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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

MALISHA MIRANDA MORALES,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 17-1-00954-9
The Honorable Stephanie Arend, Judge

OPENING BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

1. Malisha Morales was deprived of her due process rights when juvenile court jurisdiction was automatically declined and no hearing was held to determine whether the juvenile court should retain jurisdiction.
2. The trial court erred in finding a factual basis supporting Malisha Morales' guilty plea.
3. Malisha Morales' guilty plea was not knowing, intelligent or voluntary.
4. The trial court abused its discretion when it failed to meaningfully consider youthfulness as a mitigating factor as directed by the Washington and United States Supreme Courts.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Where due process requires an individualized assessment before juvenile court jurisdiction may be declined and a charged youth may be prosecuted in adult superior court, but where juvenile court jurisdiction is automatically declined when juveniles of a certain age are charged with particular offenses, was sixteen-year-old Malisha Morales denied her due process rights when she was prosecuted in

adult court without a court first making an individualized assessment of whether juvenile court jurisdiction should be declined? (Assignment of Error 1)

2. Was Malisha Morales' plea voluntary, intelligent and knowing where there is nothing in the record to show she understood the elements of accomplice liability and her admitted conduct was insufficient to satisfy the elements of accomplice liability? (Assignments of Error 2 & 3)
3. Where youthfulness and surrounding circumstances of upbringing can diminish a juvenile offender's culpability and can constitute a mitigating factor justifying the imposition of a reduced sentence, did the trial court abuse its discretion when it failed to consider whether sixteen-year-old Malisha Morales' behavior and decision making were a product of her youthful immaturity and chaotic childhood? (Assignment of Error 4)
4. Where the differences between young offenders and adult offenders can constitute a mitigating factor justifying the imposition of a reduced sentence, did the trial court meaningfully consider youth and its attributes when it failed to address the differences between sixteen-year-old Malisha Morales and adult offenders? (Assignment of Error 4)

III. STATEMENT OF THE CASE

The Pierce County Prosecutor charged sixteen-year-old Malisha Morales with one count of first degree murder and five counts of assault. (CP 1-4) The State further alleged that Malisha or an accomplice was armed with a firearm. (CP 1-4) According to the declaration of probable cause, Malisha drove a vehicle from which two other juveniles fired shots at a group of individuals, resulting in the death of C.M. (CP 1-4, 5-6)

Because of the nature of the charges and her age, RCW 13.04.030 mandated automatic transfer of the case from juvenile to adult court without the hearing otherwise held to determine whether such a transfer is appropriate.

Malisha took responsibility for her actions and entered a guilty plea to an amended information charging one count of second degree murder (RCW 9A.32.050). (CP 8, 10-20; 11/22/17 RP 1-3)¹

When asked to state the factual basis to support the plea, Malisha wrote:

On March 3, 2017, in Pierce County, Washington, I unlawfully and feloniously, with the intent to cause bodily harm or death to another

¹ The transcripts will be referred to by the date of the proceeding contained therein.

person, drove a vehicle from which Billy Williamson and Zachary Glover fired guns which caused the death of another person, C.M. I am truly sorry for what has occurred.

(CP 18) After a typical colloquy, the trial court found that the plea was knowing, voluntary and intelligent, and it accepted Malisha's guilty plea. (11/22/17 RP 3-10)

The prosecutor and defense attorney made an agreed recommendation of 123 months, the minimum sentence required under the adult sentencing statute based on Malisha's zero offender score. (11/22/17 RP 13-14, 16-17; CP 11, 13) But both reminded the court of its responsibility to consider Malisha's youth as a mitigating factor, and the defense attorney explained that Malisha was raised in a broken family without stable parental support and guidance, and for a time was living alone on the streets. (11/22/17 RP 15) Letters submitted in support of Malisha explained how Malisha never had a normal childhood existence and had "[n]o one in her life to protect her, guide her, help her make good choices." (CP 59)

Both the prosecutor and the defense attorney also noted that Malisha felt a great deal of remorse for her involvement and that her cooperation with investigators lead to the arrests and

prosecution of the shooters. (11/22/17 RP 13-14, 15; CP 9)

The trial judge was unmoved, and sentenced Malisha to an adult sentence consisting of 123 months (10.25 years) of confinement. (11/22/17 RP 20; CP 27, 30) The court stated:

I failed to bring out to the bench a copy of the Houston-Sconiers case so that I could reflect upon each of the factors that the supreme court suggests the Court should consider. Kind of details it a little differently than just youth... it's all factors of youth on the basis of research regarding brain development and the exercise of judgment and all that.

