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In the Court of Appeals Division III
Washington State
By _____

NO. 230414

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Respondent,

vs.

DANIEL ALFRED POSEY, JR.

Appellant.

RESPONDENT'S SUPPLEMENTAL BRIEF REGARDING 2005 LEGISLATIVE AMENDMENT TO RCW 13.04.030

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A. ISSUE PRESENTED

Whether the legislative amendment to RCW 13.04.030(e)(v)(E)(II) is applicable to this appeal when the effective date is not until after the date of oral argument?

B. ANSWER TO ISSUES PRESENTED

The legislative amendment is not effective as to this appeal since the legislature did not explicitly make the legislation retroactive, they did not indicate that there was an emergency and thereby make the legislation immediately effective, and the appellant has since turned eighteen years of age.

C. ARGUMENT

It seems clear that the terms "remaining charges" and "disposition" refer to nonenumerated offenses that are charged with enumerated offenses, but that don't automatically require transfer to adult criminal court jurisdiction, but for the automatic transfer of enumerated offense. See *In re Boot*, 130 Wn.2d 553, 563-65, 925 P.2d 964 (1996).

The right to be tried in a juvenile court is not constitutional and the right attaches only if a court is given statutory discretion to assign juvenile or adult court jurisdiction. *In re Boot*, 130 Wn.2d at 570-71; *State v. Dixon*, 114 Wn.2d 857, 792 P.2d 137 (1990); *State v. Sharon*, 33 Wn.

App. 491, 494-95, 655 P.2d 1193 (1982), *aff'd*, 100 Wn.2d 230, 668 P.2d 584 (1983).

"Whenever we are faced with a question of statutory interpretation we look to the plain meaning of the words used in the statute. A nontechnical statutory term may be given its dictionary meaning. *State v. Olson*, 47 Wn. App. 514, 516-17, 735 P.2d 1362 (1987). Furthermore, statutes should be construed to effect their purpose and unlikely, absurd or strained consequences should be avoided. *State v. Stannard*, 109 Wn.2d 29, 742 P.2d 1244 (1987)." *State v. Fjermestad*, 114 Wn.2d 828, 835, 791 P.2d 897 (1990).

"Generally speaking, newly enacted statutes or newly adopted rules operate prospectively. *State v. Ladiges*, 63 Wn.2d 230, 386 P.2d 416 (1963); *McDowell v. Burke*, 57 Wn.2d 794, 359 P.2d 1037 (1961). In this case, the amendment is not scheduled to be effective until July, 24, 2005, nearly a month after oral argument. The statute does not explicitly state that it is retroactive. However, when a statute or rule not explicitly made retroactive is remedial in nature, it can operate retrospectively. A statute or rule is remedial when it relates to practice, procedure or remedies and does not affect a substantive or vested right." *Yellam v. Woerner*, 77 Wn.2d 604, 608, 464 P.2d 947 (1970).

The problem that arises with retroactive application at this point is that the juvenile court has lost jurisdiction over the appellant since he has turned eighteen (18) years of age and the juvenile court has not extended juvenile court jurisdiction over the appellant pursuant to RCW 13.40.300. "Our Supreme Court strictly construes jurisdiction. This jurisdiction ends when a youth becomes 18, unless, prior to that birthday, jurisdiction has been extended pursuant to law." *State v. Bushnell*, 38 Wn. App. 809, 811, 690 P.2d 601 (1984).

The legislature recognized that the juvenile court could lose when they passed since they also adding RCW 13.40.300(1)(d), which states: "(1) . . . A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and hearlth services beyond the juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday: . . . (d) While proceedings are pending in a case in which jurisdiction has been transferred to the adult court pursuant to RCW 13.04.030, the juvenile turns eighteen years of age and is subsequently found not guilty of the charge for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense, and an automatic extension is necessary to impose the disposition as required by RCW 13.04.030(1)(e)(v)(E)." The appellant has turned eighteen years of

age long before the legislature even when into session this year. The juvenile court has long since lost jurisdiction over the appellant.

