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Court of Appeals
Division II
State of Washington
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NO. 51979-8-II

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

STATE OF WASHINGTON, Respondent

v.

ROSS ANTHONY BURKE, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.04-8-00119-1

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

- I. **The State asks this Court to decide the issues presented on the merits.**

STATEMENT OF THE CASE

The State accepts Burke's statement of the case.

ARGUMENT

- I. **The State asks this Court to decide the issues presented on the merits.**

Burke asks this Court to find the Juvenile Court has the authority to hear his petition for restoration of right to possess firearms, by finding the Court is a "court of record," or that the Juvenile Court has statutorily vested authority to hear such petitions, despite the petitioner being over the age of eighteen. The law is not clear on these closely related issues. There are arguments that support the trial court's finding that it is *not* a court of record; there are arguments that the Juvenile Court *is* a "court of record;" and there are arguments both that the Juvenile Court has been vested jurisdictional authority over petitions to restore firearms rights and arguments that it has not been vested such authority. The State asks this Court to decide this case on the merits to determine whether the trial court erred in failing to hear Burke's restoration petition, or whether the trial

court properly concluded it does not have jurisdiction over this matter and is not a “court of record.”

Jurisdiction is “the power to hear and determine.” *State v. Werner*, 129 Wn.2d 485, 493, 918 P.2d 916 (1996) (quoting *State ex rel.*

McGlothern v. Superior Court, 112 Wash. 501, 505, 192 P. 937 (1920)).

Jurisdiction has three elements: 1) jurisdiction over subject matter; 2) jurisdiction over the parties; and 3) power to render the particular judgment. Superior Court has original jurisdiction over “all cases and ... proceedings in which jurisdiction shall not have been by law vested exclusively in some other court.” Wash. Const. art. IV, sec 6. The juvenile court’s jurisdiction is granted by the legislature. RCW 13.04.030 vests authority in a juvenile court to act in certain cases. For crimes committed by individuals under the age of eighteen, subject to a few exceptions, the juvenile court has jurisdiction over the parties. RCW 13.04.030. For a person over the age of eighteen, the juvenile court only has authority over those upon whom it has extended jurisdiction prior to the individual’s eighteenth birthday, or for those over eighteen and are facing termination of a diversion agreement. RCW 13.04.030. RCW 13.04.021 establishes juvenile court as a division of the Superior Court. This statute gives commissioners all the same duties and powers as a judge in juvenile court

only, which differs from the powers commissioners have in Superior Court.

The Legislature chose to distribute and assign a certain portion of the Superior Court's business to the juvenile court. *See In re Dependency of E.H.*, 158 Wn.App. 757, 765, 243 P.3d 160 (2010). There the Court stated that the creation of juvenile courts did not subtract from the Superior Court's jurisdiction, but rather it "distribute[d] and assign[ed] a phase of the business of the superior court." *E.H.*, 158 Wn.App. at 765. Thus the Juvenile Court only has authority for matters that the legislature has given it authority to oversee. The legislature was clear that once a juvenile turns eighteen years of age, unless there has been a prior order entered to extend jurisdiction, the Juvenile Court no longer has jurisdiction. *State v. Golden*, 112 Wn.App. 68, 47 P.3d 587 (2002) (finding a juvenile court's jurisdiction ends at age eighteen as the individual is no longer a juvenile). "[E]ven if charges are filed and a plea is entered in juvenile court, the general jurisdiction of the superior court automatically takes over when the offender turns 18...." *Id.* at 74-75 (citing to *State v. Bushnell*, 38 Wn.App. 809, 811, 690 P.2d 601 (1984)).

One potentially helpful case is this Court's recent decision in *Maloney v. State*, 198 Wn.App. 805, 395 P.3d 1077 (2017). There, this Court mentioned that petitions for restoration of firearm rights are

extensions of criminal proceedings. *Maloney*, 198 Wn.App. at 808-10. In *Golden, supra*, Division III of this Court held that a CrR 7.8 motion to withdraw a plea, made in a juvenile case by a respondent who had since become an adult, was to be heard in Superior Court and not juvenile court as the respondent was no longer a juvenile. *Golden*, 112 Wn.App. at 71.