I would say this: But for her age, the Court would not be inclined to -- despite the fact that she has zero criminal history, the Court would not be inclined to go along with the low end recommendation in this case because, as I read the declaration of probable cause and as I read the fact statement of her involvement, while she didn't pull the trigger herself, she is the kind of the critical player, if you will, in the event that occurred on that day. And but for her involvement, I don't think there would have been a shooting much less a murder.

So it is only because of the Houston-Sconiers case and the supreme court's order that the Court must ... consider your age and the impact that has on your ability to exercise good judgment that the Court is going to go along with the joint recommendation for the low end.

...

The fact that you have -- had a -- are the child of a single mother, you know, there's lots of children of single mothers who don't go out there and either shoot someone or drive the car to a shooting. Right?

But it appears [that] you also really didn't have any kind of adult guidance to assist you or to make sure that you were doing what you should have been doing, which is basically being in school, being a student, you

know, and growing up so that you would hopefully have the opportunity to make better decisions in the future.

(11/22/17 RP 18-20) Malisha filed a timely Notice of Appeal. (CP 65)

IV. ARGUMENT & AUTHORITIES

A. MALISHA WAS DENIED HER DUE PROCESS RIGHTS WHEN SHE WAS PROSECUTED IN ADULT COURT WITHOUT A COURT FIRST MAKING AN INDIVIDUALIZED ASSESSMENT OF WHETHER JUVENILE COURT JURISDICTION SHOULD BE DECLINED.²

“[T]he Due Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures.” Cleveland Board of Education v. Loudermill, 470 U.S. 532, 541, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985); U.S. Const. amend. V, amend. XIV. An automatic decline of juvenile court jurisdiction, without a hearing or individualized determination of whether decline is appropriate, is inconsistent with these due process protections.

The juvenile court has original jurisdiction over most criminal offenses committed by juveniles. See RCW

² Malisha apparently did not object to the automatic transfer of her case to adult court without a decline hearing. Nevertheless, “constitutional error may be raised for the first time on appeal, particularly where the error affects ‘fundamental aspects of due process.’” State v. Lively, 130 Wn.2d 1, 19, 921 P.2d 1035 (1996) (quoting State v. Johnson, 100 Wn.2d 607, 614, 674 P.2d 145 (1983)); RAP 2.5

13.04.030(1)(e). An adult court obtains jurisdiction over juvenile defendants in two ways. The first is after a decline hearing in which the juvenile court transfers jurisdiction over the juvenile to the adult court. Decline of jurisdiction may only be ordered “upon a finding that the declination would be in the best interest of the juvenile or the public.” RCW 13.40.110(3). The second, referred to as automatic decline, is if the juvenile is charged with committing certain serious felonies. RCW 13.04.030(1)(e)(v). In such cases, the statute allows the transfer of the juvenile to adult court without the benefit of a decline hearing. But due process requires a hearing before juvenile court jurisdiction is declined for a youth charged with a crime.³

That is because “children are different.” Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 2470, 183 L. Ed. 2d 407 (2012). And that difference has constitutional ramifications: “An offender’s age is relevant to the Eighth Amendment, and [so] criminal procedure laws that fail to take defendants’ youthfulness into account at all would be

³ Whether RCW 13.04.030(1)(e)(v) violates due process principles in automatically conferring jurisdiction in adult court over 16-and 17-year old juveniles charged with certain crimes without the necessity of an individualized hearing on whether to decline juvenile court jurisdiction, and whether In re Boot, 130 Wn.2d 553, 925 P.2d 964 (1996), which upheld the constitutionality of the statute’s predecessor, remains good law, is currently pending before the Washington State Supreme Court in State v. Watkins (No. 94973-5). Oral argument in that case was held on March 13, 2018.

flawed.” Graham v. Florida, 560 U.S. 48, 76, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010); U.S. Const. amend. VIII.

