

IN THE
SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 40 MAP 2022

COMMONWEALTH OF PENNSYLVANIA,
APPELLANT,
v.
NAZEER TAYLOR,
APPELLEE.

REPLY BRIEF FOR APPELLANT

APPEAL FROM THE OPINION OF THE SUPERIOR COURT OF PENNSYLVANIA, AT NO. 856
EDA 2017, DATED JULY 29, 2021, REVERSING THE JUDGMENT OF SENTENCE IMPOSED
BY THE HONORABLE WILLIAM R. CARPENTER AND REMANDING FOR DISMISSAL IN THE
COURT OF COMMON PLEAS OF MONTGOMERY COUNTY AT NO. CP-46-CR-3166-2014.

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SUMMARY OF THE ARGUMENT

Because there is no dispute about defendant's date of birth and the relevant dates are established by the record, there should be no confusion about his age when he committed his crimes, or at any stage of the resulting proceedings. He was 16 years old when he repeatedly raped his foster brother, A.O., and he was charged for this series of rapes when he was 17.

Existing statutory law clearly refutes the Philadelphia public defender's jurisdictional policy gap theory as the controlling statute supersedes the authority on which amicus relies, and this Court should not read repealed limitations back into juvenile legislation, especially where that implication would contradict the plain meaning of an express statutory provision.

Finally, while the Commonwealth suggests a *nunc pro tunc* certification analysis in the court of common pleas based on the closed evidentiary record from the 2014 certification proceeding, this Court has wide-authority to determine the appropriate procedure to validate the General Assembly's grant of unlimited original jurisdiction over all cases where jurisdiction is not vested in another court.

ARGUMENT

I. THERE SHOULD BE NO CONFUSION ABOUT DEFENDANT’S AGE WHEN HE REPEATEDLY RAPED A.O., OR AT ANY STAGE OF THE RESULTING PROCEEDINGS.

Defendant and his amici are either confused about, or attempting to downplay, his age when he repeatedly raped A.O., and throughout the duration of this case. There is no dispute that defendant was born on September 12, 1996. N.T. 4/2/14 at 3. That means he was 15 years and 9 months old when A.O. first moved in with his foster family, including defendant, in July 2012. A.O. was born on August 24, 2000, so he was eleven years old at the time, and is approximately four years younger than defendant. *Id.* at 6. A.O. was a rising 6th grade student at the time, while defendant would have been entering the 10th grade based on his age.

Defendant began sexually assaulting A.O. “a couple of weeks” after the school year started. *Id.* at 11. Therefore, defendant was 16 years old (not 15) when he first began this series of rapes.

Defendant left the home in August, 2013. N.T. 6/20/16 at 104-05. His 17th birthday was a month after that, and A.O. did not reveal the abuse until after a chance encounter that “could have been a couple of months

later.” *Id.* at 106. Accordingly, defendant was 17 years old before any of the rapes he committed as a 16-year-old came to light.

Defendant was arrested in March of 2014, and his certification hearings were in April. He was “17½” years old at the time. N.T. 4/25/14 at 3, 21, 103-04. His trial began in June of 2016, so he was well over 19 when he went to trial in this case, and a jury unanimously determined that he was guilty of this series of rapes and sexual assaults. He was 20 years old when the trial court sentenced him on January 31, 2017, and when he filed his notice of appeal shortly thereafter. He turned 21 on September 12, 2017, during the pendency of his appeal, and filed his appellate brief a month later. In that brief, as a 21-year-old, he raised his self-incrimination challenge for the first time.

In sum, defendant’s present position that he was “certified to stand trial as an adult in criminal court for acts which occurred when [he] was 15-years-old” is inaccurate. *Brief for Appellee* at 2, 35 (again stating “Taylor was 15 when the alleged offenses occurred”). Likewise, his suggestion that “[h]e was 16-years-old[,]” when charged or at the time of his certification hearings is inaccurate. *Id.* at 7. And his amicus, the Juvenile Law Center, *et. al.*, is even more inaccurate when it claims defendant “was charged

when he was just 15.” *Juvenile Law Center Brief* at 24. Defendant repeatedly raped his foster brother, a sixth-grader, when defendant was 16 years old. The abuse stopped, and came to light, after defendant moved out of the home, shortly before his 17th birthday. Thus, he was charged for his series of rapes when he was 17 (not 15). Because there is no dispute about his date of birth and the relevant dates are established by the record, there should be no confusion about defendant’s age when he repeatedly raped A.O., or at any stage of the resulting proceedings.

II. EXISTING STATUTORY LAW CLEARLY REFUTES THE PHILADELPHIA PUBLIC DEFENDER’S JURISDICTIONAL POLICY GAP THEORY.

Defendant’s amicus, the Defender Association of Philadelphia, ultimately argues: “until the legislature provides a mechanism . . . there is simply no court with the power to adjudicate the dispute.” *Defenders’ Brief* at 27. This argument fails because the legislature has already given the courts of common pleas unlimited power to adjudicate disputes where that power is not vested in another court.

