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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY
DEPUTY

NO. 44147-1-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

Respondent,

v.

Brian Wallace Buchman

Appellant.

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

The Honorable Nelson Hunt, Judge

STATEMENT OF ADDITIONAL GROUNDS

ARGUMENTS

- 1.) Withdrawal of Plea Agreement pg. 1, 2
- 2.) Jurisdiction pg. 3, 4, 5, 6, 7
- 3.) Due Process pg. 8
- 4.) Prosecutorial Misconduct pg. 9, 10
- 5.) Ineffective Assistance of Counsel pg. 10, 11, 12
- 6.) Conclusion pg. 12

Withdrawal of Plea Agreement

On the grounds of wrongful plea agreement and Jurisdiction as well as other issues brought up in Appellate Attorney's brief and S.A.G. Defendant, Brian W. Buchman declares that charges and plea agreement should be withdrawn of any guilty plea, all plea bargains and proceedings should have been done in the Jurisdiction of the Juvenile Court on the grounds that the charging window was clearly when the defendant was a Juvenile.

No Decline Hearing was held for the defendant. The only remedy is to bring the defendant back to court and sentence in the Juvenile Court Jurisdiction.

The court erred in sentencing Defendant, Brian Buchman as an adult when he was 17 years old. The Jurisdiction is of a Juvenile unless there is proof of a decline hearing and or talk of minor going to be charged as an adult. However, defendant was 18 years old when charges were filed by the state. Does that mean Defendant, Brian Buchman loses his Juvenile Jurisdiction because the state decided to charge Defendant when he was 18 almost 19 years old?

"Whether a defendant who is not yet 18 years old at the time of the offense is committed, but 18 years of age when charges are filed has a right under RCW 13.04.030 to be tried as a Juvenile rather than as an adult." State v. Brandt 992 P.2d 1034, it states that because the loss of Juvenile Court Jurisdiction subject an accused to harsher penalties and the potential stigma of an adult Superior Court criminal conviction, the court of appeals presumes prejudice when Juvenile Court Jurisdiction is lost.

Behind these reasons and the words of the Judge feeling that defendant, Brian Buchman was not offered any Juvenile alternative was inequitable.

Defendant asks the courts to review and find that any plea bargain was done with knowingly, intelligently with knowledge and understanding as an adult. Was the defendant intelligent enough to accept a guilty plea as an adult and understand with precise knowledge of knowing what he was doing? If yes, then explain why the defendant couldn't and did not understand the meaning that Judge Hunt was trying to say about the defendant eligible to be tried as a Juvenile?

Usually declining on a minor is behind crime done with malice;

(Withdrawal of Plea Agreements)

intentions that is followed with a disposition hearing to remove the minor from Juvenile Jurisdiction to the Adult Superior Court.

By the words of the sentencing Judge, Hunt, there was no proper grounds that were fair to sentence the defendant as an adult without a Juvenile alternative disposition or decline hearing.

see Sentencing; page 15, line 23, 24 "First, this crime occurred when the defendant was under the age of 18, not prosecuted until later."

see sentencing; page¹⁵ line 25, page 16, lines 1-5; other words from Judge.

"A plea bargain must be knowingly, intelligent, and voluntarily precisely because the defendant surrenders his constitutional rights."

Defendant's plea is invalid and insufficient on the grounds that defendant wasn't offered a Juvenile disposition and was not intelligent enough to take a plea in adult superior court with lack of counsel's advice.

Defendant, Brian Buchman does not have the average state of mind to realize of bad counsel and wrongful plea. No person will know what should of been properly done until discussion with another attorney. Defendant, was manipulated to taking a plea of guilty without any knowledge of knowing what it means. Defendant was taken advantage of by state and public defence and tricked into taking a plea of guilty.

The Defendant, Brian Buchman's Constitutional rights were violated where a plea of guilty should be withdrawn under multiple violation acts by, State, prosecutor, Public Defence in the Lewis County Chehalis Superior Court.

Under the grounds of taking a improper plea bargain, defendant, Brian Buchman requests that the courts either bring the defendant back, withdraw plea of guilty and turned over to Juvenile Court Jurisdiction. It was "inequitable" how the state charged the defendant when "no malice" was involved as well as the circumstances surrounding the case.

If the court will accept the request for Juvenile Jurisdiction or dismissal of charge under these grounds. "See Judges statement"

Jurisdiction

Defendent, Brian Buchman should have been charged in Juvenile Court instead of the Adult Superior Court. The charging window from when both alleged victim Kendall Brianne Steveson (D.O.B. 11/8/96) was 13 and defendant, Brian Wallace Buchman (D.O.B. 11/19/92) was 17 years old.

The state accuses the alleged crime occurred when Kendall Steveson was 13 and the defendant was also under the age of 18, which makes the defendant in the jurisdiction of the Juvenile system.

At no time were there a decline hearing for the Defendent, Brian Buchman or any Juvenile alternative disposition, which made Judge Hunt to believe that it was inequitable to defendant, Brian Buchman. See Sentencing Hearing pg 15-16, line 4-5.

A transfer to Superior Court according to RCW 13.40.110(2) must be based upon a finding that the Juvenile court must set forth in writing its findings which shall be supported by relevant facts and opinions produced at the Hearing RCW 13.40.110(3)

The defendant was charged when he was 17 years old, but didn't charge the defendant until he was the age of 18, which in the own words of sentencing Judge made for a more harsher punishment. See Sentencing Hearing page 15-16, line 20 - page 16, line ~~10~~ 2.

State v. Brandt 992 P.2d 1034 it states that because the loss of Juvenile Jurisdiction subjects an accused to harsher penalties and the potential stigma of an Adult Superior Court conviction.

When a person charged with a crime becomes 18 years of age Juvenile Court lose Jurisdiction of the cause allegation of time indictment or information is immaterial other than it must be shown on the face that right of prosecute for crime charged is not barred by statute of limitations State v. Calderon 102 wn. 2d 348 (1984)

Jurisdiction over offenses committed by a minor defendant is to be determined at time proceedings are instituted against the offender. Jurisdiction in Juvenile court ends, when the youth becomes 18 unless Jurisdiction has been extended under authority of statute authorizing Juvenile court to retain Jurisdiction over a Juvenile beyond 18 under

(Jurisdiction)

certain circumstances. West's RCWA 13.04.030, 1304, 030(6) 13.40

Rule 8.1 Time for Decline Hearing

(A) initiating Decline hearing if required or requested pursuant to 13.40.110 a decline hearing shall be scheduled and held separate from prison to the adjudicatory hearing which was never offered to the defendant, which made it unfair to the defendant and prejudice to his case and sentencing

Defendant, Brian Buckman finds this unfair to be charged as an adult when the alleged crime occurred when he was a minor himself. It's unfair that the defendant got harsher punishments than some criminals get when violence and purpose is involved, which the purpose results as a motive.

It's clear that Defendant, Brian Buckman was a juvenile when the alleged crime occurred. (See Reporter's Verbatim Report of Proceedings March 7, 2012.) In words of the Judge pg. 15, line 21-25, "There are several other factors here which are often not present in similar cases. First, this crime occurred when the defendant was under the age of 18, not prosecuted until later." (Pg. 15, line 25, pg 16, lines 1-5, in words of the Judge, "I don't find that there was any malice in doing that, but it results in the difference in sentence between 100 months and 48 months maximum in juvenile, assuming that he didn't get a juvenile sexual offender disposition - alternative disposition. And that just seems inequitable to me."

The alleged crime was neither violent, no motive and any threats. Defendant, Brian Buckman was in a relationship with a minor, when he was a minor himself. Alleged victims parents and defendants parents both knew what was going on.

It's unfair that defendant, Brian Buckman got one of the harsher penalties by the Adult Superior Court when it should of been done in Juvenile Court Jurisdiction. Under the circumstances, the only remedy is to bring defendant Brian Buckman back to court under Juvenile Jurisdiction or dismiss the defendants charge.

(Jurisdiction)

RCW 10.73.090 time bar applies only if the judgement and sentence were rendered by a court of competent jurisdiction. RCW 10.73.090, Dalluge contends that because the Juvenile Court had exclusive jurisdiction over his proceedings, the Adult Criminal Court lacked Competent Jurisdiction in his case, "cite Dalluge".

The defendant, Brian Buchman's judgement and sentence is invalid because Adult Criminal Court lacked Competent Jurisdiction for sentencing, Improper Adult Session Hold.

In re Dillenburg v. Maxwell 70 Wn. 2d @ 331 a superior court having no original jurisdiction to try a juvenile under 18 years of age on a felony charge as an adult, has no legal authority to accept a plea or enter judgement and sentencing in connection with a felony charge against a juvenile unless a Juvenile Court Judge has complied with the requirements of RCW 13.04.120 by holding a hearing after proper notice upon the issue of an order turning the juvenile over to proper officers for trial as an adult.

The requirements of RCW 13.04.120, that a hearing be held prior to entry of an order making final disposition of a child's custody within the jurisdiction of the Juvenile court, is a procedural requirement of Due process when the Juvenile disposition is to turn the child over for trial as an adult on a criminal charge in Superior Court.

The Defendant's plea to a nonenumerated charge requires restart to Juvenile Court.

State v. Kipling 116 Wn. 2d. 100-101, if the state initially charges an offence that automatically vests the Superior Court with Jurisdiction, but later amends the information to charge an offence that does not automatically Grant Jurisdiction to the Superior Court the Juvenile court obtains Jurisdiction over the case. Juvenile Court had Jurisdiction after prosecutor amended the information reducing the charge so that auto-decline no longer applies.

When the Juvenile Court obtains Jurisdiction in such circumstances the case remains in that court unless and until it is transferred back to the Superior Court following a declination Hearing. Dalluge Wn. 2d 781

State v. Meridieth 144 Wn. App 47, 180 p. 3d 867 apr. 08'
RCW 13.04.030(1)(e)(v) automatically transfers to adult Criminal Court, a Juvenile accused of multiple enumerated offences if there is probable Cause

(Jurisdiction)

to believe that at least one of the enumerated offenses occurred after the juvenile turned 16 years old. Absent probable cause to believe that any of the enumerated offenses occurred after the juvenile turned 16, the adult criminal court does not have jurisdiction of the prosecution under the automatic transfer statute.

When an adult criminal court has entered a judgment against a juvenile offender without a valid determination of jurisdiction over the matter and the juvenile has since turned 18 years old, the remedy is for the Superior Court to conduct a de novo hearing to determine whether declination would have been appropriate. If declination would have been appropriate then the conviction stands. If declination would not have been appropriate then the conviction must be set aside and a new trial must be held in Adult Criminal Court, there is no issue of Double Jeopardy if a new trial ensues.

State v. Kipling 166 Wa. 2d 100 (2009), Pursuant to this statute a person under the age of 18 years is an offender if the Juvenile Court has Declined jurisdiction over that person pursuant to RCW 13.40.110 or if the charged crime automatically falls under jurisdiction of the Superior Court pursuant to RCW 13.04.030³.

Automatic Decline based on the nature of the crime or as a result of a declination hearing where the juvenile court waives its jurisdiction in *Dalluge* 152 Wn. 2d 772 780, 100 p. 3d 279 (2004). RCW 13.40.110(2) must be based upon a finding that the juvenile or the public and the juvenile court must set forth in writing its findings which shall be supported by relevant facts and opinions produced at the hearing.
RCW 13.40.110⁽³⁾.

Breed v. Jones pg. 359 44 LE D. 2d, *Kent v. U.S.* 383 U.S. 541, 16 LED. 2d 84 86 sct. 1045 (1966), *Kent v. United States* 383 U.S. 541, 16 LED 2d 84 (1966)

"The theory of the Districts' Juvenile Court Act, is rooted in social welfare philosophy rather than in the corpus juris. The Juvenile Court is theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct.

(Kent Factors)

- (1) The seriousness of the alleged offense to the community and whether the protection of the community requires declination.
- (2) Whether the alleged offense was committed in an aggressive, violent

(Jurisdiction)

premeditated, or willful manner.

- (3) Whether the alleged offence was against persons or against property.
- (4) The prosecutive merit of the complaint.
- (5) The desirability of trial and disposition of the entire case in one court if the juveniles in the alleged offence are adults.
- (6) The juveniles sophistication and maturity as determined by consideration of his or her environmental situation, emotional attitude, and pattern of living.
- (7) The juveniles record and previous history.
- (8) The prospects adequate protection of public and the likelihood of reasonable rehabilitation of the juvenile by the use of procedures, services and facilities currently available in the juvenile court, a juvenile court's discretion to decline jurisdiction is limited and is not properly exercised unless appropriate consideration is given to the Kent Standards, its failure to do so constitutes an abuse of discretion.

