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NO. 94973-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TYLER WATKINS,

Petitioner.

**AMICUS BRIEF OF WASHINGTON ASSOCIATION
OF PROSECUTING ATTORNEYS
(WAPA)**

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A. IDENTITY AND INTEREST OF AMICUS

The Washington Association of Prosecuting Attorneys (“WAPA”) represents the elected prosecuting attorneys of Washington State who are responsible by law for the prosecution of juveniles and adults charged with felonies and misdemeanors under the statutes of this state. WAPA is interested in cases such as this wherein this Court is asked to redefine the contours of juvenile court jurisdiction and overturn its own precedent.

B. ISSUES

Does the Due Process Clause of the federal constitution forbid state legislatures from placing jurisdiction in adult court for certain violent offenses committed by 16- and 17 year-olds?

C. FACTS

Watkins stole multiple firearms in a burglary. He was charged and convicted in adult court for burglary in the first degree. He appealed that conviction, arguing that the federal constitution prevents the Washington legislature from vesting jurisdiction over certain juvenile offenses in adult court. The appeal was transferred to this Court pursuant to RAP 4.4. The parties have adequately set forth the salient facts in their respective briefs.

Watkins argued below that the rationales for restricting the death penalty and life-without-parole sentences for juveniles also forbid trying a 16- or 17-year-old in adult court without a prior judicial determination that adult court jurisdiction is appropriate. Appellant’s Opening Brief, at 4-11. The State responded that Eighth Amendment jurisprudence does not control because it does not dictate due process analysis regarding jurisdiction. Brief of Respondent, at 3-12. The State also argued that conferring adult court jurisdiction did not offend the due process Clause. Brief of Respondent, at 12-19. Amici argue that “children are different in constitutionally relevant ways” such that “special protections [are] required in the justice system” and that Due Process analysis is one such protection. Amici Curiae Brief of Juvenile Law Center and TeamChild In Support of Appellant, Tyler Watkins’ Motion to Transfer Case To Supreme Court (hereinafter, “Brief of Amici”).

This brief will primarily address arguments raised in Watkins’ reply brief and in the brief of Amici in support of review.

D. CHILDREN AND ADULTS ARE UNDOUBTEDLY DIFFERENT, BUT STATE LEGISLATURES MAY DECIDE THAT CERTAIN JUVENILE OFFENSES REQUIRE PROSECUTION IN ADULT COURT

WAPA respectfully asks this Court to reject the arguments of Watkins and Amici Juvenile Law Center and TeamChild. The

Washington Legislature has duly enacted a statutory scheme that allows prosecution of certain violent offenses committed by older juveniles to be conducted entirely in adult court. This statutory framework comports with substantive due process because, under recent Supreme Court decisions, only the most severe sentences—death and mandatory life-without-parole—create a constitutional imperative that require different treatment of juveniles. The reasoning in those decisions confirms rather than undermines this Court’s holding in In re Boot, 130 Wn.2d 553, 925 P.2d 964 (1996).

Similarly, procedural due process is not violated because there remains, as decided in Boot, no constitutional right to be tried in juvenile court. Kent v. United States, 383 U.S. 541, 554, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966), does not demand a judicial determination before a juvenile is prosecuted in adult court.

1. RECENT CHANGES IN EIGHTH AMENDMENT
JURISPRUDENCE DO NOT UNDERCUT THIS
COURT’S SUBSTANTIVE DUE PROCESS HOLDINGS.

The Basic Juvenile Court Act provides that 16- and 17-year-old minors charged with enumerated violent or serious violent offenses be charged in adult court. RCW 13.04.030. This Court previously upheld the constitutionality of the statute. In re Boot, 130 Wn.2d 570-72. Watkins

and amici claim that recent Supreme Court jurisprudence undermines Boot.¹ This argument should be rejected. Recent Supreme Court decisions are consistent with the logic and holding in Boot.

The defendants in Boot argued that RCW 13.04.030 violated substantive due process by taking away “substantive constitutional right to punishment in accordance with one’s culpability, which in turn, depends, in part, on one’s ability to make reasoned adult judgments about the consequences of one’s acts.” Boot, at 571. This Court acknowledged that the Supreme Court had previously said that “less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult.” Boot, at 572 (quoting Thompson v. Oklahoma, 487 U.S. 815, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (1988)). However, this Court also recognized that the Supreme Court enunciated this principle in a capital case, wherein the Court noted that death penalty cases are qualitatively different from other punishments, and that the reasoning of Thompson applied only in that limited context, not in an ordinary case.

