

original

No. 35345-8-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

ZACHARY H. MEREDIETH,

Appellant

FILED  
COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
BY *[Signature]*  
DEPUTY

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

The Honorable Wm. Thomas McPhee, Judge

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BRIEF OF RESPONDENT

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A. STATEMENT OF THE ISSUES.

1. Whether the trial court erred in holding that the Zachary Meredieth was properly before the adult division of the Superior Court, even though there was evidence that some of the crimes charged occurred before he was sixteen years of age.

2. Whether Meredieth's counsel was ineffective for failing to raise the issue until after a jury verdict was reached and the appellant had reached the age of eighteen.

B. STATEMENT OF THE CASE.

The appellant has correctly stated the substantive and procedural facts of the case.

C. ARGUMENT.

The trial court did not err in finding that automatic mandatory decline was valid.

Mr. Meredieth has correctly identified abuse of discretion as the standard of review of a trial court's decision to grant or deny a new trial. "A trial court's decision granting a new trial will not be disturbed on appeal unless it is predicated on erroneous interpretations of the law or constitutes an abuse of discretion."

(Cites omitted.) State v. Jackman, 113 Wn. 2d 772, 777, 783 P.2d 580 (1989).

It is undisputed that the applicable statute, RCW 13.04.030, was amended effective July 24, 2005, and that the amended statute applies to Mr. Meredieth's present case before this court. The prior statute provided that the Juvenile Division of the Superior Court had no jurisdiction over a person who was sixteen or seventeen years of age and who was accused of committing a serious violent offense as defined in RCW 9.94A.030, as well as other crimes not at issue here. The amended statute provides in part:

RCW 13.04.030(1)(e)(v) The juvenile is sixteen or seventeen years of age on the date the alleged offense is committed and the offense is:

.....

(e)(v)(E)(I) In such a case the adult criminal court shall have exclusive original jurisdiction, except as provided in (e)(v)(E)(II) of this subsection.

(e)(v)(E)(II) The juvenile court shall have exclusive jurisdiction over the disposition of any remaining charges in any case in which the juvenile is found not guilty in the adult criminal court of the charge or charges for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense that is not also an offense listed in (e)(v) of this subsection. The juvenile court shall enter an order extending juvenile court jurisdiction if the juvenile has turned eighteen years of age during the adult criminal court proceedings pursuant to RCW 13.40.300. However, once the case is returned to juvenile court, the court may hold a decline hearing pursuant to RCW 13.40.110 to determine whether to retain the case in juvenile court

for the purpose of disposition or return the case to adult criminal court for sentencing.

Meridieth was charged with eight counts of rape of a child in the first degree, a serious violent offense that qualified him for "auto decline" in juvenile court; although that is the term used, juvenile court never had jurisdiction because of the nature of the offense, and therefore did not actually "decline" jurisdiction. RCW 13.04.030(1)(a)(v). Although the court did, as Mr. Meredieth notes in his brief, use a form appropriate to the prior version of the statute, the result was the same; he was tried as an adult in adult court. The inquiry, then, is: under the amended statute, what should have happened?

Under the amended statute, Mr. Meredieth would meet the requirements for auto-decline if the qualifying crimes were committed when he was sixteen or seventeen. The charging document specified a time period from August 1, 2002 to August 31, 2004 (CP 88-91), a time period that encompassed Mr. Meredieth's sixteenth birthday. The jury convicted of six of the eight counts of first degree rape of a child. (CP 123-26, 131-34)

Meridieth argues that automatic decline was improper because it is impossible to tell if the jury convicted him of acts

which occurred before he was sixteen or after he was sixteen. This argument approaches the analysis from the wrong end of the process.

“It is the nature of the charge that dictates jurisdiction, not the final outcome.” (Cite omitted) State v. Posey, 130 Wn. App. 262, 268, 122 P.3d 914 (2005), rev. granted 158 Wn.2d 1009 (2006). The Posey decision was interpreting the pre-July, 2005 statute, but there is nothing in the amended statute to change that conclusion. The amended statute continues to give the adult court jurisdiction if “[T]he juvenile is sixteen or seventeen years old on the date of the *alleged* offense is committed and the *alleged* offense is: . . . ” (Emphasis added.) It is the charge, not the verdict, that controls where the case is heard.