Thus, there is ample support to find a juvenile court does not have jurisdiction over the parties once a juvenile is over the age of eighteen. However, if the juvenile court is a “court of record,” another statute grants “courts of record” with authority to hear petitions for restoration of firearms rights. RCW 9.41.040 provides that an individual “may petition a *court of record* to have his or her right to possess a firearm restored.” RCW 9.41.040(4)(a) (emphasis added). The statute also provides that that “court of record” must be the court that ordered the petitioner’s prohibition from possession of firearms, or the Superior Court in the county in which the petitioner resides. RCW 9.41.040(4)(b). RCW 9.41.047 prohibits an individual from possessing a firearm until their right to do so has been “restored by a court of record.” The issue then becomes whether the juvenile court is a “court of record.” If the juvenile court is a “court of record,” then it is the “court of record that ordered the petitioner’s prohibition from possession of firearms.”

Our legislature has shown elsewhere in the RCWs that it is aware of the difference between “courts of record,” and the court in which the person was convicted. In RCW 9A.44.143, which provides for relief from the duty to register as a sex offender, the individual may petition the court in which the person was convicted. It makes no mention of the requirement of a “court of record.” Thus when RCW 9.41.040 mentions a “court of record,” we know it is more narrow than the court in which the person was convicted, as provided for in RCW 9A.44.143. For example, an individual who was convicted of Assault in the Fourth Degree – Domestic Violence, and is prohibited from possessing firearms, may not petition the District Court in which he or she was convicted to have his or her rights restored, but would be required to petition the Superior Court in the county in which he or she resides. For such persons, there is no “court of record” that ordered their prohibition from possessing firearms because it was a District Court, a non-court of record, that ordered the prohibition. The same is arguably true here: if the juvenile court is not a “court of record,” then Burke would be required to petition the superior court in the county in which he resides.

Our statutes set forth separate titles involving different courts. Title 2 of the RCWs is “Courts of Record.” Title 3 of the RCWs is “District Courts,” and Title 13 of the RCWs is “Juvenile Courts and Juvenile

Offenders.” In Title 2, the “courts of record,” there is no mention of a juvenile court and the powers of a commissioner are granted in RCW 2.24.020, discussing the commissioners’ power in “adult criminal cases,” and does not mention the commissioners’ powers in juvenile cases. Juvenile court authority is granted by separate statutory provision and is not included in Title 2, the title governing “courts of record.” This arguably evidences the Legislature’s understanding that juvenile courts are a statutorily created court and are not a court of record.

However, some case law appears to suggest that because juvenile court is a “division” of the superior court, that it is essentially a superior court. “It is well settled that the juvenile court is simply a division of the superior court, not a separate constitutional court.” *Golden*, 112 Wn.App. at 73 (citing *Werner*, 129 Wn.2d at 492). Additionally, as this Court stated in *E.H.*, *supra*, “[i]mportantly, however, juvenile court and family court are not separate courts but, rather, are divisions of the superior court.” *E.H.*, 158 Wn.App. at 765 (citing RCW 13.04.021(1); RCW 26.12.010, .020; *Werner*, 129 Wn.2d at 496). If juvenile court is simply a division of superior court, then it would seem to fall within the umbrella of superior court. But, if that is to be the case, then any individual living in Clark County could file a petition to restore firearm rights in juvenile court whether they are a juvenile or not, if it is a “court of record” in the county

in which the individual lives. The same would be true for family court.

That clearly was not the legislature's intent.

The preceding sets forth potentially relevant case law and statutes that could touch on this complicated issue. There is no case directly on point which answers this question for us. Accordingly, the State asks this Court to decide the issue on the merits to determine whether Burke's petition was properly declined to be heard in juvenile court, or whether the juvenile court erred in refusing to hear it.

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CONCLUSION

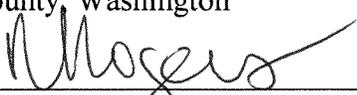
As discussed above, there are two strong arguments about whether a juvenile court is a “court of record,” and each side has merit to its argument. For this reason, the State asks this Court to reach the issues presented here on the merits and to determine whether the juvenile court erred in refusing to hear Burke’s petition to restore his firearm rights as he was an adult at the time he filed the petition and because it found the juvenile court did not have jurisdiction to hear the matter as it was not a “court of record.”

DATED this 4th day of December, 2018.

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