

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	No. 29932-5-III
)	
Respondent,)	
)	
v.)	
)	
CHRISTOPHER L. PENCE,)	UNPUBLISHED OPINION
)	
Petitioner.)	
)	

Brown, J. • Christopher L. Pence admitted to consuming alcohol during school hours. He was a minor at the time, but within about three weeks he turned 18. He opted to participate in a diversion program through the juvenile court to avoid minor in possession charges. After Mr. Pence turned 18 years, he entered into a juvenile court diversion agreement, but the record does not show the juvenile court extended its jurisdiction over him under RCW 13.40.300(1)(a). Mr. Pence's mother contacted the diversion program director and asked that her son's participation in the program be terminated. The prosecutor then ended the diversion and filed charges in district court. A jury found Mr. Pence guilty of minor in possession and the superior court affirmed.

Mr. Pence petitioned this court for discretionary review, essentially asking to have

his case returned to the juvenile court for further proceedings. A commissioner of this court granted discretionary review to determine whether Mr. Pence was denied due process of law because notice and an opportunity to be heard were not offered to him prior to the termination of his participation in the juvenile diversion program. We, however, decide the juvenile court lost jurisdiction over Mr. Pence under RCW 13.40.300(1)(a) because no order was entered extending juvenile court jurisdiction over him before he turned 18. Thus, the due process question is moot because we cannot provide any effective relief. Accordingly, we are left with no other recourse than to affirm his conviction.

FACTS

On January 29, 2010, school officials contacted police regarding Mr. Pence drinking alcohol during school hours. Seventeen-year-old Mr. Pence admitted he and some friends consumed alcohol off campus during their lunch break. He turned 18 on February 20. On March 8, Mr. Pence entered into a diversion agreement pursuant to RCW 13.40.080. He wrote a letter of apology and completed a treatment program pursuant to his diversion agreement. Pursuant to the agreement, Mr. Pence agreed to have his license revoked for potentially up to one year.

Concerned about her son's need for a driver's license, Lori Pence, Mr. Pence's mother, contacted Linette Vaughn, the program director. To attempt to avoid a one-year

license suspension, Ms. Pence told Ms. Vaughn to “pull” her son’s diversion agreement. Clerk’s Papers (CP) at 170.

The prosecutor charged Mr. Pence in district court as an adult with minor in possession. Mr. Pence unsuccessfully challenged the district court’s jurisdiction, arguing the matter should be in juvenile court. The case proceeded to a jury trial where the jury found Mr. Pence guilty as charged.

Mr. Pence appealed to the superior court, challenging the district court’s jurisdiction. The superior court affirmed, finding the communication from Ms. Pence amounted to a withdrawal from the diversion program allowing the prosecution to file charges in district court. A commissioner of this court granted discretionary review.

ANALYSIS

The issue is whether this court may afford relief when juvenile court jurisdiction was not extended prior to Mr. Pence’s 18th birthday. Mr. Pence claims he was denied due process of law as set forth in RCW 13.40.080 when the diversion program ended based on his mother’s request and charges were filed in district court. The State responds that the due process requirements of RCW 13.40.080 do not apply in the circumstances of this case because Mr. Pence achieved majority shortly after the date of the offense but before withdrawing from the diversion program.

Review of the district court’s decision on appeal, here, and in the superior court, is

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governed by the standards contained in RALJ 9.1. *State v. Ford*, 110 Wn.2d 827, 829, 755 P.2d 806 (1988). We review the record before the district court, reviewing factual issues for substantial evidence and legal issues de novo. *City of Bellevue v. Jacke*, 96 Wn. App. 209, 211, 978 P.2d 1116 (1999).

RCW 13.40.080(7) provides, “Divertees and potential divertees shall be afforded due process in all contacts with a diversion unit regardless of whether the juveniles are accepted for diversion or whether the diversion program is successfully completed.” Furthermore, “No divertee may be terminated from a diversion program without being given a court hearing.” RCW 13.40.080(7)(c). The “hearing shall be preceded by . . . [w]ritten notice of alleged violations of the conditions of the diversion program.” RCW 13.40.080(7)(c)(i).

If a statute is clear on its face, this court derives its meaning from the statute’s plain language alone. *State v. Watson*, 146 Wn.2d 947, 954, 51 P.3d 66 (2002). Here, RCW 13.40.080(7) is clear; Mr. Pence was entitled to due process. This court held likewise in *State v. Tracy M.*, 43 Wn. App. 888, 892, 720 P.2d 841 (1986), “A juvenile is accorded due process in both trial and diversion proceedings.” Thus, Mr. Pence was entitled to notice and an opportunity to be heard before the diversion program was terminated.

Problematic is that a court order extending the jurisdiction of the juvenile court

must be entered “prior to the juvenile’s eighteenth birthday.” RCW 13.40.300(1). No order was entered in this case. Thus, the juvenile court lost jurisdiction when Mr. Pence turned 18. Since only the adult court had jurisdiction at that point, there is no relief this court can provide for a due process violation that occurred in juvenile court. Mr. Pence’s appeal is, therefore, moot. *See State v. Gentry*, 125 Wn.2d 570, 616, 888 P.2d 1105 (1995) (“A case is moot if a court can no longer provide effective relief.”). Nevertheless, it is noted that Mr. Pence’s potential recourse could have been a motion to dismiss under CrR 8.3(b) to the district court.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Brown, J.

WE CONCUR:

Sweeney, J.

Siddoway, A.C.J.