If the legislature intended the outcome of the prosecution to dictate jurisdiction, then adult court jurisdiction would be provisional throughout the prosecution. This does not harmonize with the legislature’s intent to clearly delineate jurisdictional boundaries. Nor does it mesh with one of its objectives for adopting the automatic-transfer provision, which was to reduce the fiscal impact of violence. Valuable court time and money would be wasted if adult court jurisdiction was deemed improper after a full trial. Thus, RCW 13.04.030 is clear on its face—jurisdiction attaches when certain enumerated offenses are charged. The outcome of the prosecution has no effect on jurisdiction. The plain language of the statute, coupled with the

legislature's objectives, leaves no room for a different interpretation.

State v. Manro, 125 Wn. App. 165, 174-75, 104 P.3d 708 (2005).

Manro was also decided on the pre-amendment statute, but the statutory language at issue in this holding did not change.

Mr. Meredieth argues that the State has the burden to prove that the alleged offenses of rape were committed when he was sixteen or seventeen. That is not the case. To establish the automatic decline, the State only had to have probable cause to believe that at least one of the offenses occurred when he was sixteen or seventeen, and he has not challenged the Superior Court's initial finding of probable cause for a time period that goes beyond his sixteenth birthday.

"There is no constitutional right to be tried in a juvenile court." (Cites omitted.) In re Boot, 130 Wn.2d 553, 571, 925 P.2d 964 (1996). Juvenile court jurisdiction is provided by statute. "When a statute is clear on its face and unambiguous, the court does not have to engage in an interpretation of the language. (Cites omitted.) Statutory inquiry ends with the plain language of the statute and the court assumes the legislature 'means exactly what it says.'" (Cites omitted.) State v. Salavea, 151 Wn.2d 133,

142, 86 P.3d 125 (2004). “A court may not engage in statutory construction if the statutory language is unambiguous. . . . Where the statutory language is plain and unambiguous, the meaning must be derived from the wording of the statute itself.” (Cites omitted.) State v. Gilmer, 96 Wn. App. 875, 882, 981 P.2d 902 (1999).

Mr. Meredieth turned eighteen before the trial of this case.

In no event can he remove this matter to juvenile court.

Juvenile court jurisdiction is strictly construed. . . . Such jurisdiction ends when a juvenile turns 18, unless the juvenile court extends its jurisdiction before that day. . . . “Even if a juvenile cause were pending and not yet heard on the merits prior to the juvenile’s 18<sup>th</sup> birthday, the juvenile court loses jurisdiction.” . . . Once juvenile court jurisdiction has lapsed, the court cannot enter a written order extending jurisdiction, even with the consent of both parties. (Cites omitted.)

State v. Nicholson, 84 Wn. App. 75, 77, 925 P.2d 637 (1996).

The amended statute does provide for two instances in which a defendant over eighteen can be under juvenile court jurisdiction. RCW 13.04.030(e)(v)(E)(II) provides that if the juvenile tried in adult court is found not guilty of the crime(s) for which he was transferred, leaving only convictions for non-qualifying offenses, or if he is found guilty of crimes that are lesser included of the qualifying offenses, which themselves are not qualifying

offenses, then the juvenile court will have jurisdiction over the *disposition* of those convictions. The juvenile court may hold a decline hearing to determine if the case should remain in juvenile court for *disposition*, or returned to adult court for *sentencing*.

(Emphasis added.) When the case is returned to juvenile court, that court shall enter an order extending juvenile court jurisdiction, even if the juvenile had turned eighteen years of age during adult court proceedings.

In this case, neither of these triggering events occurred. Mr. Meredieth was convicted of rape of a child in the first degree, not acquitted, nor was he convicted of a lesser included offense. Under the statute, he must remain in adult court.

When a juvenile is charged with one of more qualifying crimes, as well as one or more non-qualifying crimes, all charges are heard in adult court. In In re Boot, *supra*, a decision which consolidated Boot's case with Carlos Cornejo's, the court reversed a trial court's bifurcation of charges, sending the automatic decline charges to adult court, but keeping the non-qualifying charges in juvenile court and extending juvenile court jurisdiction.

The key jurisdictional issue was decided at the time the charges were first instituted against Cornejo. "[J]urisdiction over offenses committed by a juvenile is

to be determined at the time proceedings are instituted against the offender." . . . .By virtue of the kidnapping charges, which conferred adult court jurisdiction over him, Cornejo is automatically under the adult court jurisdiction. RCW 13.40.020(14).

