

No. 94973-5

NO. 76205-2-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

TYLER WATKINS,

Appellant.

FILED
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Court of Appeals
Division I
State of Washington

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

APPELLANT'S OPENING BRIEF

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A. INTRODUCTION

Sixteen-year-old Tyler Watkins, who had no criminal history or prior experiences with juvenile court, was charged in adult court with burglary in the first degree when the juvenile court automatically declined to take jurisdiction over his case. Tyler was entitled to a hearing before juvenile court jurisdiction was declined, and because he was deprived of the ability to present evidence of why he should remain in juvenile court, he was deprived of due process of law.

B. ASSIGNMENT OF ERROR

Tyler was deprived of his due process rights when juvenile court jurisdiction was automatically declined and no hearing was held to determine whether juvenile court should retain jurisdiction.

C. ISSUES PERTAINING TO THE ASSIGNMENT OF ERROR

Due process requires an individualized assessment of amenability to juvenile court jurisdiction before juvenile court jurisdiction may be declined and the charged youth may be prosecuted in adult superior court. Juvenile court jurisdiction is automatically declined when juveniles of a certain age are charged with particular offenses. Automatic declination offends due process. Was sixteen-year-old Tyler denied his due process rights where he was prosecuted in

adult court without a court first making an individualized assessment of whether juvenile court jurisdiction should be declined?

D. STATEMENT OF THE CASE

The prosecution charged sixteen-year-old Tyler with burglary in the first degree. CP 116. Because of the nature of the charges and his age, RCW 13.04.030 mandated automatic transfer of the case from juvenile to adult court without the hearing otherwise held to determine whether such transfer is appropriate. 10/20/16 RP 7.

Tyler objected to the automatic transfer and asked the trial court to find that a hearing was required before the juvenile court could decline jurisdiction. 10/20/16 RP 6; CP 10. The government opposed this motion and the court denied Tyler's request. 10/20/16 RP 7; CP 88.

Tyler waived his right to a jury trial and stipulated that the police reports could be used to find him guilty. 11/10/16 RP 2. The trial court found Tyler guilty as charged. 11/10/16 RP 5. He was sentenced to 16 months in prison, along with 18 months of community supervision. 11/17/16 RP 6. Because of Tyler's age and maturity, he was housed with juveniles until he was sent to prison. 11/17/16 RP 5. It was also likely he would serve his time in a juvenile facility once the Department of Corrections had classified him. 11/17/16 RP 4.

E. ARGUMENT

The United States Supreme Court explained that “there is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons” as the question of when a youth may be transferred to adult court. *Kent v. United States*, 383 U.S. 541, 554, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966). The liberty interests at stake in the transfer of a youth from juvenile to adult criminal court are “critically important,” and they call for heightened procedural protections not provided under Washington’s automatic decline statute. *Id.* at 553-54.

In *State v. Houston-Sconiers*, Washington’s Supreme Court recognized that *In Re Boot*, which upholds the constitutionality of automatic decline in Washington, stands in “tension” with United States Supreme Court precedent. *State v. Houston-Sconiers*, ___ Wn.2d ___, 391 P.3d 409, 422 (2017) (referencing *In Re Boot*, 130 Wn.2d 553, 925 P.2d 964 (1996)). Indeed, automatic decline is inconsistent with due process. Because of the vital importance of the liberty interests at stake when juvenile court jurisdiction is declined, due process requires a hearing prior to transfer. At this hearing, the court

must conduct an individualized assessment of the youth's amenability to juvenile court jurisdiction. Because no such hearing was conducted here, Tyler's conviction should be reversed and his case remanded for a hearing.

1. It is no longer acceptable for courts to automatically treat youth like adults.

Procedures for adults do not automatically satisfy the constitutional requirements for youth. In *J.D.B. v. North Carolina*, the Supreme Court recognized that, because juveniles lack the maturity and experience of an adult, procedures put in place for adults must instead adapt to the attributes of youth. 564 U.S. 261, 272-74, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011). *J.D.B.* acknowledges a fact the non-judicial world had long understood: children do not have the education, judgment, and experience of adults and are not simply "miniature adults." *Id.* at 274. Likewise, the Washington Supreme Court has recognized the attributes of youth are legally significant and justify maintaining the longstanding rehabilitative purpose of juvenile court. *State v. S.J.C.*, 183 Wn.2d 408, 434, 352 P.3d 749 (2015).