In Kent v. United States, the Supreme Court held that the transfer of a youth from juvenile court to adult criminal court imposes a significant deprivation of liberty and warrants substantial due process protection. 383 U.S. 541, 554, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966). Juvenile court offers “special rights and immunities” to youth that are lost upon transfer to the adult system. 383 U.S. at 556. For many youth, decline can mean the difference between confinement until the age of twenty-one and the harshest sentences imposed upon adults. 383 U.S. at 557. In light of those circumstances, the Court found it “clear beyond dispute that the waiver of jurisdiction is a ‘critically important’ action determining vitally important statutory rights of the juvenile,” and thus it must “satisfy the basic requirements of due process and fairness.” 383 U.S. at 553, 556.

It is only by conducting an individualized assessment of whether a child should be transferred to adult court that due process can be satisfied. See Kent, 383 U.S. at 546; Miller, 567 U.S. at 489. Courts must conduct an inquiry into the youth’s needs, amenability to treatment, and the underlying facts to

determine whether decline is appropriate. Kent, 383 U.S. at 546; Miller, 567 U.S. at 489; see also In Re Gault, 387 U.S. 1, 31, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

Despite the substantial due process required by Kent and recognized by the courts, the Washington Supreme Court held automatic decline constitutional in In re Boot, 130 Wn.2d 553, 557-58, 925 P.2d 964 (1996). The Court relied upon Stanford v. Kentucky to justify automatic decline, reasoning that if the Eighth Amendment did not preclude the death penalty for sixteen and seventeen-year-old defendants, it must not require hearings for youth of the same age who were automatically declined to adult court. Boot, 130 Wn.2d at 571 (citing Stanford v. Kentucky, 492 U.S. 361, 109 S. Ct. 2969, 106 L. Ed. 2d 306 (1989)). Stanford has since been abrogated by Roper v. Simmons, 543 U.S. 551, 572-74, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005).⁴

Since Roper, the United States Supreme Court has consistently made clear that youth who are charged with crimes must be treated differently than adults. Graham, 560 U.S. 48;

⁴ “The differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability.... Stanford v. Kentucky should be deemed no longer controlling on this issue.” Roper, 543 U.S. at 574.

Miller, 567 U.S. at 471; Montgomery v. Louisiana, 136 S. Ct. 718, ___ U.S. ___, 193 L. Ed. 2d 599 (2016), as revised (Jan. 27, 2016). These cases have overruled almost all of the cases relied upon to justify automatic decline, demonstrating that both the law and newer scientific information no longer support transferring youth to adult court without a hearing.

Likewise, Washington's Supreme Court has recognized the special status juveniles have in the criminal justice system. Most recently, the Court acknowledged in State v. Houston-Sconiers, that "[c]hildren are different." 188 Wn.2d 1, 8, 391 P.3d 409 (2017) (quoting Miller, 132 S. Ct. at 2470). This recognition led the Court to hold that sentencing courts must have absolute discretion in sentencing juveniles who have been declined to adult court. 188 Wn.2d at 21.

While the Supreme Court did not reach the issue of whether automatic decline was constitutional in Houston-Sconiers, the Court recognized that the cases on which the constitutionality of automatic decline was premised were no longer good law. 188 Wn.2d at 422-23. The Court acknowledged that the holding in Boot now "stands in tension" with United States

Supreme Court holdings in Roper, Graham, and Miller. Houston-Sconiers, 188 Wn.2d at 422-23. As Stanford has been abrogated, Boot is no longer controlling and there is no longer a basis to find that automatic decline is constitutional.

For all juveniles, including Malisha, due process requires a hearing before juvenile court jurisdiction is declined. The liberty interests at stake for Malisha are “critically important” and call for heightened procedural protections before juvenile court declines to take jurisdiction over her case. Kent, 383 U.S. at 553-54.

