

NO. 43204-8-II

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON,**

DIVISION II

STATE OF WASHINGTON,

Appellant,

vs.

CHRISTOPHER NELSON MAYNARD,

Respondent.

REPLY BRIEF OF APPELLANT

**LACEY SKALISKY
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Deputy Prosecutor
for Appellant**

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I. STATEMENT OF THE CASE

Appellant adopts the statement of the case as set forth in its opening brief.

II. ARGUMENT

A. PRE-ACCUSATORIAL DELAY DOES NOT WARRANT DISMISSAL OF THE CASE AS HAND AS THE DEFENDANT WAS ARRAIGNED IN JUVENILE COURT PRIOR TO HIS EIGHTEENTH BIRTHDAY.

Maynard's argument focuses on a variety of cases concerning pre-accusatorial delay and the standards under which that claim is analyzed. If the court chooses to engage in an analysis concerning pre-accusatorial delay there is a three prong test for determining when due process has been violated. First, the defendant must show he was prejudiced by the delay; second, the court must consider the reasons for the delay; and third if the State is able to justify the delay, the court must undertake a further balancing of the State's interest and the prejudice to the accused. *State v. Alvin*, 109 Wn.2d 602, 604, 746 P.2d 807 (1987).

When a defendant loses juvenile court jurisdiction, the defendant carries his burden of showing minimal prejudice. *See e.g. id.*, *State v. Lidge*, 111 Wn.2d 845, 848-49, 765 P.2d 1292 (1989), *State v. Schifferl*, 51 Wn.App. 268, 270, 753 P.2d 549 (Div 1, 1988). A deliberate delay to

circumvent the juvenile justice system clearly violates due process. *Alvin*, 109 Wn.2d at 604, 746 P.2d 807. However, only in certain circumstances does a negligent delay arise to this level. *See id.*

In determining the cause of delay, courts find requests for additional investigation, even if fruitless, do not amount to deliberate or negligent delay. *See Lidge*, 111 Wn.2d at 849-52, 746 P.2d 1292. Courts do not hold the investigation of juvenile matters to a greater or lesser degree than adult investigations. *See id.* at 849. Additionally, the determination of sufficient evidence for filing charges is left to the expansive discretion of the prosecution. *See id.* at 850. Courts warn that

the Due Process Clause does not permit courts to abort criminal prosecutions simply because they disagree with a prosecutor's judgment as to when to seek an indictment. Judges are not free, in defining "due process," to impose on law enforcement officials our "personal and private notions" of fairness and to "disregard the limits that bind judges in their judicial function."

Id. citing *U.S. v. Lovasco*, 431 U.S. 783, 790, 97 S.Ct. 2044, 2049, 52 L.E.2d 752 (1977). Courts state "[f]orcing prosecutors to proceed precipitously may waste scarce resources on cases in which the defendant's guilt cannot be established beyond a reasonable doubt." *Id.*

In *State v. Warner*, 125 Wn.2d 876, 890, 889 P.2d 479 (1995), the Supreme Court listed the following legitimate reasons for a delay in filing

charges: (1) “sequential prosecution in order to secure the testimony of a codefendant” (*State v. Dixon*, 114 Wn.2d 857, 861, 792 P.2d 137 (1990); *State v. Boseck*, 45 Wn.App. 62, 67, 723 P.2d 1182 (1986)); (2) “waiting for lab results because of backlog at state crime lab” (*State v. Calderon*, 102 Wn.2d, 348, 354, 684 P.2d 1293 (1984)); (3) 55-day delay between confession and filing during “ongoing large scale undercover drug buying operation” (*State v. Robbers*, 46 Wn.App. 558, 564-65, 731 P.2d 522 (1986), *review denied*, 108 Wn.2d 1005 (1987)); and (4) 1.5-month delay between signed confession and filing due to “routine administrative practices such as vacation time, compensation time, and training time” (*Alvin*, 109 Wn.2d at 605-06, 746 P.2d 807). The Washington Supreme Court has gone to the extent to say it would require unusual circumstances to merit dismissal solely on the grounds of frustration of the purposes of the Juvenile Justice Act. *State v. Cantrell*, 111 Wn.2d 385, 391, 758 P.2d 1 (1988). Moreover, the State is not required to keep track of every juvenile’s birthday. *Dixon*, 114 Wn.2d at 866, 792 P.2d 137. To require such would amount to requiring special treatment and special procedures for juvenile suspects. *Id.*

