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STATE OF WASHINGTON
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NO. 94973-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TYLER WILLIAM WATKINS,

Petitioner.

ANSWER TO AMICI JUVENILE LAW CENTER AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON CETENR FOR CHILDREN AND YOUTH JUSTICE LEGAL SERVICES, TEAM CHILD WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAYWERS WASHINGTON DEFENDER ASSOCIATION

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TABLE OF CONTENTS

I. ARGUMENT 1

A. THE AUTO ADULT JURISDICTION STATUTE DOES NOT VIOLATE PROCEDURAL DUE PROCESS. 1

B. THE AUTO ADULT JURISDICTION STATUTE DOES NOT VIOLATE SUBSTANTIVE DUE PROCESS. 8

II. CONCLUSION 11

TABLE OF AUTHORITIES

WASHINGTON CASES

City of Seattle v. Montana, 129 Wn.2d 583, 919 P.2d 1218 (1996) 1
In re Boot, 130 Wn.2d 553, 925 P.2d 964 (1996).... 1, 2, 6, 9, 10, 11
In re Dalluge, 152 Wn.2d 772, 100 P.3d 279 (2004) 1
State v. Dixon, 114 Wn.2d 857, 792 P.2d 137 (1990) 1
State v. Furman, 122 Wn.2d 440, 858 P.2d 1092 (1993) 7
State v. Houston-Sconiers, 188 Wn.2d 1, 391 P.3d 409 (2017). 3, 4, 6, 10
State v. Jorgenson, 179 Wn.2d 145, 312 P.3d 960 (2013) 1
State v. Maynard, 183 Wn.2d 253, 351 P.3d 159 (2015) 1
State v. O'Dell, 183 Wn.2d 680, 358 P.3d 359 (2015) 4
State v. Salavea, 151 Wn.2d 133, 86 P.3d 125 (2004) 1
State v. W.R., Jr., 181 Wn.2d 757, 336 P.3d 1134 (2014) 2

FEDERAL CASES

Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010 ..... 3, 4, 5, 9, 10
J.D.B. v. North Carolina, 564 U.S. 261, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011) 3
Kent v. United States, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966) 1, 6
Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) 2, 3
Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) 3, 5, 9
Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) 3, 9
Stanford v. Kentucky, 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989) abrogated by Roper v. Simmons, 543 U.S. 551 (2005) 8, 9
Thompson v. Oklahoma, 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.702 (1988) 9

U.S. CONSTITUTIONAL PROVISIONS

Eighth Amendment 2, 3, 5, 7, 9, 10

WASHINGTON STATUTES

RCW 9.94A.533(3)(e) 4
RCW 9.94A.753 8
RCW 9.94A.760 8
RCW 13.04.030(1)(e)(v) 1, 2, 7
RCW 13.40.127 7
RCW 13.40.190 8
RCW 13.40.192 8
RCW 13.50.260 8

I. ARGUMENT

A. THE AUTO ADULT JURISDICTION STATUTE DOES NOT VIOLATE PROCEDURAL DUE PROCESS.

Statues are presumed constitutional. State v. Jorgenson, 179 Wn.2d 145, 150, 312 P.3d 960 (2013). The party challenging the constitutionality of a statute bears the burden of proving the statute is unconstitutional beyond a reasonable doubt. City of Seattle v. Montana, 129 Wn.2d 583, 589, 919 P.2d 1218 (1996).

This Court has repeatedly stated that there is no constitutional right to juvenile court jurisdiction. State v. Dixon, 114 Wn.2d 857, 860, 792 P.2d 137 (1990); In re Boot, 130 Wn.2d 553, 571, 925 P.2d 964 (1996); In re Dalluge, 152 Wn.2d 772, 783 n. 8, 100 P.3d 279 (2004); State v. Maynard, 183 Wn.2d 253, 259, 351 P.3d 159 (2015). The procedural Due Process right to a hearing before transfer from juvenile court to adult court applies only when there is statutory discretion to assign jurisdiction. Kent v. United States, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966); State v. Salavea, 151 Wn.2d 133, 140, 86 P.3d 125 (2004) For that reason the auto adult jurisdiction statute for certain juvenile offenders, RCW 13.04.030(1)(e)(v), does not violate procedural due process. Boot, 130 Wn.2d at 570-71.

This Court will overrule a prior decision only if there is a clear showing that the rule it announced is incorrect or harmful. "A rule can become incorrect when subsequent United States Supreme Court precedent clarifies that our prior understanding was erroneous." State v. W.R., Jr., 181 Wn.2d 757, 768, 336 P.3d 1134 (2014).

