State v. Posey (Daniel Alfred)
Dissent by Alexander, J.

No. 82957-8

ALEXANDER, J.[*] (dissenting)—I respectfully disagree with the result the majority reaches. I do so because, in my view, the Yakima County Superior Court was without jurisdiction to sentence Daniel Posey. Before addressing the merits of the case, however, it is important to point out that the issue before this court is of academic interest only because Posey has served the sentence that was imposed and the legislature has amended the relevant statute, RCW 13.04.030(1)(e)(v)(E), in a way that will prevent occurrence of events such as we have here in the future.[1]

The primary reason I believe the superior court did not possess sentencing jurisdiction over Posey is because we previously said exactly that in *State v. Posey*, 161 Wn.2d 638, 647, 167 P.3d 560 (2007) (*Posey* I). Specifically, we held that the Court of Appeals erred in holding that the superior court "had proper sentencing jurisdiction over Posey after he was acquitted of first degree assault." *Id*. Thus, we

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[*]Justice Gerry L. Alexander is serving as a justice pro tempore of the Supreme Court pursuant to Washington Constitution article IV, section 2(a).

[1]In 2005, the legislature amended the automatic decline statute, RCW 13.04.030(1)(e)(v)(E), to include subsection (II), which now requires the adult court to transfer jurisdiction back to the juvenile court if the juvenile is acquitted of the automatic-decline offense.

remanded the matter "to juvenile court for further proceedings." *Id*. at 649. Without overruling our decision in *Posey* I or indicating that the rationale for our decision was incorrect, the majority here concludes that the superior court did, in fact, have proper sentencing jurisdiction. In reaching this decision, the majority strains to fit a square peg into a round hole.

Although the juvenile court is a division of the superior court, "only the juvenile division of the superior court has the power to hear and determine certain juvenile matters." *In re Pers. Restraint of Dalluge*, 152 Wn.2d 772, 779, 100 P.3d 279 (2004) (citing RCW 13.04.030(1)). The authority of the juvenile court derives from article IV, section 6 of the Washington Constitution, which grants the superior court "original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court." When it enacted RCW 13.04.030(1)(e), the legislature was exercising its constitutional authority to vest juvenile courts with "exclusive original jurisdiction over all proceedings . . . [r]elating to juveniles alleged or found to have committed offenses." RCW 13.04.030(1)(e). There are enumerated exceptions to this legislative grant of exclusive original jurisdiction, which we discussed in *Posey* I:

> Because of the legislature's intent to treat juvenile offenders differently from adult offenders and because of the legislature's intent to impose more severe punishment on juveniles who have *committed* certain criminal offenses, the exceptions listed in former RCW 13.04.030 apply narrowly. In fact, the subsequent amendment to former RCW 13.04.030—which requires remand to juvenile court for sentencing juveniles acquitted in adult court of enumerated charges—bolsters the principles set out by the legislature that the more severe punishment should be imposed only on defendants who actually commit an

> enumerated charge. The legislature intended that a juvenile receive treatment and rehabilitation through juvenile disposition, unless the juvenile *commits* an enumerated charge under the statute.

Posey, 161 Wn.2d at 646. Significantly, none of the enumerated exceptions apply here.

The superior court obtains jurisdiction over a juvenile matter when, pursuant to a decline hearing under RCW 13.40.110, the juvenile court transfers jurisdiction to an "adult criminal court." RCW 13.04.030(1)(e)(i). Alternatively, the superior court acquires jurisdiction automatically if the juvenile is 16 or 17 years old and the alleged offense is a serious violent offense. RCW 13.04.030(1)(e)(v)(A). As we indicated in *Posey* I, "once Posey was acquitted of the enumerated charge, [a serious violent offense,] the matter should have been remanded to juvenile court for a decline hearing or sentencing." *Posey*, 161 Wn.2d at 647. Because in the instant case Posey was found not guilty of the charge and no decline hearing had been held, the superior court did not have proper jurisdiction. Thus, our decision in *Posey* I to reverse the sentence imposed by the superior court was consistent with the statutory scheme for the sentencing of juvenile offenders.

