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COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

STATE OF WASHINGTON, APPELLANT

v.

JULLIAN JAMES WAILANA DUNGCA, RESPONDENT

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Appeal from the Superior Court of Pierce County  
The Honorable Elizabeth Martin

No. 17-8-00622-7

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**Brief of Appellant**

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A. ASSIGNMENTS OF ERROR

1. The juvenile court erred when it entered an order extending juvenile court jurisdiction after juvenile court jurisdiction had expired.
2. The juvenile court erred when it held a dispositional hearing in this case.
3. The juvenile court erred when it entered a dispositional order in this case.
4. The juvenile court erred when it refused to dismiss the instant juvenile prosecution.
5. The juvenile court erred when it ruled that it would not allow this case to be refiled in adult court.
6. The juvenile court erred when it concluded that the state made a “mistake” when it failed to ask the juvenile court to extend jurisdiction in this case prior to respondent’s eighteenth birthday.
7. The juvenile court erred when it concluded that “it was way too late in the game to come in and say, whoops, there was no jurisdiction.”
8. The juvenile court erred when it concluded that it would be “extraordinarily prejudicial to everyone to retry the case on the basis of what was clearly a mistake on everyone’s part.”
9. The juvenile court erred when it concluded that “everyone proceeded in trial in good faith with a trial in this case believing that the Juvenile Justice Act had extended jurisdiction.”

B. STATEMENT OF THE CASE

Respondent was arraigned in juvenile court, on three counts of rape of a child in the second degree of on August 7, 2017. CP 23; CP 1-2.

Respondent's date of birth was 1/5/2000. CP 1. Because respondent was seventeen years old and charged with rape of a child in the second degree, the juvenile court was required by RCW 13.40.110 to conduct a mandatory juvenile court declination hearing.<sup>1</sup>

On September 25, 2017, the parties jointly stipulated to the juvenile court that there are "sufficient facts to support a finding by the Court to retain juvenile jurisdiction based on the criteria set forth in *Kent v. United States*, 383 U.S. 541, 16 L.Ed. 2d 84, 86 S.Ct. 1045 (1966) as follows: . . ."<sup>2</sup> What followed was stipulation pertaining only to the decline hearing process. CP 34-38.

The juvenile court reviewed the stipulation and entered the following order waiving the decline hearing:

Respondent signed the foregoing certificate in open court in the presence of the Respondent's lawyer and the undersigned Judge. The Respondent asserted that he had previously read the certificate. I find the Respondent's decision to enter this Stipulation to be knowingly, intelligently and voluntarily made. The Respondent understands the ramifications under the above terms.

Therefore, based upon the foregoing stipulations and agreements contained herein, the Court hereby adopts all relevant facts and opinions set forth in Section I of this document, and based on those facts and opinions, finds that declination would not be in the best interest of either the juvenile or the public. Based on that finding this Court

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<sup>1</sup> Rape of a child in the second degree is a class A felony. Former RCW 9A.44.076(2); RCW 13.40.110(2)(a) required a decline hearing.

<sup>2</sup> CP 34-38.

concludes the mandatory decline hearing required by RCW 13.40.110 should be waived and Respondent should remain under the jurisdiction of the Pierce County Juvenile Court.

IT IS HEREBY ORDERED that the decline hearing required by RCW 13.40.110 is waived and Respondent is retained under the jurisdiction of the Pierce County Juvenile Court for further proceedings consistent with this document.

CP 38.

Respondent turned eighteen on January 5, 2018 and no order extending jurisdiction was entered. *See Clerk's Papers.*

On February 27, 2018 respondent proceeded to trial in juvenile court and was found guilty. Supp. CP 192. On March 5, 2018 the trial concluded. CP 86. Sentencing was held on April 6, 2018. 4/6/18 VRP.

The State proposed the following course of action: The State's belief from Maynard is that we would follow through with a juvenile disposition under an adult cause number, and that being the appropriate authority, but we would follow through with everything we would have intended for disposition under the juvenile process.

4/6/18 VRP 4.

Defense counsel argued that the case should not be dismissed, but if it was dismissed it should be dismissed with a bar to subsequent filing in the Superior Court. CP 113.