Again, 42 Pa.C.S. § 931 plainly and broadly provides: “Except where exclusive original jurisdiction of an action or proceeding is . . . vested in

another court of this Commonwealth, the courts of common pleas shall have unlimited original jurisdiction of all actions and proceedings” *Id.* This broad-sweeping jurisdictional grant originates in Article V, Section 5 of the Pennsylvania Constitution, which establishes:

There shall be one court of common pleas for each judicial district (b) having unlimited original jurisdiction in all cases except as may otherwise be provided by law.

PA. CONST. art. V, § 5.

Thus, the Constitution establishes unlimited original jurisdiction in all cases in the courts of common pleas, and defers to the General Assembly to establish any limitations. Such limitations otherwise do not, and cannot, exist under the plain language of the state constitution. In turn, the only limit the General Assembly saw fit to impose was and is: “Except where exclusive original jurisdiction of an action or proceeding is . . . vested in another court of this Commonwealth[.]” 42 Pa.C.S. § 931. Otherwise, “the courts of common pleas shall have unlimited original jurisdiction of all actions and proceedings” *Id.* This default and catch-all provision of otherwise unlimited original jurisdiction could hardly be clearer.

In an attempt to infuse a lack of clarity where there is none, defendant's amicus espouses a "jurisdictional gap"/"policy gap" theory that ignores the plain and broad-sweeping language of Section 931 to muddy the unambiguous import of its text with provisions of law that were superseded by the express wording of this very section. *See Defender's Brief* at 5, 31. Amicus acknowledges (but attempts to gloss-over) this inconvenient fact by saying:

Of course, many of these provisions have been supplemented or superseded by statute. *See* Judiciary Act of 1976, P.L. 586, No. 142, § 26(b).[] Most, however, have been enacted into law almost verbatim, and carry over the Constitution's structure.

Defenders' Brief at 12 (footnote omitted). This curious concession warrants closer examination.

To be clear, when Article V, Section 5 of the Pennsylvania Constitution was first adopted in 1968, affording the courts of common pleas for each judicial district "unlimited original jurisdiction in all cases except as may otherwise be provided by law[.]" there was a schedule attached that provided effective dates and set certain rules in place "[u]ntil otherwise provided by law[.]" PA. CONST. SCHED. art. 5, § 4. That schedule

included Article 5, Section 4, addressing “The courts of common pleas.” It provided in relevant part:

Until otherwise provided by law, the several courts of common pleas shall exercise the jurisdiction now vested in the present courts of common pleas. The courts of oyer and terminer and general jail delivery, quarter sessions of the peace, and orphans’ courts are abolished and the several courts of common pleas shall also exercise the jurisdiction of these courts. Orphans’ courts in judicial districts having separate orphans’ courts shall become orphans’ court divisions of the courts of common pleas and the court of common pleas in those judicial districts shall exercise the jurisdiction presently exercised by the separate orphans’ courts through their respective orphans’ court division.

PA. CONST. SCHED. art. 5, § 4 (emphasis added).

As defendant’s amicus almost concedes, 42 Pa.C.S. § 931 superseded this sub-section of the schedule, so the schedule is no longer controlling law or a statement of the intent of the General Assembly on this point, but rather Section 931 is the controlling law and current expression of the legislature’s intent. And, rather than enact this schedule sub-section “almost verbatim” as amicus suggests, Section 931 provides a sharp departure from the schedule, similar to its departure from the now

repealed “exclusive jurisdiction” language of 11 P.S. § 244. Amicus ignores both of these legislative departures.

The General Assembly was obviously well aware of the language in the schedule saying orphans’ court divisions would exercise the jurisdiction previously exercised by the separate orphans’ courts, but the General Assembly omitted that language from Section 931, and did not include anything similar to replace it or that would otherwise arguably limit the manner in which a court of common pleas could exercise its jurisdiction. Separately, the General Assembly provided 42 Pa.C.S. § 951 and 42 Pa.C.S. § 952, addressing divisions of the courts of common pleas, but neither of those sections adopted the language in the schedule saying the court shall exercise jurisdiction in certain cases through a legislatively specified division. Rather, the General Assembly provided that the “full jurisdiction” vested in a court of common pleas is the jurisdiction “of the whole court,” and “each division of the court is vested with the full jurisdiction of the whole court, but the business of the court *may be* allocated among the divisions of the court by or pursuant to general rules.” 42 Pa.C.S. § 952 (emphasis added). Again, Section 931 says the common

pleas court has unlimited original jurisdiction unless jurisdiction is vested in another court.

