

right to a declination hearing. Initially, one of Mr. Ramos's attorney's, Ms. VanNostern, advised the court that, after being fully advised and after careful consideration, that Mr. Ramos wanted to waive his right to a declination hearing and asked that the case be transferred to adult felony court. (08-23-1993 RP 2). Ms. VanNostern gave the court some background information regarding that decision. Ms. VanNostern stated to the court that Mr. Ramos had been fully informed on several occasions of his right to a declination hearing, and that he had a right to present witnesses at that hearing. (08-23-1993 RP 3). Further, that the State would be presenting witnesses and that the defense would have a right to cross-examine them. That he had a right to be evaluated as to his sophistication and maturity, and that would be done on behalf of both the State and his defense. (08-23-1993 RP 3). That the defense would have a right to present evidence as to his ability to function as an adult or a child, and the nature of the crime in which he was involved. (08-23-1993 RP 3).

Defense counsel indicated to the court that they were prepared to present a complete social history, including a drug/alcohol evaluation, medical background, educational background, family background and biographies of the family members. Also, to present testimony from family members, teachers, forensic expert and probation counselors. (08-

23-1993 RP 3). That they had carefully explained to Mr. Ramos what a decline hearing would entail, both factually and legally. (08-23-1993 RP 3-4). They had explained to him the facts as they had perceived them. That with that information, Mr. Ramos, after consulting with his attorneys and with his family members, and having reviewed the agreed findings of fact, conclusions of law and order transferring of jurisdiction, on his own volition he waived his right to a decline hearing. (08-23-1993 RP 4).

The trial court engaged in a colloquy with the defendant, seeking to determine whether the waiver was knowing, intelligently and voluntarily made. (08-23-1993 RP 4-6). The court first asked the defendant whether it was his signature on the Agreed Findings. (08-23-1993 RP 4). The court then asked the defendant how far he had gotten in school, and whether he was comfortable reading, listening and speaking the English language. Mr. Ramos acknowledged that he had gone through the sixth grade and that he was comfortable in reading, listening and speaking the English language. (08-23-1993 RP 4). Mr. Ramos acknowledged that he had grown up in the Yakima Valley. (08-23-1993 RP 4-5).

The judge then asked him whether he had spoken with his attorneys about the document before he had signed it. Mr. Ramos replied in the affirmative. (08-23-1993 RP 5). The judge asked Mr. Ramos if he

had read it himself, to which he replied in the affirmative. (08-23-1993 RP 5). The judge then asked Mr. Ramos whether he understood all of the words and thoughts that were contained in each of the paragraphs and sentences on the four pages of the document. Mr. Ramos replied in the affirmative. (08-23-1993 RP 5).

Next the judge asked Mr. Ramos whether he recalled his attorney, Ms. VanNostern say that she had discussed with him what a decline hearing was. Mr. Ramos replied in the affirmative. (08-23-1993 RP 5). The judge then inquired whether he was told by his attorney what the procedure was for a decline hearing. Mr. Ramos replied in the affirmative. (08-23-1993 RP 5). Then the judge stated that to Mr. Ramos that it was a fact that they had talked to him about what a hearing would be and what evidence would be presented by both the prosecution and then the defense, in his favor. Mr. Ramos replied in the affirmative. (08-23-1993 RP 5-6). The judge asked him if he understood that he could have family members testify, and school teachers. And that Dr. Duthie, his psychologist would likely testify and anyone else his attorneys thought important. (08-23-1993 RP 6).

The judge then asked Mr. Ramos whether anybody forced him or threatened him or in any way coerced him into giving up his right to a decline hearing and consenting to be tried as an adult on the charges

before the court. Mr. Ramos replied in the negative. (08-23-1993 RP 6). The judge then asked him if he had spoken to his mother about his decision and he replied that he had. The court inquired of Ms. VanNostern, as to whether she had talked to his mother, and she replied in the affirmative. Ms. VanNostern affirmed to the court that she and Ms. Parker, Mr. Ramos's other attorney, had discussed this decision. (08-23-1993 RP 6-7).

The court then found that Mr. Ramos had the capacity to make the decision to waive the decline hearing and that his decision was made knowingly, voluntarily and willingly. The court further made findings relating to the Kent criteria as listed in the findings. (08-23-1993 RP 7; CP 30-32). Mr. Ramos was next arraigned on the charges under an adult cause number and entered a guilty plea and was sentenced. (08-23-1993 RP 8-36; CP 10-16, 6-9).

