

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.

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

APPELLANT'S REPLY BRIEF

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ARGUMENT IN REPLY

[T]here 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. *Kent v. United States*, 383 U.S. 541, 554, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966).

Because of the vital importance of the liberty interests at stake when juvenile court jurisdiction is declined, due process requires a hearing before transfer to adult court can take place.¹ Denying Tyler Watkins this fundamental right deprives him of due process and requires a reversal of his conviction.

1. The United States Supreme Court’s recognition that children must be afforded special protections is not based solely on the Eighth Amendment, as the prosecutor suggests.

The prosecutor argues this Court should not rely on the Supreme Court’s consistent holdings that children must be afforded greater protections than adults because the Supreme Court’s holdings are limited to the Eighth Amendment. Brief of Respondent at 3. Neither the

¹ In a footnote, the government argues this Court should not use the term “decline.” Brief of Respondent at 3. While there are many terms used by other states to describe their decline procedures, no compelling reason exists for using a different term here. Washington’s court has always used this term and continues to do so. *See State v. Houston-Sconiers*, 188 Wn.2d 1, 12, 391 P.3d 409 (2017); *State v. Salavea*, 151 Wn.2d 133, 137, 86 P.3d 125 (2004). To describe decline otherwise only creates unnecessary confusion.

United States Supreme Court nor Washington’s Supreme Court have, however, imposed such a limit. The prosecution’s radical suggestion to the contrary is inconsistent with historical and developing jurisprudence.

The idea that children are entitled to special protections from the courts is not new. The protections for children are longstanding and extend well beyond criminal law. Contracts entered into by children are “voidable.” E. Allan Farnsworth, *Farnsworth on Contracts* § 4.4, p. 379 and n. 1 (2nd ed. 1990). Children can own property but are considered incapable of property management. D. Kramer, *Legal Rights of Children* § 8.1, p. 663 (rev.2nd ed. 2005); J. Kent, *Commentaries on American Law* *78–*79, *90 (G. Comstock ed., 11th ed. 1867). Almost every state prohibits children from voting, jury duty, or marrying without parental consent. *Roper v. Simmons*, 543 U.S. 551, 596, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005).

These protections have become the hallmark of modern juvenile law. In the last decade, the United States Supreme Court issued a series of decisions addressing the rights of children when they are accused of crimes. *Roper*, 543 U.S. 551; *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed.2d 825 (2010); *J.D.B. v. North Carolina*, 564 U.S.

261, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011); *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012); *Montgomery v. Louisiana*, 577 U.S. ____, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016).

These cases have consistently held that children are entitled to protections not afforded to adults.

These protections have not been limited to the Eighth Amendment, as the government suggests. Brief of Respondent at 5-6. In *J.D.B. v. North Carolina*, a case the government does not cite, the United States Supreme Court held juveniles are entitled to special protections when they are interrogated by the police. 564 U.S. at 272-74. Like all other cases the United States Supreme Court has issued in the last decade, *J.D.B.* recognizes juveniles lack the maturity and experience of an adult and that procedures put in place for adults must be adapted to the attributes of youth. 564 U.S. at 272-74. Like its other jurisprudence, *J.D.B.* acknowledges that age is “more than a chronological fact” and that children “generally are less mature and responsible than adults.” 564 U.S. at 727 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982)). It is the “common nature of juveniles” that requires courts to adapt procedures that are otherwise constitutional to the unique characteristics of youth.

J.D.B., 564 U.S. at 272 (citing *Graham*, 560 U.S. at 68). These unique characteristics entitle youth to protections not afforded to adults.

J.D.B., 564 U.S. at 272-74.

Likewise, Washington’s courts have not limited the protections juveniles are entitled to when they are prosecuted by the government to the Eighth Amendment. In *State v. S.J.C.*, Washington’s Supreme Court held that “the mind of a juvenile or adolescent is measurably and materially different from the mind of an adult, and juvenile offenders are usually capable of rehabilitation if given the opportunity.” 183 Wn.2d 408, 433, 352 P.3d 749 (2015) (citing *Miller*, 567 U.S. at 471-72 & n. 5; Ashley Nellis, *Addressing the Collateral Consequences of Convictions for Young Offenders*, 35 *The Champion* 20, 24 (2011)). In holding juveniles were entitled to greater sealing rights than adults, our Supreme Court relied on “empirical data, common sense and evolving standards of justice.” *S.J.C.*, 183 Wn.2d at 428 (citing as example, *Miller*, 567 U.S. at 471-72; *Graham*, 560 U.S. at 82; *Roper*, 543 U.S. at 578.) *S.J.C.* recognizes that 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.