Only remedy is to withdraw plea and proceed onto juvenile jurisdiction.

Due Process Speedy Trial Violation

The fact that it took from June 2010 until October 2011 violated the Defendant, Brian Buchman's Speedy Trial rights and Due Process.

Speedy Trial Rights and Due Process rights under Cr.R. 3.3 guarantees under Wash. Const. Article 1 section 22 and U.S. Const. Amend V. have been violated under Cr.R. 3.3(b)(1)(I) a defendant that's out of custody must be brought to trial within 90 days.

The rights to a Speedy Trial is Constitutionally guaranteed and such any waiver of that right to a speedy trial must be done voluntarily, intelligently, and knowingly. Defendant, Brian Buchman does not knowingly choose to waive his right to a speedy trial, a continuance granted beyond the speedy trial period must be supported by findings showing a need for a continuance in the due administration of Justice. State v. Grilly 67 Wn. App. 795 citing State v. Adams 161 Wn.2d 574, 581. The state is primarily responsible for seeing that the defendant is tried in a timely manner, although the trial court is ultimately responsible for enforcing the speedy trial rule State v. Kindsvogel 110 Wn. App. 750 (2002) The failure to comply requires dismissal of Plea Agreement and Show prejudice to the defendants constitutional right.

Due Process

The Defendant, Brian Buchman's Due Process was violated when the the charge was file one year later from the time the alleged crime occurred resulting to be charged in the Adult Superior Court.

Did Juvenile lose its Jurisdiction and was it error less to allow the Superior Court to violate Defendant, Brian Buchman's due process and constitutional rights by not giving the defendant a Juvenile Sexual offence Disposition or a decline hearing?

See Sentencing Hearing, Judge Hunts statement at Sentencing Hearing. Page 16 line 4-5.

Dismissal and Plea bargain is violated based on the findings that the defendants due process was violated on the grounds of improper Jurisdiction.

Remedy is on the grounds of withdrawal guilty ~~and~~ plea and sentenced as a Juvenile.

Prosecutorial Misconduct

Should had Defendant, Brian W. Buchman, been charged in Juvenile Court Jurisdiction when the alleged crime occurred when alleged victim Kendall Brienne Steveson was 13 and the defendant was 17 years old?

The prosecutors in defendant Brian Buchmans case committed acts of vindictiveness by violating defendants; Due Process, Constitutional Rights, invalid Plea bargain, and waiting a little longer than a year to prosecute the defendant at the age of 18 in Adult Superior Court when it should of been in Juvenile Jurisdiction.

State v. Brandt 992 P.2d 1034. it states that because the loss of Juvenile Court Jurisdiction subject an accused to harsher penalties and the potential stigma of an adult Superior Court criminal conviction, the court of appeals presumes prejudice when Juvenile Jurisdiction is lost.

(A) The prosecutors committed acts of vindictiveness by violating defendant, Mr. Buchman's Due Process. Defendants due process was violated because of the fact that the charged was filed a year after the alleged crime occurred which prejudiced the lost of Juvenile Court Jurisdiction to the defendant because he was at the age of 18.

The preaccusatorial delay in bringing charges violate due process. (1) defendant must show he was prejudiced by the delay, and in making its due process inquiry (2) The court must consider the reasons for delay as well as prejudice to the accused. U.S.C.A Const. Amend 5, 14.

(B) The Prosecutors committed act of vindictiveness by violating the defendants constitutional rights. Defendant, Mr. Buchmans constitutional rights were violated by prosecutors vindictiveness that caused prejudice to the defendants rights. Violating a defendants due process also results in violation of constitutional rights.

14 const. Amendment, states that, Preaccusatorial delay by the state which results in loss of Juvenile court Jurisdiction may violate due process in only 2 circumstances (1) a deliberate delay by the state to circumvent the Juvenile Jurisdiction system (2) a negligent delay in filing.

(C) The prosecutors committed acts of vindictiveness by offering defendant, Mr. Buchman a plea bargain that's invalid in the Adult Superior Court when didn't necessarily have Jurisdiction over the defendant. Any plea needs to be intelligently

(Prosecutorial Misconduct)

and precise knowledge of understanding because the defendant surrenders his constitutional rights. However, the defendant's constitutional rights had already been violated before the plea bargain was offered. As explained in the defendant's exhibits A and B, his constitutional rights were violated, which helps the results in which the plea that the defendant took without any knowledge and precise understanding renders the plea bargain invalid.

