealing with firearm restoration specifically mandate that such petitions are filed at a “Court of Record that ordered the petitioner’s prohibition...”. As established above, juvenile court is not a “Court of Record” but simply a division of Superior Court, and as such did not have authority to address this petition.

CONCLUSION

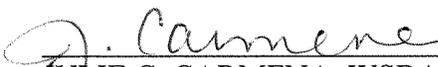
The Juvenile Court was not a court of record and did not have authority to hear or grant Respondent’s Petition to Restore his Firearm Rights. Based upon the foregoing arguments, the State respectfully requests the Court reverse the decision of the juvenile court and vacate the Order Restoring the Respondent’s right to Own or Possess Firearms.

DATED this 26th day of June 2017.

Respectfully submitted:

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