Youth is now clearly recognized as a mitigating factor for culpability, based on the same legal principles relevant to a due process analysis. *Roper v. Simmons* established that because juveniles have

lessened culpability they are less deserving of the most severe punishments. 543 U.S. 551, 569, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). In *Graham v. Florida*, the Supreme Court held a life sentence could not be imposed without the creation of a procedure which would provide a meaningful opportunity for release. 560 U.S. 48, 75, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010). These decisions incorporate both common sense – what “any parent knows” – and recent developments in brain science supporting the lesser culpability of youth. *Miller v. Alabama*, 567 U.S. 460, ___, 132 S. Ct. 2455, 2464, 183 L. Ed. 2d 407 (2012). The courts have made abundantly clear that the law can no longer simply assume adult sentences apply to youth; to the contrary, long adult sentences like those at issue here are presumptively invalid for youth unless “irreparable corruption” is proven. *Montgomery v. Louisiana*, __ U.S. __, 136 S. Ct. 718, 736, 193 L. Ed. 2d 599 (2016).

Likewise, Washington courts have recognized that because “children are different,” courts must take a defendant’s youthfulness into account and have absolute discretion to depart below otherwise applicable sentence ranges and sentencing enhancements when sentencing juveniles in adult court, regardless of how the juvenile got there. *State v. Houston-Sconiers*, 391 P.3d at 413.

Even when a young adult is convicted of a crime, the Washington Supreme Court has recognized that it must consider the person's lesser ability to control emotions, identify consequences and make reasoned decisions about actions, while at the same time having greater capacity for rehabilitation. *State v. O'Dell*, 183 Wn.2d 680, 692-93, 358 P.3d 359 (2015). Where these attributes are identified, a sentencing court must at least consider whether a sentence below the standard range is warranted for the young adult. *Id.*

Other courts have also found mandatory transfer rules unconstitutional. The Ohio Supreme Court recently found that mandatory transfer rules violated their state constitutional due process provisions, holding that all children, regardless of age, must have individual consideration of whether they should remain in juvenile court. *State v. Aalim*, ___ N.E.3d ___, 2015-0677, 2016 WL 7449237, at *9 (Ohio Dec. 22, 2016). New York has also just raised the age for when youth remain in the juvenile system, recognizing the benefits of expanding the role of juvenile courts. New York State, *Governor*

*Cuomo Signs Legislation Raising the Age of Criminal Responsibility to 18-Years-Old in New York (April 10, 2017).*¹

There are good reasons for this trend. Youth who remain in juvenile court are more likely to be rehabilitated. Those who are prosecuted in the adult system are thirty-four percent more likely to recidivate and with more violent offenses. Ziedenberg, J., *You're An Adult Now, Youth in the Criminal Justice System*, U.S. Dep't of Justice, National Institute of Corrections, 4 (2011).² Youth who are sentenced to adult facilities are also thirty-six times more likely to commit suicide and to be victims of physical and emotional abuse, including sexual assault. Campaign for Youth Justice, *The Impact of Mandatory Transfer Rules*, 1 (2016).³ It is counterproductive to transfer most youth to adult court. They are unable to access necessary services, are likely to be abused by adult prisoners, and are more likely to recidivate. Ziedenberg, at 4.

Without holding a hearing, juvenile court jurisdiction should not be declined. Because of the increased likelihood of rehabilitation within

¹ <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-raising-age-criminal-responsibility-18-years-old-new-york>

² <http://static.nicic.gov/Library/025555.pdf>

³ http://campaignforyouthjustice.org/images/factsheets/Mandatory_Transfer_Fact_Sheet_FINAL.pdf.

the juvenile system, courts should hold a hearing to determine amenability before declining a child to adult court. It is only by conducting an individualized assessment of whether a child should be transferred to adult court that due process can be satisfied. *See Kent*, 383 U.S. at 546; *Miller*, 132 S. Ct. at 2475.

