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SUPREME COURT
STATE OF WASHINGTON
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NO. 89786-7
Cowlitz Co. Cause NO. 11-1-00860-3

**SUPREME COURT OF STATE OF
WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER MAYNARD,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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A. IDENTITY OF RESPONDENT

The respondent is the State of Washington, represented by Lacey L. Skalisky, Deputy Prosecuting Attorney for Susan I. Baur, Cowlitz County Prosecuting Attorney.

B. ISSUES PRESENTED FOR REVIEW

1. Is the decision of the Court of Appeals in conflict with a previous decision of the Supreme Court?
2. Is the decision of the Court of Appeals in conflict with a previous decision of the Court of Appeals?
3. Does the decision of the Court of Appeals involve a significant question of law under the Constitution of the State of Washington or of the Constitution of the United States?
4. Does the petition involve an issue of substantial public interest that should be determined by the Supreme Court?

C. STATEMENT OF THE CASE

For the purposes of the answer to the petition for discretionary review by the Supreme Court of Washington, the State generally concurs with the Statement of the Case set forth by counsel. Maynard now asks this court to accept review of the Court of Appeals decision finding no

preaccusatorial delay and that the remedy for a successful ineffective assistance of counsel claim is a new trial.

D. ARGUMENT WHY REVIEW SHOULD BE DENIED

A petition for review will be accepted by the Supreme Court only: (1) if the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) if the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals, or (3) if a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) if the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b).

1. The decision of the Court of Appeals is not in conflict with a decision of the Supreme Court.

Maynard does not argue how the Court of Appeals decision is in conflict with a Supreme Court decision. Therefore, review should not be granted on this basis.

2. The decision of the Court of Appeals is not in conflict with another decision of the Court of Appeals.

Maynard does not argue how the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals. Therefore, review should not be granted on this basis.

3. The decision of the Court of Appeals does not involve a significant question of law under the Constitution of the State of Washington or the Constitution of the United States.

Maynard contends the Court of Appeals decision in his case involves two significant questions of law under the Constitution of the State of Washington: *Washington Constitution Article 1, §§3 and 22*, and the *United States Constitution Sixth and Fourteenth Amendments*.

The first argument is that a prosecutor's action in filing a charge prior to the expiration of juvenile court jurisdiction should not preclude

the application of the pre-accusatorial delay three-art test set forth in *State v. Oppelt*. *State v. Oppelt*, 172 Wn.2d 285, 257 P.3d 653 (2011). This Court has clearly held that a defendant does not have a constitutional right to juvenile court jurisdiction. *State v. Dixon*, 114 Wn.2d 857, 860, 792 P.2d 137 (1990). Courts have also held treatment as a juvenile is not an inherent right, but one granted by the state legislature which can be restricted or qualified as the legislature desires. *State v. Sharon*, 33 Wn.App. 491, 495, 655 P.2d 1193 (1982). Additionally, juvenile court jurisdiction is strictly construed. *State v. Rosenbaum*, 56 Wn.App.407, 411-412, 784 P.2d 166 (1989).

Here, Maynard was summonsed in to the juvenile court before his eighteenth birthday. He had two court appearances before his eighteenth birthday, one with counsel present. The actions of the prosecutor did not cause the loss of juvenile court jurisdiction as charges were filed prior to Maynard's eighteenth birthday. This court has previously held prosecutors are not required to give special treatment to juvenile defendants and keep track of their birthdates. *Dixon*, 114 Wn.2d at 866, 792 P.2d 137. Based on this it is the juvenile's counsel who bears the burden to ensure juvenile court jurisdiction is extended appropriately.

It is clear the three-pronged test set forth in *Oppelt* is not applicable in this case as Maynard appeared in court prior to the loss of juvenile court jurisdiction. Furthermore, as there is no constitutional right to be adjudicated in a juvenile court, there is not a constitutional basis for challenging the court of appeals decision.

The second argument is what remedy applies when ineffective assistance of counsel denies a defendant juvenile court jurisdiction. This Court has previously held that a defendant does not have a constitutional right to juvenile court 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 which can be restricted or qualified as the legislature desires. *Sharon*, 33 Wn.App. at 495, 655 P.2d 1193. Additionally, juvenile court jurisdiction is strictly construed. *Rosenbaum*, 56 Wn.App. at 411-412, 784 P.2d 166. Furthermore, in cases where a defendant is charged and convicted in adult superior court, which is then later challenged for ineffective assistance of counsel the remedy is the reversal of the conviction and remanding 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. Thieffault*, 160 Wn.2d 409, 417, 158 P.3d 580 (2007).

Here, Maynard's attorney failed to move to extend juvenile court jurisdiction prior to him turning 18. It was conceded prior by the State as ineffective assistance on defense counsel's part. However, the generally accepted remedy for a successful claim of ineffective assistance of counsel is to remand the case back for a new trial. Maynard was given the opportunity to have effective representation in adult superior court, thus he had recourse for his ineffective counsel. Because no constitutional right of Maynard's was affected this Court should deny the petition for review.

4. The decision of the Court of Appeals does not involve an issue of substantial public interest that should be determined by the Supreme Court.

Maynard does not argue how his petition involves an issue of substantial public interest that should be determined by the Supreme Court. Therefore, review should not be granted on this basis.

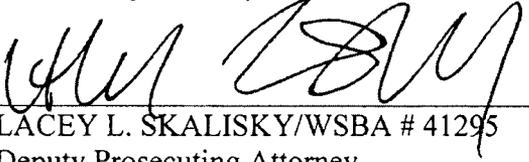
E. CONCLUSION

For the above reasons, review should not be granted in this case.

Respectfully submitted this 24th day of January, 2014.

SUSAN I. BAUR
Prosecuting Attorney

By:



LACEY L. SKALISKY/WSBA # 41295
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

Crystal Iverson, certifies the Answer to Petition for Review was served electronically via e-mail to the Supreme Court:

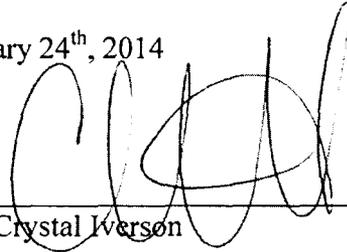
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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on January 24th, 2014


Crystal Iverson

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ATTACHED IS THE ANSWER TO PETITION FOR REVIEW ON CHRISTOPHER MAYNARD, SUPREME COURT CASE # 89786-7. PLEASE LET ME KNOW IF YOU HAVE ANY ADDITIONAL QUESTIONS. THANK YOU!

Crystal Iverson for Michelle Sasser.