¹ They rely on the following cases: Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (the death penalty may not be imposed against juveniles under the Eighth Amendment); Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010) (life-without-parole sentence may not be applied to juvenile convicted of a non-homicide offense); Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012) (mandatory life-without-parole sentence violates the Eighth Amendment); Montgomery v. Louisiana, 577 U.S. ___, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016) (Miller applies retroactively because it prohibited a certain category of punishments as to juveniles).

Watkins and amici argue that, since the Supreme Court has now extended the Thompson-like reasoning to life-without-parole sentences, that reasoning should be applied to *all cases* in which juveniles are tried as adults, regardless of the punishment that will be imposed. The opposite is true. The Supreme Court has restricted application of life-without-parole sentences to juveniles precisely because life sentences are, for purposes of the Eighth Amendment, *very similar* to death sentences in that the sentence leaves no opportunity for reform. Montgomery, 136 S. Ct. at 734 (“Miller ... established that penological justifications for life without parole collapse in light of the distinctive attributes of youth”). But, if death sentences and life-without-parole sentences are similar to each other, they are necessarily *different* from other sentences. Roper, Graham, Miller and Montgomery cannot extend to *all* sentences without destroying the rationale that death and life without parole sentences require special treatment because they are qualitatively different.

It follows that this Court’s logic in Boot is reaffirmed, not undercut, by the Supreme Court’s recent decisions. The unique characteristics of death and life-without-parole sentences demand protections that are not otherwise required. Thus, the holding of Boot can stand with a simple modification: “sixteen and seventeen-year-olds can be tried as adults in noncapital cases [and cases involving life without parole]

without a prior determination of their ability to make judgments about the consequences of their acts.” Boot, at 572.

Watkins has not shown that this is one of the “relatively rare” occurrences where this Court should decline to follow precedent because it is clearly incorrect and harmful. State v. Otton, 185 Wn.2d 673, 678, 374 P.3d 1108 (2016). Since the sentence in this case is neither death nor life without parole, the reasoning of Boot controls.

2. KENT V. UNITED STATES DID NOT CREATE A DUE PROCESS RIGHT TO A JUDICIAL DETERMINATION BEFORE A JUVENILE IS TRIED IN ADULT COURT.

Watkins and amici suggest that the Supreme Court held in Kent v. United States, 383 U.S. 541, 554, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966), that due process requires a judicial determination before a juvenile may be prosecuted in adult court. Appellant’s Reply Brief, at 7 (“...the Supreme Court issued rules establishing due process rights for juveniles charged with crimes”); Brief of Amici, at 18-19. These arguments mischaracterize the Supreme Court’s decision in Kent.

Morris Kent, Jr. was a 16-year-old juvenile arrested after a home invasion rape and robbery. Kent, 383 U.S. at 543. He was interrogated by police and confessed to involvement in similar crimes involving “housebreaking, robbery, and rape.” The interrogation violated District of

Columbia law because his parents were not notified in advance. Kent, at 544, n.1.

Kent was subsequently charged in juvenile court under a District of Columbia law mandating that juvenile courts had “exclusive jurisdiction” over juvenile offenders. Kent, at 543 (citing D.C. Code § 11-907 (1961)). The statute provided that jurisdiction could be transferred after “full investigation” and after compliance with a number of important procedural safeguards. Id. at 546, n.4 and 565-68 (Appendix to Opinion of the Court). The juvenile court indicated an intent to waive jurisdiction, so Kent’s lawyer moved for a “full investigation” under the statute, and for access to Kent’s social history file. Id. at 546. The juvenile court subsequently transferred Kent’s case to adult court in a pro forma order, ignoring the motion of counsel for access to the social history file, failing to contact Kent’s parents, and failing to follow other rudimentary procedural requirements. Id. at 546.

Kent argued to the Supreme Court that his rights were violated in numerous respects from the time of arrest through adjudication. Kent, 383 U.S. at 551-52. The Supreme Court expressed concern about the lower court’s failure to comply with statutory requirements and about the general “justifiability of affording a juvenile less protection than is accorded to

adults suspected of criminal offenses.” Id. at 551.² The Court declined to reach those issues, however, because the Court decided the case solely on the basis of “...the infirmity of the proceedings by which the Juvenile Court waived its otherwise exclusive jurisdiction...” Id. at 552, n.13.