Amici Juvenile Law Center et. al. urge this Court to overrule its decision in Boot and find that juveniles do have a Due Process right to a hearing before adult court assumes jurisdiction. The arguments proffered in support of this position should be rejected because they are based on a misreading of Eighth Amendment cases. Those cases do not establish a basis on which to overrule this Court's prior precedent.

Amici argues that RCW 13.04.030(1)(e)(v) violates procedural due process citing the test set out in Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). That test requires consideration of three factors; (1) the private interest that will be affected by official action, (2) the risk of erroneous deprivation of such interest by the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and (3) the Government's interest, including fiscal and

administrative burdens that additional procedures would entail. Mathews, 424 U.S. at 335.

To establish a private interest affected by official action Amici relies on the United States Supreme Court decisions in Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), and J.D.B. v. North Carolina, 564 U.S. 261, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011). It also cites this Court's decision in State v. Houston-Sconiers, 188 Wn.2d 1, 391 P.3d 409 (2017). With the exception of J.D.B., each case addresses the limitations the Eighth Amendment places on sentencing juvenile offenders. J.D.B. addressed whether the attributes of youth were a relevant factor in assessing whether a reasonable person would believe he is in custody for Miranda purposes. None of these cases addresses whether juveniles have a constitutional right to juvenile court jurisdiction or a decline hearing before adjudication in the adult court. They do not establish that this Court's prior decision in Boot was incorrect.

Amici argues that the foregoing cases demonstrate a new understanding that "children are different" and therefore criminal

procedural laws must take those differences into account or they are otherwise "flawed" citing Houston-Sconiers 188 Wn.2d at 9 and Graham, 560 U.S. at 76.[1] In Houston-Sconiers this Court addressed RCW 9.94A.533(3)(e), which established a mandatory sentence upon finding a defendant was armed with a firearm during the commission of a crime. The reference to "'criminal procedure laws' [which] must take the defendant's youthfulness into account" in setting sentencing for juveniles adjudicated in adult court related to a sentencing procedure. This Court made clear that it was not commenting on the question of original jurisdiction. In holding that "sentencing courts must have absolute discretion to depart as far as they want below otherwise applicable SRA ranges and/or sentencing enhancements, regardless of how the juvenile got there"[2] it specifically refused to address the constitutionality of original adult court jurisdiction for 16 and 17 year olds who committed certain violent offenses.

Similarly, the "criminal procedure laws" considered in State v. O'Dell, 183 Wn.2d 680, 358 P.3d 359 (2015) related to sentencing procedures. The question there was whether youth

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[1] Brief of Amici at 4.

[2] Id. at 9 (emphasis added)

could be considered a mitigating factor for a sentence below the standard range for young offenders who were not juveniles. Id. at 690. It had nothing to do with the question presented here.

Amici also quotes Graham for the proposition that juvenile jurisdiction statutes are procedural laws that must take a defendant's youthfulness into account or are otherwise "flawed." That portion of the Court's decision was a rebuttal to the State's argument that jurisdiction statutes that did take an offender's age into account were sufficient to address Eighth Amendment sentencing concerns as it related to juvenile offenders. The Court approved those statutes, stating that many states had made substantial efforts to enact comprehensive rules governing the treatment of juvenile offenders in the criminal justice system. However, the Court held those statutes did not go far enough to address the constitutional concern at issue in that case. The jurisdiction statutes did not preclude a court from sentencing a juvenile non-homicide offender to life without parole based on a subjective determination that the crimes demonstrated the juvenile could not be rehabilitated. Graham, 560 U.S. at 76.

Amici cite Miller for the proposition that the unique traits of children and adolescents necessitates an individualized

assessment of the offender before exposing youth to the punishments of the adult criminal justice system.[3] That is exactly the result reached in Houston-Sconiers. Before a juvenile is sentenced in adult court, whether juvenile jurisdiction was declined or it never applied, the court has absolute discretion to consider those attributes before sentencing a juvenile under the SRA.

Amici also cites Kent for the proposition that the attributes of youth are relevant to the decision to transfer a juvenile to adult court. Kent dealt with the question of what process was due when a statute conferred original jurisdiction in the juvenile court over a juvenile offender. Kent, 383 U.S. at 556. It did not address whether all juveniles, in the absence of a statutory right, had a right to a hearing before transfer to adult court.

None of the foregoing cases demonstrates that this Court's decision in Boot was wrong. None of the cases relied on have reversed the position that there is no constitutional right to juvenile court jurisdiction. In the absence of a statutory right, there is no private interest that is affected by official conduct. Boot correctly held the statute did not violate procedural due process.