Boot is no longer good law. Its underpinnings have been overturned and it stands not only in “tension” with United States Supreme Court precedent, but in direct contradiction of the acknowledgement that children are different and must be accorded individualized assessment of their amenability to juvenile court before they are declined to adult court. Houston-Sconiers, 188 Wn.2d at 21; Miller, 567 U.S. at 471.

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B. MALISHA'S GUILTY PLEA WAS INVOLUNTARY BECAUSE THE CONDUCT SHE ADMITTED TO WAS THE FACTUAL BASIS FOR THE PLEA BUT THAT CONDUCT WOULD HAVE BEEN INSUFFICIENT TO PROVE THE CHARGED OFFENSE AT TRIAL AND BECAUSE SHE CLEARLY DID NOT UNDERSTAND THE LAW IN RELATION TO THE FACTS.

Due process requires an affirmative showing that a defendant entered a guilty plea knowingly, intelligently, and voluntarily. U.S. Const. amend. XIV; Wash. Const. art. 1, § 3; Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). A plea cannot be voluntary "unless the defendant possesses an understanding of the law in relation to the facts." McCarthy v. United States, 394 U.S. 459, 466, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969). "[A]n accused must not only be informed of the requisite elements of the crime charged, but also must understand that his conduct satisfies those elements." In re Pers. Restr. of Hews, 99 Wn.2d 80, 87-88, 660 P.2d 263 (1983). The State bears the burden of proving the validity of the guilty plea from the record or by "clear and convincing extrinsic evidence." Ross, 129 Wn.2d at 287.

CrR 4.2 requires that the court not accept a guilty plea without first determining that the defendant is making it voluntarily, competently, and with an understanding of the nature of the charge

and the consequences of the plea. Ross, 129 Wn.2d at 284. Additionally, under CrR 4.2(d), “[t]he court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.” Before accepting a plea the judge must determine that the defendant’s admitted conduct constitutes the charged offense. In re Pers. Restr. Of Crabtree, 141 Wn.2d 577, 585, 9 P.3d 814 (2000).

The requirement in CrR 4.2(d), that there be a factual basis for the plea, is procedural and not constitutionally mandated. In re Pers. Restr. of Hews, 108 Wn.2d 579, 592 n. 2, 741 P.2d 983 (1987); State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). The purpose behind the factual basis requirement, however, is to protect a defendant who may enter a plea with an understanding of the nature of the charge, but without realizing that his conduct does not actually satisfy each element of the charged crime. FERGUSON, 13 WASHINGTON PRACTICE, § 3613 (2d ed. 1997); In re Pers. Restr. Of Keene, 95 Wn.2d 203, 209, 622 P.2d 360 (1980). The factual basis of a plea is constitutionally significant where it relates to the defendant’s understanding of her plea. Hews, 108 Wn.2d at 591-92. The failure to establish an adequate factual basis leaves the plea open to the challenge that it was involuntary. Hews, 108 Wn.2d at

592; State v. Rigsby, 49 Wn. App. 912, 916, 747 P.2d 472 (1987).

The amended information alleged that Malisha committed the crime of second degree murder contrary to RCW 9A.32.050(1)(a). (CP 8) Under that statute, “[a] person is guilty of murder in the second degree when ... [w]ith intent to cause the death of another person but without premeditation, he or she causes the death of such person or of a third person[.]” RCW 9A.32.050(1)(a).

First, in her plea statement, Malisha states that she acted with “intent to cause bodily harm or death.” (CP 18) But an intent to cause bodily harm is insufficient to establish the elements of second degree murder. Second, Malisha states that she “drove a vehicle from which” two others “fired guns.” (CP 18) Malisha did not fire a weapon and therefore did not personally cause C.M.’s death. (CP 5-6, 18; 11/22/17 17, 18) Rather, the State was proceeding on the theory that Malisha was an accomplice to the two shooters. (11/22/17 RP 12-13)

To find accomplice liability for a crime, the court must find that a defendant solicited, commanded, encouraged, or requested another person to commit a crime, knowing that her actions would facilitate the commission of that crime or that the defendant aided in the crime or its planning. State v. Berube, 150 Wn.2d 498, 511, 79

P.3d 1144 (2003); RCW 9A.08.020(3)(a)(i)-(ii). Nothing in Malisha's plea statement admitted such conduct.