Washington also extended the protections of youth to young adult offenders who are no longer juveniles, which is also well beyond the Eighth Amendment. In *State v. O'Dell*, our Supreme Court held a defendant's youthfulness can support an exceptional sentence below the standard range for an adult defendant. 183 Wn.2d 680, 698–99, 358 P.3d 359 (2015). *O'Dell* is not analyzed under the Eighth Amendment, as Mr. O'Dell was an adult when he was sentenced and his sentence was not cruel and unusual. Washington's Supreme Court recognized in *O'Dell* that until full neurological maturity, young people have less ability to control their emotions, clearly identify consequences, and make reasoned decisions. *Id.* at 692. Like *S.J.C.*, Washington's Supreme Court applied the United States Supreme Court jurisprudence to a non-Eighth Amendment case to hold youthful offenders are entitled to have their youthfulness considered at sentencing. *Id.* at 696.

Likewise, in *State v. Houston-Sconiers*, Washington's Supreme Court recognized the constitutional importance of age when it held trial courts must have absolute discretion to depart from sentencing ranges and enhancements when sentencing juveniles in adult court. 188 Wn.2d at 9. While Washington's Supreme Court bases this decision on the Eighth Amendment, the decision also states that criminal procedure

laws must take a defendant's youthfulness into account. *Id.* at 8. Even when addressing the Eighth Amendment, the Washington Supreme Court has not adopted the restrictive approach the prosecution promotes.

2. A historical analysis of juvenile due process rights favors the elimination of automatic decline.

The prosecution argues a juvenile's interest in being tried in juvenile court has not traditionally been considered fundamental. Respondent's Brief at 15. This ignores the centuries of jurisprudence to the contrary, in addition to the clear holdings of Washington's courts that afford additional due process protections to juveniles that are not afforded to adults. *Houston-Sconiers*, 188 Wn.2d at 8; *State v. Maynard*, 183 Wn.2d 253, 259, 351 P.3d 159 (2015); *State v. Dixon*, 114 Wn.2d 857, 860, 792 P.2d 137 (1990). Depriving Tyler of his due process right to a hearing before being declined to adult court requires reversal of his conviction and a new trial.

While juveniles were considered to be miniature adults during the Renaissance, where little consideration was given to their mental capacity or culpability, this is no longer the case. *See* Barry Feld, *Bad Kids: Race and the Transformation of the Juvenile Court*, 17 (1999). By the nineteenth century, juveniles were believed to be fundamentally

different from adults. David S. Tanenhaus, *The Evolution of Transfer out of the Juvenile Court, in The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court* 13, 17 (Jeffrey Fagan & Franklin E. Zimring eds., 2000). Special protections were created for them, including child labor laws, mandatory schooling, and a separate court system.

The original juvenile courts were designed to be substantively and procedurally different from adult courts. *In Re Gault*, 387 U.S. 1, 15, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967). These courts focused on rehabilitation rather than punishment, with the primary goal of helping troubled youth. Kelly Keimig Elsea, *The Juvenile Crime Debate: Rehabilitation, Punishment, or Prevention*, 5 Kan. J.L. & Pub. Pol'y 135, 137 (1995). These courts were largely unmonitored until the twentieth century when the Supreme Court began to grow increasingly concerned with the lack of due process being afforded to juveniles. The Supreme Court issued rules establishing due process rights for juveniles charged with crimes. In *Kent v. United States*, the Supreme Court held that prior to transfer to adult court, a juvenile must be granted a hearing that satisfies due process. 383 U.S. at 554. The next year, the Supreme Court held that a juvenile delinquency proceeding

that may lead to commitment in a state institution “must measure up to the essentials of due process and fair treatment.” *Gault*, 387 U.S. at 30. Scholars argue the United States Supreme Court never intended for juveniles to be deprived of their fundamental right to a hearing before they could be tried as adults. Sally T. Green, *Prosecutorial Waiver into Adult Criminal Court: A Conflict of Interests Violation Amounting to the States’ Legislative Abrogation of Juveniles’ Due Process Rights*, 110 Penn St. L. Rev. 233, 260 (2005).