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[3] Brief of Amici at 7

Amici urge that there is a private interest at stake; the interest in being sentenced in a juvenile system that confers benefits that does not exist outside the juvenile system. The State has addressed this argument in its response brief and relies on that in part to respond to Amici. Brief of Respondent at 14-19. Largely the interests identified by Amici have been addressed by Eighth Amendment cases cited above that grant sentencing courts absolute discretion to sentence juveniles in adult court regardless of how they got there. Moreover, if adult jurisdiction were not automatically conferred on older juveniles who commit serious violent and violent offenses, there is a real risk that they will not even serve as long a sentence that their younger counterparts would serve after adjudication for the same crimes. State v. Furman, 122 Wn.2d 440, 447-48, 858 P.2d 1092 (1993).

Amici identifies the opportunity for a deferred disposition under RCW 13.40.127, the opportunity for sealing the juvenile court file, and waiver of legal financial obligations as interests that should merit a hearing before transfer to adult court. Since that statute exempts juveniles charged with a violent or sex offense, that disposition alternative is not available to most juveniles subject to RCW 13.04.030(1)(e)(v). It is not a given that a juvenile who

commits a violent offense will have his file sealed. He earns that right only if he remains crime free. RCW 13.50.260. Juveniles are required to pay mandatory legal financial obligations and restitution, just as an adult offender is required to do so. RCW 13.40.190, RCW 13.40.192, RCW 9.94A.753, RCW 9.94A.760.

Amici proffers a number of other reasons why a juvenile offender has an interest in a hearing before transfer to adult court. They include the length of time a juvenile spends in custody pre-trial and the increased potential for recidivism. How long a juvenile is confined pre-trial is dependent on the nature of the case. Where the juvenile is housed is determined by either the public officials who administer the detention facilities or by the local governing body.[4] Those policy concerns do not render the auto adult jurisdiction statute unconstitutional because they factors that are independent of the jurisdiction of the adult court over a juvenile offender.

B. THE AUTO ADULT JURISDICTION STATUTE DOES NOT VIOLATE SUBSTANTIVE DUE PROCESS.

Amici argues that it should nonetheless abrogate Boot because it relied in part on Stanford v. Kentucky, 492 U.S. 361, 109

S.Ct. 2969, 106 L.Ed.2d 306 (1989) abrogated by Roper v. Simmons, 543 U.S. 551 (2005). In Boot the defendant argued that he had a substantive Due Process right to be sentenced in accordance with his culpability. His culpability depended in part on his ability to make reasoned judgments about his acts citing Thompson v. Oklahoma, 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.702 (1988).

This Court responded to the argument by distinguishing Thompson in two respects. First, by citing Stanford holding that the Eighth Amendment did not prohibit the death penalty for 16 and 17 year olds. That decision was overruled in Roper. Second, by noting that both of those cases were capital cases. There was no authority for the proposition that the reasoning in Thompson applied to non-capital cases. Boot 130 Wn.2d at 571-72.

The reasoning in Thompson and Roper has been expanded to only one other kind of sentence, life without the possibility of parole. Graham, 560 U.S. at 74-75 (juvenile non-homicide offenders); Miller, 567 U.S. at 479 (mandatory life without parole for juvenile homicide offenders). Death and life without parole were

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[4] See brief of Amici at 15 n. 3 referencing the King County Ordinance 18673 providing for pre-trial detention facilities for juveniles declined from juvenile court.

identified by the Court as distinct for Eighth Amendment purposes because of the irrevocable consequences of those sentences. Graham, 560 U.S. at 69-70. But that reasoning has not been applied to a term of years sentence that is less than life without parole. Older juveniles who are subject to the auto adult statute because of the nature of the crime committed are not subject to those distinctly irrevocable sentences. On the contrary, juveniles tried in adult court are sentenced in accordance with their relative culpability taking into consideration each juvenile offender's individual attributes of youth that may be relevant to an appropriate sentence. Houston-Sconiers, 188 Wn.2d at 21. Thus the reasoning in Boot remains sound. Amici has not demonstrated that Boot was wrongly decided.

II. CONCLUSION

The auto adult statute does not violate procedural or substantive due process. The Court should refuse to overrule its prior decision in In re Boot and affirm the conviction in this case

Respectfully submitted on February 23, 2018.

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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The undersigned certifies that on the 23rd day of February, 2018, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

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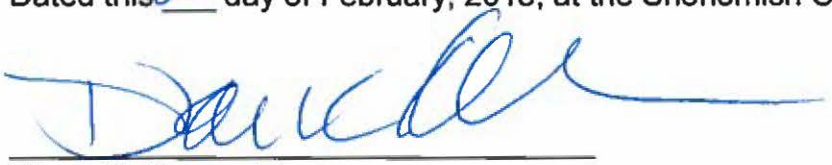
I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 23rd day of February, 2018, at the Snohomish County Office.



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