Malisha's admitted conduct, which was the sole basis for the court's factual basis finding, does not establish the elements of second degree murder or accomplice liability for murder. Thus, there was no factual basis for the plea to the charged offense.

Additionally, the court erred in finding that the plea was knowing and voluntary because it failed to determine whether Malisha understood the nature of the charge in relation to the facts. A plea is only valid where the defendant has knowledge of the elements of the charged offense and how the facts relate to the charge. Hews, 99 Wn.2d at 87-88. There is nothing in the record that shows Malisha understood what was required to establish her liability as an accomplice. There was no acknowledgement or discussion in the record showing that Malisha was ever advised or understood that a person is not guilty as an accomplice unless she "associates [her]self with the venture and takes some action to help make it successful," and that "mere presence and knowledge of the criminal activity is insufficient to establish accomplice liability."⁵

⁵ State v. Truong, 168 Wn. App. 529, 530-40, 277 P.3d 74 (2012); see also In re Welfare of Wilson, 91 Wn.2d 487, 491, 588 P.2d 1161 (1979).

A defendant is entitled to withdraw a guilty plea when necessary to correct a manifest injustice. CrR 4.2(f); State v. Marshall, 144 Wn.2d 266, 280-81, 27 P.3d 192 (2001); State v. Davis, 125 Wn. App. 59, 68, 104 P.3d 11 (2004). A manifest injustice exists if the plea was involuntary. Marshall, 144 Wn.2d at 281. A manifest injustice is “an injustice that is obvious, directly observable, overt, not obscure.” State v. Saas, 118 Wn.2d 37, 42, 820 P.2d 505 (1991) (quoting State v. Taylor, 83 Wn.2d 594, 596, 521 P.2d 699 (1974)). An involuntary plea constitutes a manifest injustice. Saas, 118 Wn.2d at 42. Therefore, Malisha’s plea should be vacated and the case remanded so that she can withdraw her plea. Saas, 118 Wn.2d at 42; Wood v. Morris, 87 Wn.2d 501, 511, 554 P.2d 1032 (1976).

C. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO PROPERLY CONSIDER MALISHA’S YOUTH AND CHAOTIC UPBRINGING AS A MITIGATING FACTOR.

Under the SRA, a sentencing court must generally sentence a defendant within the standard range. State v. Graham, 181 Wn.2d 878, 882, 337 P.3d 319 (2014); RCW 9.94A.505(2)(a)(i). However, “[t]he court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a

preponderance of the evidence.” RCW 9.94A.535(1). The diminished culpability of youth may serve as a mitigating factor. See RCW 9.94A.535(1)(e); State v. Ronquillo, 190 Wn. App. 765, 769, 361 P.3d 779 (2015); Miller v. Alabama, *supra*, State v. O’Dell, 183 Wn.2d 680, 358 P.3d 359 (2015).

That is because children are “constitutionally different from adults for purposes of sentencing.” Miller, 132 S. Ct. at 2464. Children are less blameworthy because they are less capable of making reasoned decisions. Miller, 132 S. Ct. at 2464. Scientists have documented their lack of brain development in areas of judgment. Miller, 132 S. Ct. at 2464.

These scientific studies “reveal fundamental differences between adolescent and mature brains in the areas of risk and consequence assessment, impulse control, tendency toward antisocial behaviors, and susceptibility to peer pressure.” O’Dell, 183 Wn.2d at 692 (footnote citations omitted); *see a/so* Miller, 132 S. Ct. at 2468 (the hallmark features of youth that diminish a juvenile’s blameworthiness under the Eighth Amendment include immaturity, impulsivity, and failure to appreciate risks and consequences).