The juvenile court orally concluded that "it is a mutual mistake by everyone" that respondent turned eighteen without an extension of jurisdiction. 4/6/18 VRP 16. The juvenile court concluded that "everyone

proceeded in trial in good faith with a trial in this case believing that the Juvenile Justice Act had extended jurisdiction.” 4/6/18 VRP 17. The juvenile court concluded that “it was way too late in the game to come in and say, whoops, there was no jurisdiction.” *Id.* The juvenile court would not allow the dismissal of the juvenile case without prejudice to refile in adult court. 4/6/18 VRP 17. In addition to the foregoing reasons, the juvenile court concluded that it would be “extraordinarily prejudicial to everyone to retry the case on the basis of what was clearly a mistake on everyone’s part” and that a retrial would hurt the victim. *Id.* The juvenile court then concluded: “I am going to basically extend jurisdiction all the way back to the time it should have been extended, which is prior to his 18th birthday, and proceed accordingly.” 4/6/18 VRP 17-18.

The matter then proceeded to disposition. CP 125-134.

The State timely appealed. CP 140-151.

C. ARGUMENT

1. JUVENILE COURT AUTHORITY LAPSED  
WHEN RESPONDENT TURNED EIGHTEEN.

The authority to define juvenile court authority lies with the legislature. *State v. Watkins*, \_\_\_ Wn.2d \_\_\_, 423 P.3d 830, 839 (2018).<sup>3</sup> The legislature has unambiguously circumscribed that authority:

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<sup>3</sup> The juvenile court is a “creation and creature of the legislature.” *Zylstra v. Piva*, 85 Wn.2d 743, 749, 539 P.2d 823, 827 (1975).

The provisions of chapters 13.04 and 13.40 RCW, as now or hereafter amended, shall be the exclusive authority for the adjudication and disposition of juvenile offenders except where otherwise expressly provided. Chapter 10.22 RCW does not apply to juvenile offender proceedings, including diversion, under chapter 13.40 RCW.

RCW 13.04.450. The legislature has expressly limited the juvenile court's authority to extend juvenile court jurisdiction beyond the age of eighteen.

(1) . . . A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and health services beyond the juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday:

(a) Proceedings are pending seeking the adjudication of a juvenile offense and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday.

(emphasis added)

“When a juvenile cause is pending and not heard on its merits prior to the time the juvenile reaches 18 years of age, the juvenile court loses jurisdiction over the cause.” RCW 13.40.300; *State v. Kramer*, 72 Wn.2d 904, 907, 435 P.2d 970, 972 (1967) (citing *State v. Ring*, 54 Wn.2d 250, 339 P.2d 461 (1959); *In re Lesperance*, 72 Wn.2d 567, 434 P.2d 602 (1967); *In re Dillenburg v. Maxwell*, 70 Wn. 2d 325, 422 P.2d 783 (1967)). This rule is “longstanding.” *State v. Calderon*, 102 Wn.2d 348, 351, 684 P.2d 1293, 1295 (1984).<sup>4</sup> “Our Supreme Court strictly construes

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<sup>4</sup> *Calderon* was cited for this principle in two more recent cases, *State v. Salavea*, 151 Wn.2d 133, 139, 86 P.3d 125 (2004), and *State v. Oppelt*, 172 Wn.2d 285, 257 P.3d 653 (2011).

juvenile court jurisdiction.” *State v. Bushnell*, 38 Wn. App. 809, 811, 690 P.2d 601, 602 (1984). It was not “way too late” to tell the juvenile court that it lacked authority to proceed when the juvenile court lacked authority to proceed. 4/6/18 VRP 16. Juvenile court authority depends upon compliance with RCW 13.40.300(1)(a) and not upon anything like waiver or laches.

The continued validity of this rule is evidenced in the recent Supreme Court opinion of *State v. Maynard*, 183 Wn.2d 253, 351 P.3d 159 (2015): “Without any remedy, Maynard already faces the prospect of trial as an adult because the juvenile court's statutory authority lapsed.” *Maynard*, 183 Wn.2d at 261. In *Maynard*, the Supreme Court took RCW 13.40.300 as a given, and worked around it to fashion a superior court, adult division remedy for a defendant whose lawyer’s deficient performance caused the irreversible lapse of juvenile court jurisdiction. *Maynard*, 183 Wn.2d at 262-64.