The House Bill Report in SHB 2061 (attached as Appendix A), states that ". . . in a recent Washington Court of Appeals case, *State v. Manro*, the court found the juvenile automatic transfer of jurisdiction statute requires that if a person is found not guilty of the charge that was the basis of the automatic transfer, but is found guilty of a second count that was not an automatic transfer charge, or if the person were found guilty of a lesser included offense, then the case would not be sent to juvenile court for disposition. Instead, the adult court would retain jurisdiction regardless of whether the offense for which the juvenile was convicted was one requiring automatic transfer. . . We want to provide clarifying information to the court to send these cases back to juvenile court."

Retroactive application of this "clarification" of the statute would give the legislature the ability to overrule the court. As the court in *Johnson v. Morris*, 87 Wn.2d 922, 925-26, 557 P.2d 1299 (1976), ". . . the existing law *as interpreted by this court*, was that juvenile court jurisdiction was coterminous with minority. If the legislature desired to change the existing law, to extend jurisdiction to age 21, it must enact legislation providing a specific exception to the age of majority statute,

which would necessarily be an amendment to the juvenile law. Petitioner cites no authority for the proposition that the legislature is empowered to retroactively "clarify" an existing statute, when that clarification contravenes the construction placed upon that statute by this court. Such a proposition is disturbing in that it would effectively be giving license to the legislature to overrule this court, raising separation of powers problems." n3

> n3 *See United States v. Gilmore*, 75 U.S. (8 Wall.) 330, 19 L. Ed. 396 (1869); *Peony Park, Inc. v. O'Malley*, 121 F. Supp. 690 (1954), *aff'd*, 223 F.2d 668 (1955); *United States v. Stafoff*, 260 U.S. 477, 67 L. Ed. 358, 43 S. Ct. 197 (1923); 2 C. Sands, *Statutes and Statutory Constructions* § 27.04, at 313, 314 (4th ed. 1973).

Since retroactive application of this legislation would effectively overrule the court's decision in *State v. Manro*, it would stand the separation of powers on its head and make statutory construction of existing laws meaningless. (See also *State v. Dunaway*, 109 Wn.2d 207, 216, 743 P.2d 1237 (1987) (Even a clarifying enactment cannot be applied retrospectively when it contravenes a construction placed on the original statute by the judiciary)).

D. CONCLUSION

Since the appellant has turned eighteen prior to the date of the amendment and the juvenile court has already lost jurisdiction, and

because the amendment is intended to clarify the law as the result of a judicial interpretation of the then existing law, the amendment should be interpreted as prospective only.

Respectfully submitted this 3rd day of June, 2005.

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Attorney for Yakima County

APPENDIX A

HOUSE BILL REPORT
SHB 2061

As Passed Legislature

Title: An act relating to requiring disposition to be held in juvenile court in certain circumstances when a case is automatically transferred to adult court.

Brief Description: Requiring disposition to be held in juvenile court in certain circumstances when a case is automatically transferred to adult court.

Sponsors: By House Committee on Juvenile Justice & Family Law (originally sponsored by Representatives Darneille, Moeller and Dickerson).

Brief History:
Juvenile Justice & Family Law: 2/23/05, 3/1/05 [DPS].

Floor Activity:

Passed House: 3/9/05, 96-0.
Passed Senate: 4/12/05, 42-0.
Passed Legislature.

Brief Summary of Substitute Bill

- Requires a case that was automatically transferred to adult court be returned to juvenile court for disposition if the juvenile is convicted of an offense that was not one requiring automatic transfer of jurisdiction, or if the juvenile was convicted of a lesser included offense.

HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY LAW

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Dickerson, Chair; Moeller, Vice Chair; McDonald, Ranking Minority Member; McCune, Assistant Ranking Minority Member; Crouse, Lovick and Roberts.

Staff: Sonja Hallum (786-7092).

Background:

In general, the juvenile court has exclusive original jurisdiction over juveniles under age 18 who are charged with a criminal offense, traffic infraction, or violation. However, in some situations, the case is transferred to adult court and juvenile court does not have jurisdiction.

A case may be transferred to adult court through an automatic transfer procedure which permits the case to be filed directly into adult court and never enter juvenile court. A case may also be

transferred to adult court if a court holds a decline hearing and decides to decline juvenile court jurisdiction.