Thus, a sentencing court must consider a juvenile offender’s “youth and attendant characteristics” before determining the penalty,

and not simply examine her acts during the incident. Miller, 132 S. Ct. at 2471. The judge must “meaningfully consider youth as a possible mitigating circumstance.” O’Dell, 183 Wn.2d at 696.⁶

The Houston–Sconiers Court recently provided guidance to sentencing courts on how to exercise their discretion in juvenile sentencing:

[I]n exercising full discretion in juvenile sentencing, the court must consider mitigating circumstances related to the defendant's youth—including age and its “hallmark features,” such as the juvenile’s “immaturity, impetuosity, and failure to appreciate risks and consequences.” It must also consider factors like the nature of the juvenile’s surrounding environment and family circumstances, the extent of the juvenile’s participation in the crime, and “the way familial and peer pressures may have affected him [or her].” And it must consider how youth impacted any legal defense, along with any factors suggesting that the child might be successfully rehabilitated.

Houston-Sconiers, 188 Wn.2d at 23 (quoting Miller, 132 S. Ct. at 2468).

Furthermore, in assessing whether any fact is a valid mitigating factor, the sentencing court’s task is to determine whether

⁶ Generally, a standard range sentence may not be appealed. RCW 9.94A.585(1). That statute, however, does not place an absolute prohibition on the right of appeal. A defendant may challenge the procedure by which a sentence within the standard range is imposed. State v. Mail, 121 Wn.2d 707, 712-13, 854 P.2d 1042 (1993). And O’Dell concluded that a sentencing court’s failure to fully consider youthfulness as a mitigating factor is reviewable. 183 Wn.2d at 697.

that fact differentiates the current offense and offender from others in the same category. O'Dell, 183 Wn.2d at 690. What makes youthfulness a mitigating factor is the degree to which youth and its characteristics differentiates youthful offenders from older offenders. O'Dell, 183 Wn.2d. at 693. It is “misguided” to equate adolescent failings with those of older offenders. Roper v. Simmons, 543 U.S. at 570. Thus, another relevant question is to what degree did Malisha’s youth differentiate her and her offense from other adult offenders. The trial court did not attempt to consider any of these factors.

First, the court admitted it could not “reflect upon each of the factors” suggested by Houston-Sconiers because it “failed to bring out to the bench a copy” of that decision. (11/22/17 RP 18) Second, at no point did the court consider how Malisha’s maturity, culpability, and decision making abilities (or lack thereof) compared to adult offenders. By failing to do so, the trial court did not give effect to the mandate of the SRA, Miller or O'Dell.

The trial court also failed to give effect to the Supreme Court’s caution, that the hallmark attributes of youth are transient. “The relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature,

the impetuosity and recklessness that may dominate in younger years can subside.” Roper, 543 U.S. at 570. The trial court never assessed Malisha’s likelihood for rehabilitation that may occur simply from maturation as compared to older adult offenders.

Instead, the trial court focused on Malisha’s involvement in the incident and her decision making at that time. (11/22/17 RP 18, 19) The court failed to consider that immature judgment and impetuosity—classic traits of youth—may have contributed to Malisha’s decision making. And the court did not consider how Malisha’s youth and chaotic upbringing may have impacted her ability to make good decisions.

The trial court “did not meaningfully consider youth as a possible mitigating circumstance” and therefore failed to properly exercise its discretion at sentencing. O’Dell, 183 Wn.2d at 696-97. Malisha’s case should be remanded for a new sentencing hearing. O’Dell, 183 Wn.2d at 697.

V. CONCLUSION

Because of the vital importance of the liberty interests at stake when juvenile court jurisdiction is declined, due process requires a hearing prior to transfer to adult court. At this hearing,

the court must conduct an individualized assessment of the youth's amenability to juvenile court jurisdiction. Because no such hearing was conducted here, Malisha's conviction should be reversed and her case remanded for a hearing. This Court must also vacate her conviction because Malisha's plea was not truly knowing and voluntary. Alternatively, this Court should remand this matter for a new sentencing hearing to permit the court to meaningfully consider Malisha's youthfulness, surrounding environment and family circumstances as a mitigating factor.

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