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FEB 22, 2013
Court of Appeals
Division III
State of Washington

27489-6-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

STEPHEN A. BAILEY, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF YAKIMA COUNTY

APPELLANT'S SUPPLEMENTAL BRIEF

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A. STATEMENT OF THE CASE

The State alleged that Mr. Bailey was convicted of Second Degree Robbery (Cause No. 97-1-2017-0) on February 20, 1998. (RP 1476-77) The robbery was committed in November 1997; at that time Mr. Bailey was 16 years old. (RP 1477) He had previously signed a written agreement waiving his right to a declination hearing in juvenile court (Cause No. 97-8-1762-0) in that matter. (RP 1475)

The State provided the court with a transcript of Mr. Bailey's adult court guilty plea hearing from the 1997 robbery, and a copy of his written guilty plea statement. (RP 1514) In examining Mr. Bailey regarding his statements at the guilty plea hearing, the State elicited the fact that as part of his plea agreement Mr. Bailey had agreed to forego his right to have his case transferred back to juvenile court. (RP 1522-23)

The State did not present any evidence that the juvenile court made any effort to determine whether Mr. Bailey's waiver of the decline hearing was made with knowledge of its consequences. The State did not present any written findings of fact and conclusions of law as to whether declination would be in the best interests of anyone. The court apparently relied on defense counsel, rather than the court, to ensure the decision of a juvenile to waive juvenile court jurisdiction is made with knowledge and intelligence. (RP 1551-52)

B. ARGUMENT

1. *SAENZ* REQUIRES REVERSAL OF MR. BAILEY'S SENTENCE UNDER THE PERSISTENT OFFENDER ACCOUNTABILITY ACT.

In the recent opinion in *State v. Saenz*, 175 Wn.2d 167, 283 P.3d 1094 (2012), the Supreme Court identified two specific prerequisites for a valid transfer of juvenile court jurisdiction to the adult court when the juvenile has signed a written waiver of the statutory decline hearing, RCW 13.40.110. First, the waiver must be made after the juvenile has been fully informed of the right being waived. Second, prior to any transfer to adult court, the juvenile court must enter written findings on the issue of whether the transfer is justified:

> a juvenile's waiver of juvenile court jurisdiction and a decline hearing must be an "express waiver intelligently made by the juvenile after the juvenile has been fully informed of the right being waived." RCW 13.40.140(9). Second, after a decline hearing but before transferring a case to adult court, juvenile courts must enter findings in the record, including a finding that transfer to adult court is in the best interest of the juvenile or the public. Former RCW 13.40.110(2), (3). Only then can the juvenile court properly transfer the case to adult court. *Id.*

State v. Saenz, 175 Wn.2d at 175.

The record in this case is devoid of any evidence that Mr. Bailey was ever fully informed of the implications of waiving the decline hearing or waiving juvenile court jurisdiction. The court may not presume that

this function has been fully and adequately performed by defense counsel. 175 Wn.2d at 177.

The State presented evidence that, after Mr. Bailey had waived his rights in juvenile court, he became somewhat aware of the rights he was giving up by entering a guilty plea in adult court. But here, as in *Saenz*, such evidence "has no bearing on whether he understood his entirely separate waiver of rights in juvenile court." 175 Wn. 2d at 177.

Further, the State did not present written findings, or any evidence that the juvenile court had ever entered written findings, before declining juvenile court jurisdiction. "Even where the parties stipulate to decline juvenile jurisdiction, the statute still requires the court to enter findings, and the court cannot transfer a case to adult court until it has done so." 175 Wn.2d at 179.

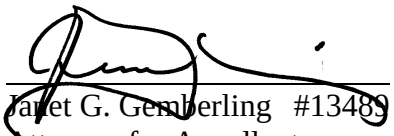
The transfer of Mr. Bailey's 2007 robbery charge to adult court was defective, and his 2008 conviction in adult court cannot be used as a strike under the POAA. *See* 175 Wn.2d at 181.

C. CONCLUSION

This court should reverse the sentence imposed in the trial court and remand the case for imposition of a sentence within the standard range.

Dated this 22nd day of February, 2013.

JANET GEMBERLING, P.S.



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 27489-6-III
	)	
vs.	)	CERTIFICATE
	)	OF MAILING
STEPHEN A. BAILEY,	)	
	)	
Appellant.	)	

I certify under penalty of perjury under the laws of the State of Washington that on February 22, 2013, I served a copy of the Appellant's Supplemental Brief in this matter by email on the following party, receipt confirmed, pursuant to the parties' agreement:

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I certify under penalty of perjury under the laws of the State of Washington that on February 22, 2013, I mailed a copy of the Appellant's Supplemental Brief in this matter to:

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Signed at Spokane, Washington on February 22, 2013.

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