2. Due process requires a hearing before juvenile jurisdiction may be denied to a youth charged with a crime.

Due process requires a hearing before juvenile court jurisdiction is declined for a youth charged with a crime. “[T]he Due Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures.” *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985). At a minimum, compliance with due process and fundamental fairness requires the court to identify the private interest affected by the official action, the risk of erroneous deprivation, the probable value of additional safeguards and, finally, the State’s interest. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). To satisfy this due process requirement, courts must conduct an inquiry into the youth’s needs, amenability to treatment, and the underlying

facts to determine whether decline is appropriate. *Kent*, 383 U.S. at 546; *Miller*, 132 S. Ct. at 2475; *see also In Re Gault*, 387 U.S. 1, 31, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

In *Kent*, the United States Supreme Court held that the transfer of a youth from juvenile court to adult criminal court imposes a significant deprivation of liberty and warrants substantial due process protection. *Kent*, 383 U.S. at 554. Juvenile court offers “special rights and immunities” to youth they lose upon transfer to the adult system. *Id.* at 556. For many youth, decline can mean the difference between confinement until the age of twenty-one and the harshest sentences imposed upon adults. *Kent*, 383 U.S. at 557. In light of those circumstances, the Court found it “clear beyond dispute that the waiver of jurisdiction is a ‘critically important’ action determining vitally important statutory rights of the juvenile,” and thus it must “satisfy the basic requirements of due process and fairness.” *Id.* at 553, 556.

3. Automatic decline fails to adequately protect the significant interests of juveniles charged with crimes.

For a youth like Tyler, the most important question is which court will hear the case. *State v. R.G.D.*, 108 N.J. 1, 4–5, 527 A.2d 834 (1987). Transfer of a juvenile to adult court is “the single most serious act that the juvenile court can perform.” *State in Interest of N.H.*, 226

N.J. 242, 252, 141 A.3d 1178, 1184 (2016) (quoting Hahn, P., *The Juvenile Offender and the Law*, 180 (3d ed.1984)). There is a “fundamental difference between juvenile courts and adult courts—unlike wholly punitive adult courts, juvenile courts remain ... rehabilitative.” *State v. Saenz*, 175 Wn.2d 167, 173, 283 P.3d 1094 (2012). Our Supreme Court has many times recognized the importance of this distinction. *State v. Rice*, 98 Wn.2d 384, 393, 655 P.2d 1145 (1982).

The Supreme Court has also recognized the important benefits a juvenile receives by remaining in juvenile court. *State v. Maynard*, 183 Wn.2d 253, 259, 351 P.3d 159 (2015). While the clearest difference between adult and juvenile court is the length of time a youth will serve if convicted of a crime, many other differences also exist. *See State v. Chavez*, 163 Wn.2d 262, 271, 180 P.3d 1250 (2008). Youth may seek a deferred disposition for eligible offenses. RCW 13.40.127. Most youth who remain in juvenile court are entitled to have their records sealed. RCW 13.50.260 (4); JuCR 7.12 (c)-(d). Legal financial obligations are mostly eliminated. RCW 7.68.035. Many evidence-based programs exist which seek to rehabilitate the youth and reduce recidivism. *See, e.g.,* Washington State Department of Social and Health Services,

*Juvenile Justice Evidence Based Programs: Evidence Based Programs
– Research Based Programs – Promising Practices* (2016).⁴

4. *In re Boot* is no longer good law, as it violates due process rights established by both the United States and Washington State Supreme Court.

Washington’s courts have also long recognized the important benefits of juvenile court and applied due process principles to youth. *See Maynard*, 183 Wn.2d at 259 (citing *State v. Dixon*, 114 Wn.2d 857, 860, 792 P.2d 137 (1990)). Even prior to the United States Supreme Court ruling in *Kent* and *Gault* that juvenile offenders were entitled to fundamental due process, Washington’s juvenile courts employed most of the required practices. *S.J.C.*, 183 Wn.2d at 424; *see also* Const. art. 1, § 3. Washington’s courts “have built a constitutional wall around juvenile justice; and while the dimensions of this wall have changed, its structural integrity has not.” *S.J.C.*, 183 Wn.2d at 417.

Despite the substantial due process required by *Kent* and recognized by the courts, the Washington Supreme Court held automatic decline constitutional in *Boot*, 130 Wn.2d at 557-58. The court relied upon *Stanford v. Kentucky* to justify automatic decline,

⁴ <https://www.dshs.wa.gov/ra/juvenile-rehabilitation/juvenile-justice-evidence-based-programs>.

arguing that since the Eight Amendment did not preclude the death penalty for sixteen and seventeen-year-old defendants, it did not require hearings for youth of the same age who were automatically declined to adult court. *Boot*, 130 Wn.2d at 571 (citing *Stanford v. Kentucky*, 492 U.S. 361, 109 S. Ct. 2969, 106 L. Ed. 2d 306 (1989)).