Because it can find no support for its jurisdictional policy gap theory in the statute that literally defines the scope of original jurisdiction in the courts of common pleas, amicus turns to the Juvenile Act in an attempt to manufacture that support. Amicus concedes, as it must, that “the Juvenile Act, adopted in 1976, 42 Pa.C.S. § 6301, does not contain . . . express jurisdictional provisions[.]” *Defender’s Brief* at 14. Again, there was an express jurisdictional provision in prior juvenile court legislation, but the General Assembly repealed it. Thus, because it would benefit criminal defendants generally, amicus asks this court to read the repealed jurisdictional limit back into juvenile legislation “by necessary implication.” *Id.*

While the General Assembly has firmly established the “unlimited” original jurisdiction of the courts of common pleas in no uncertain terms, for absolutely “all cases” where jurisdiction is not vested in another court, what amicus asks this Court to do is: (A) imply a jurisdictional policy gap into legislation that does not express any such gap; (B) blame the General Assembly for the existence of that gap despite contrary legislation; and (C)

walk away from the then judicially-created problem, leaving the court that is afforded unlimited jurisdiction with no jurisdiction, all in the name of not creating policy. This Court should not place implications on the General Assembly that flatly contradict express legislation. Rather, the Court should simply apply the plain meaning of Section 931 as the General Assembly intended and affirm that:

Except where exclusive original jurisdiction of an action or proceeding is by statute or by general rule . . . vested in another court of this Commonwealth, the courts of common pleas shall have unlimited original jurisdiction of all actions and proceedings[.]

42 Pa.C.S. § 931. “When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S. § 1921(b).

Ultimately there should not be a question of whether the court of common pleas has original jurisdiction in this case, but merely an administrative/logistical question as to how the court should exercise its unlimited jurisdiction in this and similar cases to best align with prevailing legislative policy without divesting the court of the jurisdiction the General Assembly intended.

III. THE DEFENDER MISSTATES OR MISAPPREHENDS THE COMMONWEALTH'S POSITION ON THE APPROPRIATE PROCEDURE FOR RESOLVING THIS CASE ON REMAND.

Lastly, defendant's amicus attempts to reframe the Commonwealth's argument as requesting an automatic age-out transfer of cases from juvenile divisions to criminal, and attempts to limit the remedy requested to a criminal division holding a certification hearing under the Juvenile Act for someone to whom the Act cannot apply. The Commonwealth certainly seeks no automatic age-out transfer for juvenile cases, but rather, limited to the context of a certified defendant reaching age 21 during the appellate process, this Court's recognition that the courts of common pleas have jurisdiction to address certification errors on remand where remand is otherwise appropriate. And while the Commonwealth sees no issue with a criminal division holding a certification hearing *nunc pro tunc* to determine whether a prior certification order was appropriate under the provisions of the Juvenile Act, the Commonwealth's suggested remedy is not so limited, and is not a new certification hearing.

This Court should recognize that defendant's certification proceeding consisted of three parts: (1) the evidentiary record, (2) the certifying court's analysis; and (3) the certification order. On remand, the evidentiary record

can be redacted if and as needed to eliminate references to defendant's refusal to admit wrongdoing, and the certifying court's analysis would be disregarded altogether. A common pleas judge could then conduct an independent analysis to determine whether the 2014 certification order is supported by what remains of the evidentiary record.

In Montgomery County, and perhaps in many counties, juvenile division judges wear multiple hats, as they preside over juvenile matters as well as criminal division cases. Thus, a juvenile division judge would be fully-equipped to reevaluate the 2014 certification, and make a *nunc pro tunc* decision as to whether the 2014 certification order must be vacated, or whether it should remain in place based on the evidentiary record, particularly defendant's failure to meet his burden of proof after the Commonwealth established a *prima facie* case for certification.

The Commonwealth's argument is not meant to limit this Court's options in determining the appropriate remedy on remand, but to outline what seems to be, in this case, the most appropriate and efficient means of validating the General Assembly's decision to vest unlimited jurisdiction in the courts of common pleas over all cases where jurisdiction is not vested

elsewhere. Ultimately, this Court has the constitutional power and authority:

to prescribe general rules governing practice, procedure and the conduct of all courts . . . [so long as] such rules are consistent with [the Pennsylvania] Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court

PA. CONST. art. V, § 10.

CONCLUSION

For the above-stated reasons, and those in the Commonwealth's initial brief, the Commonwealth respectfully requests remand to the unlimited original jurisdiction of the Court of Common Pleas of Montgomery County to conduct a proper certification analysis in the first instance based on a properly redacted closed record. Alternatively, the Commonwealth requests remand to the Superior Court for harmless error analysis in the first instance.

RESPECTFULLY SUBMITTED:

/s/ Todd N. Barnes

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NAZEER TAYLOR	:	
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CERTIFICATE OF COMPLIANCE

I, Todd N. Barnes, certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

/s/ TODD N. BARNES

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