Although a juvenile court's jurisdiction may extend beyond a person's 18th birthday in limited circumstances, "[i]n no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday." RCW 13.40.300(3). During the sentencing hearing following remand, the superior court judge, Susan Hahn, correctly determined that under the plain language of RCW 13.40.300(3) the juvenile court no longer had jurisdiction over Posey because

he was now 21 years old. But, as we decided in *Posey* I, the superior court was also without jurisdiction to sentence Posey.

Because the juvenile court no longer had jurisdiction over Posey due to the fact that he had turned 21 years of age, Judge Hahn properly concluded that a decline hearing could not vest the superior court with jurisdiction over him. That is significant, there being no mechanism, other than a decline hearing or automatic decline, by which jurisdiction over a juvenile matter could be transferred from juvenile to adult court. *See* RCW 13.04.030(1)(e); *State v. Knippling*, 166 Wn.2d 93, 100, 206 P.3d 332 (2009). Faced with our decision remanding the matter to the juvenile court of Yakima County, Judge Hahn undoubtedly felt that she had to take some action and she chose to impose a sentence that was consistent with juvenile adjudication standards but did so in her capacity as a superior court judge.[2] While I can fully understand Judge Hahn's quandary, I agree with Posey that under these circumstances there was "simply no authority, constitutional or statutory, permitting the adult Superior Court to enter a disposition in a case where the Juvenile Court had, but subsequently lost, exclusive jurisdiction after a juvenile offender reached the age of 21 years." Pet. for Review at 10. In sum, the superior court did not have jurisdiction to sentence Posey, an adult, for a judgment that was entered when he was a juvenile for offenses that he committed as a

[2]Judge Hahn stated the following during the sentencing hearing: "I think the way to handle this, with no actual prejudice to [Posey] and, really, a distinction without a difference, at this time, is for this Court to forget, for a moment, that it's sitting in Juvenile Court, transform the room and the judge into a Superior Court judge, and sentence Mr. Posey, right now, to a standard range sentence, according to the Juvenile Justice Act that applied at the time." Report of Proceedings at 29-30.

juvenile.

As support for its decision, the majority points to this court's decision in *State v. Werner*, 129 Wn.2d 485, 918 P.2d 916 (1996). It asserts that *Werner* stands for the broad proposition that the legislature "*cannot* deprive the superior courts of constitutional jurisdiction over crimes committed by juveniles." Majority at 11 (citing *Werner*, 129 Wn.2d at 496). The majority reads too much into that opinion. I say this because the decision in *Werner* turned on a narrow question of whether the superior court had jurisdiction to issue a warrant to arrest a juvenile. In deciding that it did, our court correctly indicated that only the juvenile division of the superior court had "the power to hear and determine the case against [the juvenile], and to render judgment against him." *Werner*, 129 Wn.2d at 494. Significantly, we went on to say the issue "is not whether the adult division of the Pierce County Superior Court had the power to hear and determine the charges against [the juvenile]. *It did not*." *Id*. (emphasis added). We then pointed out that the "real issue is whether the adult division had the power to issue a warrant to arrest [the juvenile]." *Id*. With regard to that question, we concluded that "the plenary constitutional and statutory authority of superior court judges under Wash. Const. art. IV, § 6 and RCW 2.20.010, respectively, to issue arrest warrants was not restricted by the legislation creating juvenile courts." *Id*. at 496. Thus, contrary to the majority's assertion, this court's holding in *Werner* that the creation of juvenile courts by statute did not constrain the power of a superior court to issue a warrant for a juvenile's arrest does not undercut Posey's argument. Indeed, it supports

it. I would reverse the Court of Appeals and vacate the disposition order.[3]

[3]A reader of this dissent should not conclude that a holding that the superior court was without jurisdiction to sentence Posey would result in a sentencing windfall for him. The record shows that Posey was confined for more than four years for a conviction that should have resulted in a much shorter sentence of 60-80 weeks confinement in a juvenile facility. Most of Posey's time in confinement was spent at the Washington State Penitentiary at Walla Walla.

AUTHOR:
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WE CONCUR: