

**FILED**

OCT 04 2012

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**No. 29932-5-III**

COURT OF APPEALS  
DIVISION III  
OF  
THE STATE OF WASHINGTON

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**State of Washington,  
*Respondent***

**v.**

**Christopher L. Pence,  
*Appellant***

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Appeal from the Superior Court of Lincoln County  
on review from the District Court of  
Lincoln County

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***SUPPLEMENTAL BRIEF OF APPELLANT***

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## **I. INTRODUCTION**

The appellant adopts the introduction cited in the appellant's brief filed on December 09, 2011.

## **II. ASSIGNMENTS OF ERROR and ISSUE STATEMENTS**

1. The appellant adopts and incorporates appellant's issue in the appellant's brief filed on December 09, 2011.
2. When a diversion agreement has been entered jurisdiction may only be terminated after a due process hearing.

## **III. STATEMENT OF THE CASE**

The appellant adopts the statement of the case filed in the appellant's brief filed December 09, 2011.

## **IV. ARGUMENT**

Mr. Pence entered into a diversion agreement pursuant to RCW 13.40.080. Mr. Pence was allowed to enter into the diversion agreement after he turned 18 years of age. Upon entering into the program Mr. Pence began to perform on the terms of the agreement by first writing a letter of apology and completing his "My Choice Program". Subsequently, the diversion program ended, apparently based upon communication from Lori Pence, the mother of Christopher Pence. A complaint was filed in Lincoln County District Court. Jurisdiction was challenged in District Court. After trial in District Court an appeal was filed in Superior Court challenging the jurisdiction of District Court. The Superior Court upheld

the District Court jurisdiction ruling that the communication from the mother, Lori Pence, was a withdrawal from the diversion program allowing the prosecution in Lincoln County District Court. The Motion for Discretionary Review was granted by Commissioner's Ruling on July 27, 2011.

**Issue 1: The appellant adopts and incorporates appellant's issue in the appellant's brief filed on December 09, 2011.**

The defendant incorporates the argument previously filed on December 09, 2011.

**Issue 2: When a diversion agreement has been entered jurisdiction may only be terminated after a due process hearing.**

The effect of there being no order extending jurisdiction in the juvenile court has no effect. Once again, before a juvenile can be terminated from the diversion there must be a due process hearing. A waiver of any right in juvenile court must be on "express waiver intelligently made by the juvenile after the juvenile has been fully informed of the right being waived." RCW 13.40.140 (a); *State v. Saenz*, Washington Supreme Court 84949-8, p. 8-9 (8/23/2012) The Washington Supreme Court states "without proof that *Saenz* had some inkling of the numerous protections he was surrendering by waiving a juvenile jurisdiction and a decline hearing, his waiver cannot be considered to have been made intelligently." *Saenz, supra* p. 10 (2012)

The position of the appellant that due process requires a due process hearing before termination is supported by the Washington Supreme Court's

ruling in *Saenz supra*. The Washington State Supreme Court states that “Thus moving a case from juvenile court to adult court is a “critically important” action determining vitally important statutory rights of the juvenile.” *State v. Saenz*, 84949-8, p. 6 (8/23/2012) citing *Kent v. United States*, 383 U.S. 541, 86 S. Ct. 1045, 16 L.Ed.2d 84 (1966); *State v. Holland*, 98 Wn.2d 507, 515, 656 P.2d 1056 (1983) It is precisely because “moving a case from juvenile court to adult court is a ‘critically important’ action determining vitally important statutory rights of the juvenile” *State v. Saenz*, 84949-8, p. 5-6 (8/23/2012) that there must be at least a due process hearing to protect the juvenile from an uninformed decision.

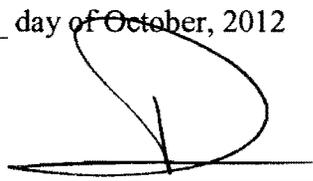
It is important that the court requires an adequate record and a due process hearing before a juvenile case is removed from juvenile court. The record before this court provides no basis from which the court can determine that Mr. Pence was aware of or waived his right to continue through his diversion. The facts require that the case be remanded to juvenile court to conduct a proper due process hearing regarding the removal from juvenile court and the diversion program.

## **V. CONCLUSION**

The defendant incorporates the conclusion previously filed on December 09, 2012. Additionally, the appellant requests that the court remand the case to juvenile court for a due process hearing. The waiver of the “critically important right” to proceed in juvenile court requires that a due process hearing be held to

protect the juvenile defendant consistent with the Washington Supreme Court decision in *State v. Saenz*, 84949-8 (8/23/2012).

Respectfully submitted this 4 day of ~~October~~, 2012

A handwritten signature in black ink, appearing to be 'D. Phelps', written over a horizontal line.

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