In balancing the defendant’s interest against the State, a court must look to see whether the action complained of violates those “fundamental conceptions of justice which lie at the base of our civil and political

institutions.” *Dixon*, 114 Wn.2d at 860, 792 P.2d 137 citing *Calderon*, 102 Wn.2d at 353, 684 P.2d 1293. “There is no constitutional right to be tried as a juvenile.” *Id.* In most cases, the State has a stronger interest in “maintaining an orderly administration of judicial process than in disrupting that process to give special advantage in the system to any particular suspect.” *Alvin*, 109 Wn.2d at 606, 746 P.2d 807.

Here, the delay was not deliberate. The case involved multiple acts of malicious mischief occurring over a period of time with multiple codefendants that varied for each occurrence. The prosecutor requested more information from the investigating officer numerous times to make sure the charges filed could be proven beyond a reasonable doubt. As shown, this is expected of a prosecutor and the court should allow the state discretion to file charges once the investigation meets the required standard.

Additionally, the Respondent offers two reasons for dismissal that directly focus on the prosecutor actions, first standing by and saying nothing at arraignment, and second extending an offer that was open beyond Maynard’s eighteenth birth date. Case law clearly shows that paying attention to a defendant’s birth date is not a responsibility of the prosecutor as it would require the prosecutor to give special treatment and

procedures to juvenile defendants. Therefore, the burden is on defense counsel to address any issues that may arise in regards the extension of juvenile court jurisdiction due to their client's age.

There was no pre-accusatorial delay in Maynard's juvenile case that caused him prejudice as he was arraigned with counsel present prior to his eighteenth birthday. Furthermore, even if the court chooses to engage in a pre-accusatorial delay analysis the State demonstrated that the delay in charging was necessary as more investigation by the officer was needed. Thus, the trial court's ruling finding that pre-accusatorial delay warranted dismissal should be reversed.

B. DISMISSAL OF THE ADULT COURT CHARGES IS NOT THE APPROPRIATE REMEDY WHEN A DEFENDANT'S COUNSEL ERRED RESULTING IN THE LOSS OF JUVENILE COURT JURSDICTION.

Maynard argues that the only remedy for his counsel's ineffectiveness is dismissal with prejudice because otherwise his constitutional rights are violated. However, a defendant does not have a constitutional right to juvenile jurisdiction. *Dixon*, 114 Wn.2d at 860, 792 P.2d 137. Treatment as a juvenile is not an inherent right, but one granted by the state legislature and that can be restricted or qualified as the legislature desires. *State v. Sharon*, 33 Wn.App. 491, 495, 655 P.2d 1193

(1982) Furthermore, juvenile court jurisdiction is strictly construed. *State v. Rosenbaum*, 56 Wn.App. 407, 411-12, 784 P.2d 166 (1989).

Here, the juvenile court followed the dictates of the legislature. It dismissed the case without prejudice once it no longer had jurisdiction over the matter. Therefore, the court should focus its attention on what the standard remedy is when a case is analyzed for ineffective assistance of counsel.

In cases where a defendant is charged and convicted in adult court, which is then later challenged for ineffective assistance of counsel the remedy is reversal of the conviction and to remand the case for a new trial. *State v. Grier*, 150 Wn.App.619, 645, 208 P.3d 1221 (2009); *see also State v. Smith*, 154 Wn.App. 272, 279, 223 P.3d 1262 (2009); *State v. Thiefault*, 160 Wn.2d 409, 417, 158 P.3d 580 (2007).

In the instant case, the filing of the charges in adult court provides an equitable remedy. The defendant is still presumed innocent and can challenge the charges through trial, while the State is still able to pursue a conviction. If the adult case is dismissed with prejudice then the State is punished for defense counsel's ineffectiveness in failing to be diligent about the defendant's age. Thus, the case should be reversed and remanded.

III. CONCLUSION

Based on the files and records herein, the State requests that the court reverse the trial court and remand for further proceedings.

Respectfully submitted this 24th day of October, 2012.

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CERTIFICATE OF SERVICE

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on October 24th, 2012.



Michelle Sasser

COWLITZ COUNTY PROSECUTOR

October 24, 2012 - 2:36 PM

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