Ultimately, the Court held that the failure to follow the statutory procedures of the Juvenile Court Act, to hold a hearing, to provide counsel, to grant counsel access to Kent’s social history report, and to state reasons for transferring the juvenile to adult court were fatal and reversed the trial court’s order. Kent, at 557-63. The Court noted that its decision was “required by the statute read in the context of constitutional principles relating to due process and the assistance of counsel.” Id. at 557.

This Court has previously held that the holding in Kent “does not necessarily translate into a right to a hearing on juvenile court jurisdiction.” Boot, at 570 (citing Kent and Gault). There is a due process right to a hearing only when a statute grants discretion to a trial court to

² When Kent was decided, courts still treated juvenile adjudications as “rooted in social welfare policy rather than in the corpus juris.” Kent, at 554. Proceedings were considered civil, not criminal, the goal was rehabilitation, the court determined the needs of the child and guided the child, and “the State was *parens patriae* rather than prosecuting attorney and judge.” Id. at 554-55. Thus, numerous rights granted to adults were denied to children. Id. at 555. The Court expressed concern that the underfunded system provided neither procedural protections nor solicitous care, and exposed children to the “worst of both worlds.” Id. at 556. It rejected an invitation to apply adult rights to children. Id. That holding came the following year in In re Gault, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

By contrast, under current Washington law, juveniles charged with a crime in adult court have *all* the due process rights afforded to adults, including the right to a jury trial.

send a juvenile to either adult or juvenile court. Id. This Court also noted that no fewer than five Washington appellate decisions had held that there was no right to be charged in juvenile court. Id. at 571.

The paucity of case law calling into question or striking down state statutes that provide for automatic adult jurisdiction over certain juveniles proves correct this Court's interpretation of Kent. In fact, the Supreme Court has cited to numerous auto-adult jurisdiction statutes in its recent decisions and has made no suggestion, whatsoever, that such statutes are constitutionally infirm. See, e.g., Miller, at 487-88.³

For these reasons, amici and Watkins are simply mistaken that Kent established a due process right to a hearing before a juvenile is tried in adult court.

3. WASHINGTON'S CURRENT SENTENCING LAW
BALANCES THE INTERESTS IDENTIFIED BY THE
SUPREME COURT.

There is an additional reason to reject the arguments of Watkins and amici. The court in Miller noted the conundrum faced by courts when transfer to adult court mandated a life without parole sentence. Because juvenile sentences tend to be short, juvenile verses adult adjudication "presents a choice between extremes: light punishment as a child or

³ See also <http://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx>.

standard sentencing as an adult (here, life without parole).” Miller, at 488.

The Court observed that discretionary sentencing in adult court *would* serve as a sufficient check on sentencing.

[A] judge or jury could choose, rather than a life-without-parole sentence, a lifetime prison term *with* the possibility of parole or a lengthy term of years. It is easy to imagine a judge decided that a minor deserves a (much) harsher sentence than he would receive in juvenile court, while still not thinking life-without-parole appropriate.

Id. at 489 (italics in original).

Washington does not face this difficult “choice between extremes.”

A juvenile prosecuted for a serious offense in adult court faces no mandatory de facto life sentence. State v. Houston-Sconiers, 188 Wn.2d 1, 391 P.3d 409 (2017). And, a juvenile sentenced to a life term in Washington has a meaningful opportunity for release. RCW 9.94A.730.

In these ways, the automatic adult jurisdiction statute, together with other Washington law, avoids the “choice between extremes” conundrum identified by the Supreme Court. Miller, at 489. The legislative purpose to deter violent crime is furthered by the threat of harsher punishment in the adult system, yet judges still have the authority to tailor a sentence to the youth’s culpability. This scheme advances rather than offends due process.

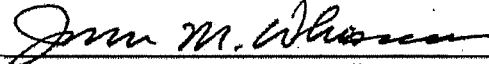
E. CONCLUSION

For these reasons, amici and Watkins cannot show that Boot was clearly incorrect and harmful. Nor can they meet their burden of showing beyond a reasonable doubt that RCW 13.04.030 is unconstitutional.

DATED this 26th day of January, 2018.

Respectfully submitted,

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