The trial court erred in bifurcating the robbery charges and assigning them to juvenile court because the juvenile court could not have jurisdiction over Cornejo once he came under the jurisdiction of the adult criminal court. We vacate the trial court's order severing the charges, so as to permit the filing of a proper information against Cornejo on all charges in adult criminal court.

In re Boot, *supra*, at 575.

Mr. Meredieth's case is analogous. He was charged with eight counts of first degree rape of a child, which required automatic decline to adult court. He was also charged with eight counts of first degree child molestation, which did not. The non-qualifying counts could not stay in juvenile court, because juvenile court did not have jurisdiction over him.

Meredith argues that because it is impossible to know on which facts the jury based its verdict, and thus impossible to know whether they convicted for acts that occurred before he was sixteen or after, the court must assume that they convicted for acts that occurred before he turned sixteen and arrest the judgment.

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The mental processes of jurors inhere in the verdict and cannot be inquired into. State v. Marks, 90 Wn. App. 980, 955 P.2d 406 (1998); State v. Ng, 110 Wn.2d 32, 750 P.2d 632 (1988). Because this is true, Meredieth raises a “sufficiency of the evidence” issue, arguing that “the question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Appellant’s Brief, p. 14. Apart from the trial court’s own review of the evidence, in which the judge found sufficient evidence on which the jury could have based at least one of the qualifying convictions, (09/14/06 RP, pgs. 5-6) there remains the fact that it doesn’t matter what acts the jury based its decision upon, or when they happened. The question, as discussed above, is whether there was probable cause to charge Meredieth in adult court to begin with. The verdict of the jury has no bearing on the issue of automatic decline. The jury could have acquitted Mr. Meredieth of all charges, and he would still have been properly before the adult court.

Meredieth argues that the rule of lenity requires that a court construe RCW 13.04.030(1)(e)(v) strictly against the State and in Mr. Meredieth’s favor. However, the rule of lenity applies only

when a statute is ambiguous. State v. Roberts, 117 Wn.2d 576, 817 P.2d 855 (1991). For all the reasons stated above, the statute is not ambiguous.

Defense counsel was not ineffective for failing to object to the automatic decline prior to trial in adult court.

As Mr. Meredieth argues in his brief, the standard of ineffective assistance of counsel required that he prove that his attorney's representation fell below an objective standard of reasonableness under prevailing professional norms and that he was prejudiced by that deficient performance. State v. Early, 70 Wn. App. 452, 853 P.2d 964 (1993). In this case, it is more difficult to make an argument that counsel's performance fell below a prevailing norm when both the prosecuting attorney's office, as well as at least two judges (09/14/06 RP, pg. 19), also failed to note the change in the automatic decline statute. The easier question is whether the outcome would have been different absent the error. It would not. The results applying the amended statute are the same as the results reached in Mr. Meredieth's case. There was no ineffective assistance of counsel.

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D. CONCLUSION.

The trial court in this matter applied a statute which had been amended shortly before Mr. Meredieth was charged with the offenses resulting in his conviction in adult court. However, even had the court applied the amended statute, the results would have been the same. There was no error in hearing his case in adult court, and his counsel was not ineffective.

The State respectfully requests that this court affirm the convictions.

Respectfully submitted this 18<sup>th</sup> of July, 2007.

  
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Carol La Verne, WSBA# 19229  
Attorney for Respondent

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DIVISION II

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STATE OF WASHINGTON  
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DEPUTY

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STATE OF WASHINGTON,  
Respondent,  
vs.  
ZACHARY H. MEREDIETH,  
Appellant.

CERTIFICATE OF MAILING

STATE OF WASHINGTON )  
) ss.  
COUNTY OF THURSTON )

I, Jamie Keserich, hereby state under penalty of perjury, that I am over the age of 18 years and competent to be a witness in the above-entitled cause, that on the 18th day of July, 2007, I caused to be mailed to the Appellant's Attorney Thomas E. Doyle, a copy of Respondent's Brief, by depositing same in the United States mail at Olympia, Washington, addressed as follows:

THOMAS E. DOYLE  
ATTORNEY AT LAW  
PO BOX 510  
HANSVILLE, WA 98340-0510

I hereby swear under penalty of perjury under the laws of the State of Washington, that the above is true and correct.

Signed this 18<sup>th</sup> day of July, 2007, at Olympia, Washington.

Jamie Keserich  
Jamie Keserich  
Legal Assistant