IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. DANIEL ALFRED POSEY, JR., Petitioner.	No. 82957-8 En Banc Filed March 22, 2012

J.M. JOHNSON, J.—The question in this case is whether legislation relating to juvenile courts can deprive the superior courts of their constitutional jurisdiction. Article IV, section 6 of the constitution vests in the superior courts' jurisdiction "in all criminal cases amounting to felony. . . ." We hold the legislature does not have the power to alter this constitutional grant of felony jurisdiction. We thus affirm the sentence imposed in this case.

At 16 years of age, Daniel A. Posey Jr. committed two counts of rape

in the second degree. A jury convicted Posey, and the superior court sentenced him as an adult. On direct review, we remanded Posey's case with instructions that a juvenile court sentence him. Prior to the mandate of our decision, Posey turned 21 years old.

On remand, Posey challenged the juvenile court's authority to sentence him. The presiding judge agreed. Subsequently, acting in her role as a superior court judge, the trial court sentenced Posey as an adult but imposed a sentence consistent with the standard juvenile range. Posey appeals his sentence arguing that, by operation of statute, neither the juvenile court nor the superior court had jurisdiction to sentence him for his crimes. We disagree and affirm the Court of Appeals' decision upholding the sentence imposed upon Posey.

Facts and Procedural History

In 2003, 16-year-old Posey was charged in Yakima County Juvenile Court with three counts of second degree rape and one count of first degree assault while armed with a firearm. Because the first degree assault charge was classified as a "'[s]erious violent offense'" under former RCW 9.94A.030(37)(a)(v) (2002), the juvenile court automatically declined

jurisdiction over Posey pursuant to RCW 13.04.030(1)(e)(v)(A) and transferred the case to the Yakima County Superior Court.

The matter proceeded to trial in the Yakima County Superior Court. The jury found Posey guilty of two counts of second degree rape. The jury acquitted Posey on the count of first degree assault and one count of second degree rape. The trial judge sentenced Posey under the adult sentencing guidelines to two concurrent terms of life in prison with a minimum term of 119 months of confinement.

Posey appealed to the Court of Appeals, claiming that the superior court did not have jurisdiction to sentence him as an adult after his acquittal on first degree assault, the charge that led the juvenile court to automatically decline jurisdiction. The Court of Appeals rejected this argument and affirmed Posey's judgment and sentence. *State v. Posey*, 130 Wn. App. 262, 122 P.3d 914 (2005).

Posey thereafter obtained review in this court. We affirmed Posey's convictions but reversed the Court of Appeals. *State v. Posey*, 161 Wn.2d 638, 647, 167 P.3d 560 (2007) (*Posey* I). We remanded the matter "to juvenile court for further proceedings." *Id.* at 649. The mandate for our

opinion issued on October 16, 2007, less than a month after Posey turned 21 years of age.

A few months later, the Yakima County Juvenile Court conducted a sentencing hearing on remand. Yakima Superior Court Judge Susan Hahn presided over the hearing in her capacity as a judge of the Yakima County Juvenile Court. Posey's counsel moved to dismiss "the matter" arguing that the juvenile court was without jurisdiction to sentence him because Posey was now 21 years old. Clerk's Papers at 15. Judge Hahn agreed that the juvenile court no longer had jurisdiction over Posey due to his age but indicated that she would "forget, for a moment," that she was sitting in juvenile court and would "transform the room and the judge into a [s]uperior [c]ourt . . . and sentence [Posey], right now, to a standard range sentence, according to the Juvenile Justice Act." Verbatim Report of Proceedings at 30. Judge Hahn then imposed a juvenile standard range disposition of 60 to 80 weeks. The judge also entered a protection order and sex offender notice of registration requirements.

Posey appealed this sentence to the Court of Appeals. In response, the State filed a motion on the merits. A commissioner at that court granted the

motion and a panel of that court denied Posey's motion to modify. We granted Posey's petition for review.

Analysis

We affirm the Court of Appeals. We hold that the legislature cannot deprive the superior courts of their constitutional jurisdiction over felony offenses. The legislature may designate special sessions of the superior court to adjudicate juvenile cases. However, where a statute prohibits the juvenile session from adjudicating the case, the superior court retains its constitutional jurisdiction over felony offenses.

