

FILED
Sep 17, 2015
Court of Appeals
Division III
State of Washington

33215-2 - III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, APPELLANT

v.

ROBERT RUSSELL ELLISON, RESPONDENT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

REPLY BRIEF OF APPELLANT

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I. APPELLANT’S ARGUMENT IN REPLY

- A. RESPONDENT’S OVERARCHING RELIANCE ON DICTA IN *STATE V. GOLDEN*, 112 WN. APP. 68 (2002), IS MISPLACED IN LIGHT OF THE MORE RECENT STATE SUPREME COURT DECISION *STATE V. POSEY*, 174 WN.2D 131 (2012).

Respondent relies heavily on this Court’s decision in *State v. Golden*, 112 Wn. App. 68, 47 P.3d 587 (2002), for the proposition that RCW 9A.04.050 controlled the jurisdictional ability of the superior court to act in a case while not essential to this Court’s decision that the superior court retained jurisdiction to decide a collateral attack on the validity of a guilty plea entered by a ten-year-old, even after the defendant turned 18 years of age, that court, in *dicta*, discussed the three components of “complete jurisdiction,” and stated that RCW 9A.04.050 (presumption of incapacity of 10-year-old juvenile) controlled the jurisdictional ability of the superior court to act in a case. *Golden*, 112, Wn. App. at 77. In discussing the jurisdictional components of the case, the *Golden* court relied on *dicta* from *State v. Werner*, 129 Wn.2d 485, 918 P.2d 916 (1996).¹

In *State v. Posey*, 174 Wn.2d 131, 272 P.3d 840 (2012), our Supreme Court analyzed the issue of whether a statute, such as RCW 9A.04.050, could divest the court of their criminal jurisdiction and settled the issue with

¹ In *State v. Posey*, 174 Wn.2d 131, 272 P.3d 840 (2012), the Court notes that this “three jurisdictional elements” approach from *Werner* was largely *dicta*, (fn. 1), and that their jurisprudence was “not a model of clarity.” 174 Wn.2d at 137-38.

a resounding no. Jurisdiction over felonies and juveniles was constitutionally derived:

In adopting Washington Constitution article IV, section 6 the people of this state granted the superior courts original jurisdiction “in all criminal cases amounting to felony” and in several other enumerated types of cases and proceedings. In these enumerated categories where the constitution specifically grants jurisdiction to the superior courts, the legislature cannot restrict the jurisdiction of the superior courts.

State v. Posey, 174 Wn. 2d 131, 135, 272 P.3d 840, 842 (2012).

The Court noted that *Werner’s* distinction between subject matter jurisdiction and “the power or authority to render the particular judgment” rested on “an antiquated understanding of subject matter jurisdiction.” *Posey*, 174 Wn.2d at 138. The Court then noted that *Werner* was not the only opinion embracing that antiquated decision. *Posey*, 174 Wn.2d at 138-39 (citations omitted).

The Court in *Posey* did away with its *Werner* analysis in as far as it was relevant to this Court’s decision in *Golden*. To the extent, *Golden* holds that RCW 9A.04.050 is a statute depriving the court of jurisdictional “authority to act,” it is overruled *sub silentio* by *Posey, supra*. The trial court entering Defendant Ellison’s judgment and sentence had both subject matter jurisdiction and personal jurisdiction. The Court in *Posey* has considered the constitutional grant of subject matter jurisdiction to the

superior courts, and accorded it the centrality that it deserves. Article IV, section 6 is dispositive and has overruled precedents that erroneously classify the superior court's jurisdiction as statutory. The legislature cannot alter the constitutional jurisdiction of the superior courts by statute.

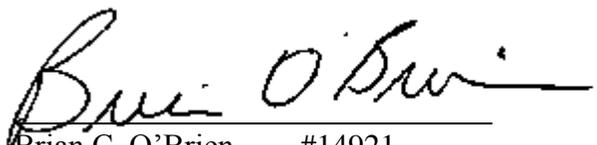
II. CONCLUSION

In a prosecution for failure to register as a sex offender, the defendant may not collaterally attack the legality of his or her predicate offense. While the predicate conviction must be facially valid, the State is not required to prove the defendant was required to register pursuant to a constitutionally valid conviction. There is no statutory prerequisite to the acquisition of juvenile jurisdiction; the trial court's jurisdiction comes from the constitution.

For the reasons stated above, and in the opening brief, the trial court's dismissal of the failure to register charge should be reversed and the matter remanded to superior court for further proceedings.

Dated this 15th day of September, 2015.

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CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on September 15, 2015, I e-mailed a copy of the Amended Reply Brief of Appellant in this matter, pursuant to the parties' agreement, to:

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9/15/2015

(Date)

Spokane, WA

(Place)

Crystal McNees

(Signature)