Stanford has, of course, been abrogated by *Roper*. 543 U.S. at 574. Since *Roper*, the United States Supreme Court has consistently made clear that youth who are charged with crimes must be treated differently than adults. *Graham*, 560 U.S. 48; *Miller*, 132 S. Ct. 2455; *Montgomery*, 136 S. Ct. 718. These cases have overruled almost all of the cases relied upon to justify automatic decline, demonstrating that both the law and newer scientific information no longer support transferring youth to adult court without a hearing.

Likewise, Washington's Supreme Court has recognized the special status juveniles have in the criminal justice system. Most recently, the court recognized in *Houston-Sconiers* that "children are different." 391 P.3d at 413. The recognition led to the court to hold that sentencing courts must have absolute discretion in sentencing juveniles who have been declined to adult court. *Id.*

Houston-Sconiers is consistent with other recent opinions where the Washington Supreme Court has examined youthfulness. In *O'Dell*, the court held that a sentencing court may consider a defendant's youth as a mitigating factor justifying an exceptional sentence below the sentencing guidelines of the Sentencing Reform Act, even when the youth is over eighteen. 183 Wn.2d at 688-89. Likewise, in *Maynard*, the Washington Supreme Court required the prosecutor to reoffer a plea proposal only available to juveniles, even though juvenile court jurisdiction had lapsed before *Maynard* had attempted to take advantage of the offer. 183 Wn.2d at 264. No such disposition would have otherwise been available in adult superior court. *Id.*

While the Supreme Court did not reach the issue of whether automatic decline was constitutional in *Houston-Sconiers*, the court recognized that the cases on which the constitutionality of automatic decline was premised were no longer good law. 391 P.3d at 422. The court acknowledged that the holding in *Boot* "stands in tension" with United States Supreme Court holdings in *Roper*, *Graham*, and *Miller*. *Houston-Sconiers*, 391 P.3d at 422. As *Stanford* has been abrogated, there is no longer a basis to find automatic decline is still constitutional. *Boot* is no longer good law.

5. Tyler is likely to have remained in juvenile court if a decline hearing had been held.

Had the court held a hearing, it is likely Tyler would have remained in juvenile court. Since no hearing was held regarding Tyler's amenability to taking advantage of the resources available to a juvenile, there are clear factors which would have weighed in his favor.

In determining whether to decline jurisdiction, the juvenile court considers (1) the seriousness of the alleged offense and whether the protection of the community requires waiver; (2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner; (3) whether the alleged offense was against persons or against property; (4) the prosecutive merit of the complaint; (5) the desirability of trial and disposition of the entire offense in one court when the juvenile's accomplices in the alleged offense are adults; (6) the juvenile's sophistication and maturity as determined by consideration of his or her home, environmental situation, emotional attitude, and pattern of living; (7) the juvenile's record and previous history; and (8) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile by the use of procedures, services, and facilities available in the juvenile court. *Kent*, 383 U.S. at 566-67; *State v. Williams*, 75 Wn.2d 604, 606-07, 453 P.2d

418 (1969); *see also State v. Furman*, 122 Wn.2d 440, 447, 858 P.2d 1092 (1993); *State v. Holland*, 98 Wn.2d 507, 515 n. 2, 656 P.2d 1056 (1983).

a. Seriousness of the alleged offense.

While all offenses subject to automatic decline are serious, the facts of the particular crime here make it less so. Tyler was accused of entering a house where he stole firearms. CP 116. Firearms were stolen from a house, but there do not appear to be any allegations they were ever used to commit other crimes. CP 113. No one was home when the burglary took place. CP 53. There was no evidence anyone was hurt or threatened. CP 53. The firearms appear to have been stolen and then stored at Tyler's house. CP 113-14. It is appropriate to factor in the seriousness of this crime, but to recognize the mitigating facts as well.

b. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.

This appears to have been a crime of opportunity committed by Tyler and his younger brother. It appears they came to the victim's home looking for an animal that had escaped. CP 111. There was no evidence in the police reports to suggest whether this was in fact true, or a ruse. The actual crime took place when there were no persons in

the home, as the home's occupant was at work when the break-in occurred. CP 53.

c. Whether the alleged offense was against persons or against property.

While burglary in the first degree is defined as a crime against persons, the facts of this case make clear this was a property offense. CP 53; RCW 9A.52.020(2); RCW 9.94A.411. No persons were in the house when it was burglarized and no persons were put into danger by the break-in. CP 53. The factor that makes this crime a burglary in the first degree is not related to any acts against a person, but the fact that firearms were stolen. CP 116; RCW 9A.52.020.

d. The prosecutive merit of the complaint.