A case may be automatically transferred to adult court if the juvenile is 16 or 17 years old and the alleged offense is a:

(1) serious violent offense; or
(2) violent offense and the offender has a criminal history consisting of:
(a) one or more prior serious violent offenses;
(b) two or more prior violent offenses; or
(c) three or more of any combination of the following offenses: any class A felony, any class B felony, vehicular assault, or manslaughter in the second degree, all of which must have been committed after the juvenile's 13th birthday and prosecuted separately.

If a case is automatically transferred to the adult court, and the prosecutor reduces the charge to an offense that does not require automatic transfer of jurisdiction, the case must be returned to juvenile court where all further proceedings will be held.

However, in a recent Washington Court of Appeals case, *State v. Manro*, the court found the juvenile automatic transfer of jurisdiction statute requires that if a person is found not guilty of the charge that was the basis of the automatic transfer, but is found guilty of a second count that was not an automatic transfer charge, or if the person were found guilty of a lesser included offense, then the case would not be sent to juvenile court for disposition. Instead, the adult court would retain jurisdiction regardless of whether the offense for which the juvenile was convicted was one requiring automatic transfer.

The juvenile court loses jurisdiction over a juvenile when the juvenile turns age 18, unless the court extends juvenile court jurisdiction by issuing a written order. In no event may the juvenile court extend jurisdiction over any juvenile offender beyond the juvenile's 21st birthday.

Summary of Substitute Bill:

If a juvenile offender case is transferred to adult court pursuant to the automatic transfer of jurisdiction statute, and the juvenile is then charged with multiple counts in adult court and found not guilty in the adult criminal court of the charge for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense that is not one requiring automatic transfer, the case will be returned to juvenile court for the disposition of the case.

If the juvenile has turned 18 years of age during the adult criminal court proceedings, the juvenile court must enter an order extending juvenile court jurisdiction.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) With the current interpretation of the law the juvenile might be convicted and sentenced in adult court on a charge that wasn't one that originally required transfer. We want to provide clarifying information to the court to send these cases back to juvenile court. The bill clarifies what a lot of people thought was the law. We don't want kids convicted of offenses as adults for crimes that never even required transfer. People were shocked by the court case that interpreted the statute to require this result.

(With concerns) We thought this was the law, but would like an amendment to clarify that the juvenile court can still decline jurisdiction.

Testimony Against: None.

Persons Testifying: (In support) George Yeannakis, Washington Defenders Association; and Martha harden-Cesar, Superior Court Judges.

(With concerns) Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.

5/20/2005 11:52 AM

WASHINGTON STATE LEGISLATURE
Roll Calls on HB 2061

Requiring disposition to be held in juvenile court in certain circumstances when a case is automatically transferred to adult court.

Chamber: HOUSE
2005 Regular Session
Bill No.: SHB 2061
Description: FINAL PASSAGE
Item No.: 6
Transcript No.: 59 Date: 3-9-2005

Yeas: 96 Nays: 0 Absent: 0 Excused: 2

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Blake, Buck, Buri, Campbell, Chandler, Chase, , Clements, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Curtis, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eickmeyer, Ericks, Ericksen, Flannigan, Fromhold, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kilmer, Kirby, Kretz, Kristiansen, Lantz, Linville, Lovick, McCoy, McCune, McDermott, McDonald, Miloscia, Moeller, Morrell, Morris, Murray, Newhouse, Nixon, O'Brien, Orcutt, Ormsby, Pearson, Pettigrew, Priest, Quall, Roberts, Rodne, Santos, Schindler, Schual-Berke, . Sells, Serben, Shabro, Simpson, Skinner, Sommers, Springer, Strow, B. Sullivan, P. Sullivan, Sump, Takko, Talcott, Tom, Upthegrove, Wallace, Walsh, Williams, Wood, Woods, and Mr. Speaker.

Excused: Representatives McIntire and Roach.

Chamber: SENATE
2005 Regular Session
Bill No.: SHB 2061
Description: 3RD READING & FINAL PASSAGE
Item No.: 3
Transcript No.: 93 Date: 4-12-2005

Yeas: 42 Nays: 0 Absent: 0 Excused: 7

Voting yea: Senators Benson, Benton, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Thibaudeau, and Weinstein.

Excused: Senators Fairley, Finkbeiner, Johnson, Mulliken, Oke, Swecker, and Zarelli.