In 2018, the Supreme Court restated the longstanding principle that juvenile courts lack authority to suspend juvenile dispositions without statutory authority to do so. *State v. Bacon*, \_\_\_ Wn.2d \_\_\_, 415 P.3d 207, (2018). “Thus, the rule established by our older cases retains its vitality today: the power to impose and suspend sentences must be granted by the legislature.” *State v. Bacon*, \_\_\_ Wn.2d \_\_\_, 415 P.3d 207 (2018).

A conclusion to be drawn from *Calderon* and *Bacon* is that a juvenile court *cannot* resolve a juvenile case unless the legislature grants the juvenile court the authority to resolve that juvenile case.<sup>5</sup>

This case falls squarely within *State v. Nicholson*, 84 Wn. App. 75, 77, 925 P.2d 637, 639 (1996). Respondent turned eighteen while juvenile court proceedings were pending and no order extending jurisdiction was in effect. The following juvenile court trial (a bench trial of an adult) and dispositional proceeding were without legislative authority. The outcome in *Nicholson* should be the same outcome in this case: “Because the court did not enter a written order extending jurisdiction before Nicholson turned 18, we hold that juvenile court jurisdiction lapsed in this case.” *State v. Nicholson*, 84 Wn.App. at 75.

- a. The juvenile court’s concerns about fashioning a remedy were misplaced.

The juvenile court recognized that what *State v. Maynard* “is really trying to do is saying that the juvenile should not bear the mistake of counsel.” 4/6/18 VRP 16. The court ruled:

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<sup>5</sup> Similar reasoning can be found in Court of Appeals cases. “While a juvenile court has discretion to craft an appropriate disposition, it lacks inherent authority to impose a deferred disposition absent a legislative grant of authority.” *State v. Mohamoud*, 159 Wn. App. 753, 760, 246 P.3d 849, 853 (2011) (citing *State v. H.E.J.*, 102 Wn.App. 84, 87, 9 P.3d 835 (2000)). “In further limitation of the court's exercise of its contempt authority, we note that a court cannot use the contempt power as a basis to punish a status offender who is otherwise not subject to juvenile court jurisdiction, nor attempt to find the child to be delinquent vis-a-vis the contempt finding.” *State v. Norlund*, 31 Wn. App. 725, 729, 644 P.2d 724, 727 (1982).

And if I read *Maynard*, which is basically allowing the Court to have some leeway to create a remedy for ineffective assistance of counsel, then my ruling is that I will retroactively extend jurisdiction in this matter, and I will accept the verdict under the Juvenile Justice Act, and I will sentence him under the Juvenile Justice Act.

4/6/18 VRP 17. The juvenile court missed the point of *Maynard*. The Supreme Court recognized that juvenile court jurisdiction was over in *Maynard*, and fashioned a superior court remedy for a superior court case. *Maynard*, 183 Wn.2d at 262-64.

Appellant agrees that there was ineffective assistance of counsel in this case leading to a loss of juvenile court authority. An adult was tried and sentenced without a jury for a juvenile offense without the authority of law. This resulted in a juvenile court outcome that is meaningless and void. If this matter is ever recharged in the adult court, the superior court will be compelled by *Maynard* to fashion an appropriate remedy. But, as it stands now, respondent's juvenile adjudication is meaningless.

The State is entitled to seek a valid adjudication of respondent's offending behavior. Because the juvenile court never extended jurisdiction before respondent turned eighteen, the only forum now available for that adjudication is adult court. The superior court will then have the full panoply of appropriate remedies available to it—and the adult Jullian J. Wailana Dungca will retain the right to his as-yet-unwaived trial by jury.

D. CONCLUSION

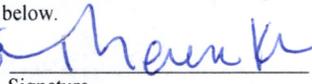
This matter should be remanded to the juvenile court for dismissal. The dismissal order should recite that the basis for the dismissal is the lapse of juvenile court jurisdiction and that the dispositional order entered in this case is void.

DATED: October 18, 2018.

MARK LINDQUIST  
Pierce County Prosecuting Attorney  
  
\_\_\_\_\_  
Mark von Wahlde  
Deputy Prosecuting Attorney  
WSB # 18373

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

10-26-18   
Date Signature

**PIERCE COUNTY PROSECUTING ATTORNEY**

**October 26, 2018 - 9:19 AM**

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