Like many states, Washington’s automatic decline statute was born out of the misplaced fear engulfing the country that youth were becoming super-predators. Patrick Griffin, *Different from Adults: An Updated Analysis of Juvenile Transfer and Blended Sentencing Laws, With Recommendations for Reform*, Nat’l Ctr. for Juvenile Justice (Nov. 2008).² In enacting Washington’s automatic decline statute, the legislature found “youth violence is increasing at an alarming rate.” Laws of Washington 1st Sp. Sess. Ch. 7, § 1. This fear has been debunked, as no such crime wave ever emerged. Clyde Haberman,

² Available at www.ncjj.org/PDF/MFC/MFC_Transfer_2008.pdf.

When Youth Violence Spurred “Superpredator” Fear, New York Times (April 6, 2014).³

Washington’s automatic decline rules were upheld by Washington’s Supreme Court, relying on the United States Supreme Court’s now abrogated case, *Stanford v. Kentucky*, 492 U.S. 361, 109 S. Ct. 2969, 106 L. Ed. 2d 306 (1989). *In Re Boot*, 130 Wn.2d 553, 571, 925 P.2d 964 (1996). Washington’s Supreme Court has recognized this tension and, while not addressing the constitutionality of the automatic decline procedures, has recognized the deprivation of procedure for juveniles before juvenile court jurisdiction is taken away may no longer be constitutional. *Houston-Sconiers*, 188 Wn.2d at 27, n.11.

Many courts have recognized that the most important question for a youth is whether they will be tried as a juvenile or an adult. *State v. R.G.D.*, 108 N.J. 1, 4–5, 527 A.2d 834 (1987); *State in Interest of N.H.*, 226 N.J. 242, 252, 141 A.3d 1178, 1184 (2016). A historical analysis of the due process rights of juveniles makes it clear children are entitled to special protections not afforded to adults. *Houston-*

³ Available at https://www.nytimes.com/2014/04/07/us/politics/killing-on-bus-recalls-superpredator-threat-of-90s.html?mcubz=0&_r=0.

Sconiars, 188 Wn.2d at 8. Predominant in these fundamental due process rights are those first recognized in *Kent*: no transfer to adult court without a hearing, effective assistance of counsel, and a statement of reasons. *Kent*, 383 U.S. at 554. The failure to provide these basic due process rights to Tyler before he was declined to adult court is a violation of his due process and requires a reversal of his conviction.

3. *In Re Boot* should be recognized as inconsistent with federal and state jurisprudence and can longer be relied on as a justification for automatic decline.

Washington's Supreme Court found automatic decline to be constitutional in *In Re Boot*. 130 Wn.2d at 571. The prosecutor argues *In Re Boot* is still good law. Brief of Respondent at 4-5. This argument ignores the concerns of Washington's Supreme Court in *Houston-Sconiars* and the abrogation of *Stanford* by the United States Supreme Court, which *Boot* relies on to uphold the constitutionality of automatic decline. *Houston-Sconiars*, 188 Wn.2d at 27, n. 11. And while the prosecutor argues the Supreme Court refused to address the constitutionality of automatic decline, the court was instead clear its decision was not intended to foreclose argument on this issue, because the remedy the appellants sought did not require the constitutionality of automatic decline to be addressed. *Id.*; Brief of Respondent at 13.

Stanford, which *Boot* relied on to find automatic decline to be constitutional, is no longer good law. *Roper*, 543 U.S. at 574. *Stanford* held that the Eighth Amendment did not preclude the death penalty for sixteen and seventeen-year old defendants. *Stanford*, 492 U.S. 361, 109 S. Ct. 2969, 106 L. Ed. 2d 306 (1989). *Boot* relies on the analysis in *Stanford* to uphold the constitutionality of automatic decline. *Boot*, 130 Wn.2d at 571. The Supreme Court's decision in *Roper* abrogates *Stanford's* holding. *Roper*, 543 U.S. at 574. *Roper*, like all others following it, made clear youth must be treated differently. *Id.*; see also *Graham*, 560 U.S. 48; *Miller*, 567 U.S. 460; *Montgomery*, 136 S. Ct. 718. Despite the prosecutor's argument to the contrary, almost all of the cases relied on by the court to justify automatic decline in *Boot* have been overruled. Brief of Respondent at 15. With its underpinnings cases abrogated, there is no basis to follow *Boot* and this Court should decline to do so.