3. Argument.

- a. The petitioner waived declination hearing and that waiver also waived any appeal as to the declination.

“A guilty plea forecloses appeal except for validity of the statute, sufficiency of the information, jurisdiction of the court, or circumstances

surrounding the plea.” *State v. Cross*, 156 Wn.2d 580 132 P.3d 80; 2006 Furthermore, a defendant who pleads guilty waives appeal "to errors committed prior to arraignment, including an illegal search or seizure." 13 ROYCE A. FERGUSON, JR., WASHINGTON PRACTICE: CRIMINAL PRACTICE AND PROCEDURE § 3718, at 101 (2004).

Like a guilty plea, the waiver of the declination hearing should foreclose an appeal as to that issue. In the present case, the trial court engaged in a colloquy with the defendant, seeking to determine whether the waiver was knowingly, intelligently and voluntarily made. (08-23-1993 RP 4-6). In *State v. Pritchard*, 79 Wn. App. 14, 18-19, 900 P.2d 560 (1995) the court addressed the issue of when the transfer order may be challenged. The court looked to the case of In re Lewis, where the court held that “when a juvenile court enters a transfer order, the decision is not appealable as a matter of right but is a matter for discretionary review only. Appeal as a matter of right is reserved until the conclusion of the adult criminal matter. The reasoning of Lewis is still persuasive, and the provisions of the Rules of Appellate Procedure remain essentially the same in this regard. RAP 2.2(a)(1), (3), (5), and (6) reveal no wording changes to alter Lewis. Thus, an appeal as a matter of right exists postconviction.”

The *Pritchard* case is factually distinguishable from the facts in this case. In *Pritchard* the defendant had an actual hearing regarding the issue of whether to retain or transfer jurisdiction. *Pritchard*, supra at 16. That was not the case here. Defendant Ramos waived the declination hearing and agreed to the transfer of jurisdiction to adult court. (08-23-1993 RP 7; CP 30-32). The court found that Mr. Ramos had the capacity to make the decision to waive the decline hearing and that his decision was made knowingly, voluntarily and willingly. The court further made findings relating to the Kent criteria as listed in the findings. (08-23-1993 RP 7).

In *State v. Kells*, 134 Wn.2d 309, 313, 949 P.2d 818 (1998), the court noted that “neither party has attacked the validity of the holding in Pritchard. Therefore, we assume without deciding that a defendant has the right to appeal an order of declination after a guilty plea in superior court.” The State herein disputes the validity of *Pritchard* in the context of a waiver of the hearing by a defendant as is the present case. It is ridiculous to permit a waiver of juvenile court jurisdiction, and then turn around and say that you can then appeal that waiver.

In the case of *In re Welfare of Lewis*, 89 Wn.2d 113, 116 (1977), the court noted that the record reflected “no abuse of discretion and no lack of due process. The court, after a hearing at which testimony was

taken from several witnesses, found as factors mandating declination: the fact that adults were involved with the juvenile; his sophistication, maturity, environmental situation and patterns of living; his previous contact with law enforcement agencies and the court's judgment that there were no beneficial resources available; as well as the sufficiency of the evidence of the crimes charged to support an adult prosecution. There was additional testimony in the record indicating the juvenile had previously been committed to the Department of Social and Health Services and had been discharged from probation, which also supported the decision of the court. Thus, unlike the present case, in *Lewis* the court ruled over a disputed matter. Thus, the cases of *Lewis*, *Pritchard* and *Kells* are all factually distinguishable from the present case.

- b. Neither the trial court, prosecutor, nor defense counsel violated the defendant's rights by not advising him that he could appeal the transfer order.

On October 27, 2008, the defendant, Joel Ramos filed a motion to dismiss under CrR 8.3(b) with the Yakima County Superior Court. That motion was then transferred to this Court to be considered as a Personal Restraint Petition pursuant to CrR 7.8(c)(2). In the motion Ramos claims that the "government" violated his right to appeal by not advising him of such right at the time of his entry of waiver and his guilty plea. [Memorandum in Support of Motion to Dismiss, pg. 6]. The defendant

further claims that the Supreme Court ruled that he had a right to appeal.
[Memorandum in Support of Motion to Dismiss, pg. 6].

