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Court of Appeals
Division III
State of Washington
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No. 35571-3-III

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

STATE OF WASHINGTON,

Respondent,

v.

SAWNAY TAW,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR SPOKANE COUNTY

REPLY BRIEF OF APPELLANT

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A. ARGUMENT

The 2018 Legislative amendments should apply retroactively and Sawney’s matter must be remanded for a decline hearing.

Initially, the State contends the decision that the Supreme Court’s decision in *State v. Watkins*, 191 Wn.2d 530, 423 P.3d 830 (2018), already determined that the 2018 amendments do not apply retroactively. Brief of Respondent at 5, 10. Alternatively, the State argues the 2018 amendments were not remedial, thus the amendments do not apply retroactively. Sawney asks this Court to reject the State’s argument and reverse and remand for a decline hearing.

In *Watkins*, the issue before the Supreme Court was whether the auto decline statutes violated his right to due process: the 2018 amendments to the auto decline statute were not before the Court and its pronouncement regarding retroactive application was dicta. “A statement is dicta when it is not necessary to the court’s decision in a case.” *Protect the Peninsula’s Future v. City of Port Angeles*, 175 Wn.App. 201, 215, 304 P.3d 914 (2013).

The State also argues there is nothing in the legislative history or the express language of the statute indicating that the intent of the Legislature was that the statutes apply retroactively. Brief of

Respondent at 6. Conversely, there is nothing in the Legislative history or the plain language of the statute that it is not to apply retroactively.

In addition, the State cites the decision of Division Two of this Court in *State v. Ramirez*, 140 Wn.App. 278, 165 P.3d 61 (2007), which found the 2005 amendments to RCW 13.04.030(1)(e) did not apply retroactively. Brief of Respondent at 6. *Ramirez*, is not helpful nor binding on this Court because the issue in *Ramirez* was whether the amendment was *curative*. *Ramirez*, 140 Wn.App. at 288-89. Sawney submits the 2018 amendments are remedial, thus they should apply retroactively.

Further, the State conclusion reached in *State v. Posey*, 161 Wn.2d 638, 644, 167 P.3d 560 (2007), cited by the State, that concluded the legislative intent of the RCW 13.04.030 was punishment: to punish with certainly and more severity youthful offenders. While this may have been the case in 2007, that view is now outdated in light of the research and subsequent caselaw that has led to the amendments to RCW 13.04.030 limiting the automatic decline provision to just a few offenses. *See e.g. Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012); *State v. Houston-Sconiers*, 188 Wn.2d 1, 8, 391 P.3d 409 (2017).

Finally, the State's statement that the amendment affects jurisdiction is misplaced. Juvenile courts are not separate and distinct from superior courts. Properly understood, "the superior court, sitting in juvenile court 'session,' grants to prosecuting officials the 'authority to proceed,' in an appropriate case, with the criminal prosecution of a child under 18 years of age." *Dillenburg v. Maxwell*, 70 Wn.2d 331, 353, 413 P.2d 940, 422 P.2d 783 (1967). "[U]nder Article IV, § 6, the Legislature has not vested jurisdiction exclusively in some court other than the superior court by enacting RCW 13.04.030 because the juvenile court is a division of the superior court, not a separate court." *State v. Werner*, 129 Wn.2d 485, 493, 918 P.2d 916 (1996).

But, the State is correct that the amendments amend the *procedure* for determining whether a juvenile stays in juvenile court or is tried in adult court. Since the amendments are limited to altering the *procedure*, they are retroactive and should apply to Sawney.

B. CONCLUSION

For the reasons stated in this reply brief as well as the previously filed Brief of Appellant, Sawney asks this Court to reverse his conviction and remand for a decline hearing.

DATED this 5th day of December 2018.

Respectfully submitted,

s/Thomas M. Kummerow

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APPELLANT.)	

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