This Court should recognize Washington's Supreme Court has consistently held that the differences between juveniles and adults apply to criminal procedure and is not confined to punishment. *Houston-Sconiers*, at 8. This recognition, as argued above, applies to issues having nothing to do with sentencing, like the sealing of juvenile

court history. *S.J.C.*, 183 Wn.2d at 417. The special protections juveniles are entitled to require prosecutors to renew offers, even when they are no longer authorized by law. *Maynard*, 183 Wn.2d at 264. *Houston-Sconiers* makes clear its jurisprudence relies on the Eighth amendment its recognition criminal procedure laws must take a defendant's youthfulness into account. *Id.* at 8. *Boot* cannot be reconciled with these holdings.

Both the United States and Washington's Supreme Court have recognized children are entitled to due process rights not afforded to adults. *Boot* is inconsistent with this jurisprudence and can no longer be reconciled with the opinions of either court. This Court should adopt the analysis of both high courts with regard to the rights of juveniles and not the restrictive approach advocated for by the prosecution. *Boot* is not a barrier to this approach.

4. *Kent v. United States* and *In Re Gault* require juveniles be afforded the right to a hearing before juvenile jurisdiction is declined.

Washington's courts have long held juveniles have due process rights not afforded to adults. *Dixon*, 114 Wn.2d at 860. Even before additional rights were recognized to apply to juveniles in *Kent* and *Gault*, juveniles prosecuted in Washington enjoyed the protections of

fundamental due process. *S.J.C.*, 183 Wn.2d at 424; *see also* Const. art. 1, § 3. These rights, at a minimum, require a hearing before a juvenile may be declined to adult court where the court can make an individual assessment into whether juvenile court should decline jurisdiction. *Kent*, 383 U.S. at 554.

The prosecutor appropriately recognizes that three states have upheld their procedures for decline juvenile jurisdiction. Brief of Respondent at 10-11. But not all courts that have addressed automatic decline have found it to be constitutional. Delaware has long held that automatic decline is unconstitutional under both the Fourteenth Amendment and Delaware's constitution. *Hughes v. State*, 653 A.2d 241, 252 (Del. 1994). Nevada has held its decline procedures to be unconstitutional, because they require a juvenile to admit to a criminal act in order to remain in juvenile court, thereby violating the Fifth Amendment. *In re William M.*, 124 Nev. 1150, 1152, 196 P.3d 456, 457 (2008).

Other states have recently eliminated their automatic decline rules, obviating the need for their courts to address their constitutionality. Missouri now requires mandatory hearings for offenses that would qualify for automatic decline in Washington. Mo.

Rev. Stat. § 211,021 (2013). Delaware codified its court's holding and requires an amenability hearing before a juvenile alleged to have committed a crime may be declined to adult court. Del. Code Ann. Tit. 10 § 1010 (2012). Hawaii will only allow decline after a court determines that the juvenile cannot be treated in an institution designed for children. Haw. Rev. State. Ann. §571-22 (2014).

Kent is the only case the United States Supreme Court has ever heard regarding the transfer of a youth to adult court. *Kent's* requirement that children must be afforded due process that includes a hearing before they are transferred to adult courts can no longer be ignored. The United States Supreme Court never intended for juveniles to be deprived of this fundamental right without a hearing. Green, 110 Penn St. L. Rev. at 260. This Court should find it is no longer acceptable to allow decline youth to adult court without requiring the government to comply with these fundamental due process rights. The failure to do so requires reversal of Tyler's conviction.

A. CONCLUSION

The 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 this matter remanded to juvenile court, where a hearing may be conducted.

DATED this 11th day of September 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
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STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 76205-2-I
)	
TYLER WATKINS,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

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