



No. 29932-5-III

FILED
OCT 01, 2012
Court of Appeals
Division III
State of Washington

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

STATE OF WASHINGTON, Respondent

v.

CHRISTOPHER L. PENCE, Appellant.

RESPONDENT'S SUPPLEMENTAL BRIEF

Jeffrey S. Barkdull, WSBA# 18690
Prosecuting Attorney
Melvin D. Hoit, WSBA# 24095
Deputy Prosecuting Attorney
Attorneys for Respondent
P. O. Box 874
Davenport, WA 99122
509-725-4040

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TABLE OF AUTHORITIES

Statutes

RCW 13.40.080

4, 5

A. ISSUE ADDRESSED

[As stated by the Court]

What is the effect of there being no order extending jurisdiction in the juvenile court on the issues raised in this case?

B. ARGUMENT

The Commissioner's Ruling stated:

RCW 13.40.080(7) is unambiguous and clearly applies only to situations in which the State seeks to terminate the diversion agreement because the divertee has violated its terms. CR 4

The Court, in the Commissioner's Ruling granting discretionary review, then asked:

The question, then, is whether the juvenile court lost jurisdiction when Mr. Pence withdrew from diversion *after* he reached his 18th birthday. Or, was the court required to take some affirmative act to end its jurisdiction of the case?
CR 4-5

As argued in the Brief of Respondent, RCW 13.40.080(7) provides the procedure to follow once diversion has been terminated pursuant to the statute. Although the appellant here was not "terminated" pursuant to RCW 13.40.080 but instead withdrew from participation in the diversion program, the process codified in subsection (7) should apply in this situation as well.

The statute provides that the prosecutor may file an information on the offense for which the divertee was diverted in juvenile court if the divertee is under eighteen years of age; or in superior court or the appropriate court of limited jurisdiction if the divertee is eighteen years of age or older. Id.

Appellant was advised in writing that he does not have to participate in diversion and if he chose not to, "your case will go to court if charges are filed by the prosecutor." Appendix, Brief of Respondent, p. 15, #8.

The effect on the issues raised in this case of the lack of an order extending juvenile jurisdiction is nil. The Commissioner's Ruling makes explicit that the requirements of RCW 13.40.080 do not apply in the circumstances of this case. Therefore, because appellant achieved majority shortly after the date of the offense but before withdrawing from the diversion program, juvenile court no longer had jurisdiction over the matter. The State's decision to prosecute the matter left the State with the only available option under the law -- to file the information in District Court.

Appellant cites no authority for his prayer to remand the case to Juvenile Court for further action. Indeed there is no authority to do so.

C. CONCLUSION

Due process has been met in this case. The appellant has had the benefit of counsel during the entire pendency of this matter. Appellant was offered diversion and chose, with knowledge of the potential consequences and with advice of counsel, to reject diversion.

Appellant was afforded his constitutional right to trial by jury in District Court. Appellant prevailed in his motion to suppress his written confession as set forth in a letter of apology to the school principal. Appellant's challenge to District Court jurisdiction was denied. A jury trial was held and the appellant convicted. Appellant's jury verdict was affirmed by the Superior Court.

The effect of the lack of an order extending juvenile court jurisdiction in the circumstances of this case is simply that juvenile court lost jurisdiction over the matter once the appellant withdrew from diversion after his eighteenth birthday.

Dated this 1st day of October, 2012.

Respectfully submitted,



Melvin D. Hoit
Attorney for Respondent
WSBA# 24095

D. CERTIFICATE OF MAILING

I, Melvin D. Hoit, do hereby certify and declare under penalty of perjury of the laws of the State of Washington that, on this 1st day of October, 2012, I caused to be placed in the U. S. Mail, postage prepaid First Class, a true and correct copy of this *Brief of Respondent* addressed to the attorney for appellant as follows:

Douglas D. Phelps
Attorney and Counselor at Law
Phelps & Associates, PS
2903 N. Stout Rd.
Spokane, WA 99206-4373

Signed this 1st day of October, 2012, at Davenport, Washington.



Melvin D. Hoit