Tyler stipulated to the police reports, making it impossible to evaluate the testimony had there been any. 11/10/16 RP 5. However, there do not appear to be any deficiencies in the government's ability to prove its case.

e. The desirability of trial and disposition of the entire offense in one court.

Tyler's brother was also prosecuted for this offense. CP 114. Because he was fourteen, Tyler's brother was prosecuted in juvenile

court. CP 72. This factor weighs in favor of retaining Tyler's case in juvenile court.

f. The juvenile's sophistication and maturity as determined by consideration of his or her home, environmental situation, emotional attitude, and pattern of living.

Because the court did not conduct a hearing, Tyler did not have an opportunity to present evidence of his lack of sophistication and his immaturity. The disposition was agreed to by the parties and it is clear the parties understood Tyler was still a youth. 11/17/16 RP 3. Both the prosecution and the defender hoped he would serve his sentence in a juvenile facility, suggesting he did not have the maturity to be housed with adult offenders. 11/17/16 RP 4. Even while he was waiting for transport, the prosecutor had agreed it was not appropriate for him to be in the adult jail. 11/17/16 RP 5.

Tyler acts like an adolescent who was still dependent upon his family. CP 105. Tyler had never been charged with a crime previously and had no history of working with the juvenile court to demonstrate his maturity and sophistication. CP 105. This factor also weighs in Tyler's favor.

g. Tyler's criminal history.

Tyler had no prior history and had never been given the opportunity to take advantage of the services provided to a youth through the juvenile courts. CP 105. This factor also weighs in Tyler's favor.

h. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile.

Tyler received a sentence of 16 months incarceration, followed by community custody. CP 9. Had he remained in juvenile court, he could have been under control of the juvenile court until his twenty first birthday. RCW 13.04.030. Given his age at the time of his conviction, there was no advantage to prosecuting him as an adult with respect to removing him from the community.

By keeping Tyler in juvenile court, the likelihood Tyler will commit a future crime is also reduced. Youth who are automatically declined have a higher rate of recidivism than those who are not. Washington Institution for Public Policy, *The Effectiveness of Declining Juvenile Court Jurisdiction of Youth*, 6 (2013). The findings of the Washington Institute for Public Policy are consistent with other studies regarding the likelihood a juvenile sent to adult court is likely to

reoffend. See, Drake, E., *The Effectiveness of Declining Juvenile Court Jurisdiction of Youthful Offenders* (2013); Fagan, J., Kupchick, A., & Liberman, A. (2007), *Be Careful What You Wish For: Legal Sanctions and Public Safety Among Adolescent Offender in Juvenile and Criminal Court*, Columbia Law School, (2007). In fact, the very act of sending a juvenile to adult court without a hearing may increase their likelihood to reoffend. Given that no one thought Tyler was mature enough to be housed with adults, this factor should be scored in Tyler's favor.

6. Tyler's conviction should be reversed and the trial court should be ordered to hold a decline hearing.

Tyler's matter should have been prosecuted in juvenile court rather than adult court. Many of the factors that would justify a juvenile court to retain jurisdiction weigh in Tyler's favor, even with the minimal record one would expect to have been created where no decline hearing was ever conducted and where the sentence recommendation to the court was agreed to after Tyler stipulated to the trial.

For all juveniles, including Tyler, due process requires a hearing before juvenile court jurisdiction is declined. The liberty interests at stake for Tyler are "critically important" and call for heightened procedural protections not provided to youth who are not provided a

hearing before juvenile court declines to take jurisdiction over their case. *Kent*, 383 U.S. at 553-54.

Boot is no longer good law. Its underpinnings have been overturned and it stands not only in “tension” with United States Supreme Court precedence, but in direct contradiction to the requirement that children are different and must be accorded individualized assessment of their amenability to juvenile court before they are declined to adult court. *Houston-Sconiers*, 391 P.3d at 422; *Miller*, 132 S. Ct. at 2475.

F. CONCLUSION

Automatic decline of juvenile court jurisdiction is inconsistent with due process. Due process requires a hearing prior to a juvenile court declining jurisdiction. Because Tyler was deprived of his due process rights, his conviction should be reversed and his matter remanded to juvenile court, where a hearing may be conducted.

DATED this 25 day of April 2017.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Stearns', with a long horizontal flourish extending to the right.

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 76205-2-I
)	
TYLER WATKINS,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 25TH DAY OF APRIL, 2017, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON, THIS 25TH DAY OF APRIL, 2017.



X _____

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