The Court of Appeals held in *State v. Moen*, 110 Wn. App. 125,
38 P.3d 1049 (2002):

Pursuant to CrR 8.3(b), a court "in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution" and "shall set forth its reasons in a written order." The denial of a motion to dismiss on this basis is reviewed for abuse of discretion. Michielli, 132 Wn.2d at 240; State v. Garza, 99 Wn. App. 291, 295, 994 P.2d 868, review denied, 141 Wn.2d 1014 (2000). To support dismissal, the defendant must show two things: (1) arbitrary action or governmental misconduct, and (2) prejudice affecting the defendant's right to a fair trial. Michielli, 132 Wn.2d at 239-40. Because dismissal of charges is an extraordinary remedy, it is available only in "truly egregious cases of mismanagement or misconduct by the prosecutor" and when prejudice to the defendant materially affected the right to a fair trial. Duggins, 68 Wn. App. at 401; Garza, 99 Wn. App. at 295 (citing City of Seattle v. Orwick, 113 Wn.2d 823, 830, 784 P.2d 161 (1989)).

State v. Moen, 110 Wn. App. at 131-132.

In *State v. Kells*, 134 Wn.2d 309; 949 P.2d 818 (1998), the Supreme Court stated: "[t]he trial court was not required under CrR 7.2(b) to inform Kells of his right to appeal a decline order; however, Sweet requires that the State demonstrate that Kells made a voluntary, knowing, and intelligent waiver of his right to appeal his declination order before an appeal may be dismissed as untimely under RAP 18.8(b). The Court of Appeals apparently never made a Sweet analysis before it dismissed Kells'

appeal. We accordingly reverse and remand for a hearing on whether Kells voluntarily, knowingly, and intelligently waived his right to appeal the declination order.”

In the present case, the trial court engaged in a colloquy with the defendant, seeking to determine whether the waiver was knowingly, intelligently and voluntarily made. (08-23-1993 RP 4-6). The court then found that Mr. Ramos had the capacity to make the decision to waive the decline hearing and that his decision was made knowingly, voluntarily and willingly. The court further made findings relating to the Kent criteria as listed in the findings. (08-23-1993 RP 7; Appendix A).

Since the trial court did not have to advise the defendant of any right to appeal, he cannot establish that the court acted arbitrary or that there was any governmental misconduct.

4. Conclusion.

The defendant knowingly, voluntarily, and intelligently waived the declination hearing and any right to appeal the transfer of jurisdiction. Further, the trial court was not required to advise the defendant of a right to appeal the transfer of jurisdiction per the hold in *State v. Kells*. Thus, the defendant cannot show arbitrary action or governmental misconduct.

Respectfully submitted this 18th day of December, 2008.



Kenneth L. Ramm
WSBA 16500
Deputy Prosecuting Attorney
Attorney for Respondent
State of Washington

Certificate of Service

I certify that on December 18, 2008, I caused to be placed in the mails of the U.S., postage pre-paid, a copy of this document to: Joel Rodriguez Ramos, DOC #712229, Airway Heights Corrections Center, PO Box 2049 (MB55), Airway Heights, WA 99001-2049



Kenneth L. Ramm, WSBA #16500

FILED

DEC 22 2008

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

In Re the Personal Restraint of) NO. 275248
)
JOEL RAMOS,) SWORN STATEMENT OF SERVICE
) BY MAIL
)
Petitioner.)
)
)
)
)
)

I, Elaine Chartrand, state that I am and was at the time of the service of the State's Response to Personal Restraint Petition, herein referred to, a citizen of the United States, residing at Yakima, Yakima County, Washington; that I am over the age of twenty-one years and am not a party to this action.

That on the 18th day of December, 2008, I served upon Joel Ramos, #712229, Airway Heights Correctional Center, P O Box 2049, Airway Heights, WA 99001-2049, the petitioner herein, a copy of the aforementioned instrument, by putting the same, enclosed in sealed envelopes, postage paid, into the post office.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.


ELAINE CHARTRAND
December 18, 2008
at Yakima, WA



Ronald S. Zirkle
Prosecuting Attorney

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Deputies
Kenneth Ramm
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December 18, 2008

Ms Renee S. Townsley, Clerk
Court of Appeals/Division III
500 North Cedar Street
Spokane, WA 99201

FILED

DEC 22 2008

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By *[Signature]*

RE: Joel Ramos
Appeal Number: 275248

Dear Ms. Townsley:

Enclosed please find the original and one copy of the State's Response to Personal Restraint Petition, along with a sworn statement of service in the above-entitled case.

We have made copies and forwarded them to Joel Ramos, the petitioner.

Very truly yours,

RONALD S. ZIRKLE
Prosecuting Attorney

Elaine Chartrand

Elaine Chartrand
Office Specialist

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