(D) The prosecutors committed acts of vindictiveness by charging the defendant in Adult Superior Court instead of Juvenile Court. The prosecutors showed vindictiveness as well as prejudice by prosecuting the defendant at the age 18 when the alleged crime occurred when defendant, Mr. Buchman was 17, and continued acts of vindictiveness by prosecuting the defendant in Adult Superior Court instead of Juvenile Court that could of then led to a decline hearing resulting to the Adult Superior Court to be properly prosecuted.

Whether a defendant who is not yet 18 at the time of the offence is committed, but is 18 when charges are filed has a right under RCW 13.04.030 to be tried as a juvenile rather than as an adult. §

The prosecutor showed vindictiveness by allowing me to be wrongfully charged in the Adult Superior Court when it should of been done in Juvenile Court Jurisdiction. Under Prosecutorial Misconduct the only remedy is to withdraw the defendant, Brian Buchman's, plea of guilty.

Ineffective of Counsel

Although appellate courts will generally not consider issues raised for the first time on appeal. A claim of error may be raised for the first time on appeal if it is a manifest error affecting a constitutional right. R.A.P. 2.5(a).

Counsel was showing ineffective assistance when he gave and volunteered information to state prosecution attorney. Defendant's counsel of representation was deficient, prejudiced the defendant that there was a reasonable probability that by stipulating would cause a better outcome. Except that counsel's unprofessional errors, result of proceeding's would have been different. U.S.C. A Const. Amend. Co. where counsel failed and gave prosecution information and did not use legitimate strategic nor tactical reason

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(Ineffective Assistance of Counsel)

to representation at defendants hearing is ineffective assistance of counsel. There was no presumptions and no burden of proof on or in General state presumptions of evidence and proceeding that state claims. Torica, 59 Wash. App 368, 798 P.2d 296 U.S.C.A Const. Amend. 4 crR 3.6. State v. Thomas 109 Wash. 2d. 222-26 (1987)

Strickland v. Washington 466 U.S. 668-687 (1987)

Defendent holds that failure to move and suppress of the evidence made at SSOSA Revoke Hearing is per se deficient representation under the 1258 first prong of the Strickland test.

Defendents counsel was unsuccessfully and ineffective by not moving against alleged accusations at SSOSA Revoke Hearing and admitted as well as told defendant Brian Buchman to say guilty for reason of better probability of less harsher punishment.

For these reasons and new Appellate Attorney Peter Tiller's brief, we ask the courts of Appeals to review defendents Hearing proceedings and consider my complaint as well as my Appellant Attorney's about defendents counsel stipulating to alleged violations.

One last thing defendant Brian Buchman wants to bring up about public defence attorney that prejudiced sentencing hearing on March 7, 2012.

The defendant's public defence was ineffective assistance of counsel who lacked notice and concern of what's best for his defendent. (If you turn to page 4 of this brief and re-read the words from the Judge, you'll see that defendents counsel didn't question or raise the subject of the factors of what the Judge just said.

Defendent's counsel showed ignorance and lack of interest of what's best for his client by not asking for another alternative or disposition other than one of the harsher punishments in the Adult Superior Court. The defendent was a Juvenile at the time the allege crime ocured, so it makes it a Juvenile offence. The defendents counsel was ineffective assistance of counsel by not arguing or mentioned the fact that the defendent was a Juvenile when allege crime ocured and should be charged as a Juvenile, not as an adult. Whether a defendent who is not yet 18 when charges are filed has a

right under RCW 13.04.030 to be tried as a Juvenile rather than as an adult. The only remedy is to bring the defendant, Brian Buckman back to court under the Juvenile Jurisdiction or dismiss the defendants charge for reasons of prejudice that was unfair to the defendants rights.

Conclusion

On the grounds of Defendants arguments of Withdrawal of Plea, Jurisdiction, Due Process, Prosecutorial Misconduct and Ineffective assistance of counsel, the best remedy would to bring Defendant, Brian W. Buckman back to the proper Jurisdiction of the Juvenile court or dismiss the charge for prejudice issues that made it unfair to the defendants rights.

Sincerely,

Brian Wallace Buckman

Brian Wallace Buckman