A. The Constitutional Framework

In adopting Washington Constitution article IV, section 6 the people of this state granted the superior courts original jurisdiction "in all criminal cases amounting to felony" and in several other enumerated types of cases and proceedings. In these enumerated categories where the constitution specifically grants jurisdiction to the superior courts, the legislature cannot restrict the jurisdiction of the superior courts. *See Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 418, 63 P.2d 397 (1936). Even though the legislature cannot restrict the *enumerated* jurisdiction of the superior courts, it

can promulgate laws that govern procedures as to which "sessions" of the superior court will hear certain types of cases. *See* Wash. Const. art. IV, § 5 ("In any county where there shall be more than one superior court judge, there may be as many sessions of the superior court at the same time as there are judges thereof . . . the business of the court shall be so distributed and assigned by law . . . ."); *see also State ex rel. Campbell v. Superior Court*, 34 Wn.2d 771, 775, 210 P.2d 123 (1949).

Article IV, section 6 also grants the superior courts *residual* jurisdiction over nonenumerated cases and proceedings, providing that superior courts "shall *also* have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court . . . ." (Emphasis added.) It is with respect to cases and proceedings that fall within the residual jurisdiction of the superior courts that the legislature can vest exclusive jurisdiction in an alternative forum. For example, by limiting the common law tort claims of injured workers and creating administrative procedures and enhanced remedies under the Industrial Insurance Act, Title 51 RCW, the legislature effectively modified the role of the superior courts over such claims. *See* Laws of 1911,

ch. 74; *see also Lidke v. Brandt*, 21 Wn.2d 137, 139, 150 P.2d 399 (1944); *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 314, 76 P.3d 1183 (2003).

B. Juvenile Court Jurisdiction

The State of Washington's earliest juvenile legislation recognized that the superior courts possessed original jurisdiction over juvenile cases. *See* Laws of 1905, ch. 18, § 2. However, the "sessions" of the superior court handling juvenile cases were designated as the "'Juvenile Court.'" *Id.*, § 3. This same assignment of juvenile cases held true throughout subsequent revisions of the legislation governing juvenile courts and cases. *See*, *e.g.*, Laws of 1913, ch. 160, § 2; Laws of 1937, ch. 65, § 1. Likewise, our case law interpreted the juvenile court legislation as a special "session" of the superior court that the legislature directed to preside over juvenile cases pursuant to article IV, section 5 of the state constitution. *See Campbell*, 34 Wn.2d at 775; *Dillenburg v. Maxwell*, 70 Wn.2d 331, 352, 413 P.2d 940, 422 P.2d 783 (1966).

In 1977, the legislature added the language in RCW 13.04.030, which grants the juvenile courts "exclusive original jurisdiction" over all juvenile

proceedings. Laws of 1977, 1st Ex. Sess., ch. 291, § 4. We interpreted the effect of these changes in *State v. Werner*, 129 Wn.2d 485, 496, 918 P.2d 916 (1996). We held that "under Article IV, § 6, the Legislature *has not* vested jurisdiction exclusively in some court other than the superior court by enacting RCW 13.04.030 because the juvenile court is a division of the superior court, not a separate court." *Id*. at 493 (emphasis added).

Further, we explained that the legislature *could not* divest the superior courts of their criminal jurisdiction over juveniles. *Id*. at 496. We stated:

> The only remaining argument . . . is that the creation of juvenile courts by statute somehow constrained the power of a superior court . . . . That argument fails. This Court has resolutely resisted legislative attempts to restrict its constitutional authority . . . "[T]he courts are not required to recognize a legislative restriction which has the effect of depriving them of a constitutional grant or of one of their inherent powers. *What the legislature has not given, it cannot take away*."

Id. (last alteration in original) (emphasis added) (quoting *Blanchard*, 188 Wash. at 418).

Admittedly, our prior jurisprudence discussing juvenile court jurisdiction is not a model of clarity. *See Dillenburg*, 70 Wn.2d at 353 ("When, then, we spoke of 'surrender of jurisdiction' and 'jurisdiction' in reference to juvenile and superior court proceedings in our original opinion in

this case, we were not accurately using the word 'jurisdiction' in its true juridical and traditional sense."). *Werner*'s own discussion of the "'three jurisdictional elements in every valid judgment'" further confused the issue. *Werner*, 129 Wn.2d at 493 (quoting *In re Marriage of Little*, 96 Wn.2d 183, 197, 634 P.2d 498 (1981)). [1]

Werner distinguished between "'three jurisdictional elements in every valid judgment, namely, jurisdiction of the subject matter, jurisdiction of the person, and the power or authority to render the particular judgment.'" *Id*. (quoting *Little*, 96 Wn.2d at 197 (citing 1 A.C. Freeman, A Treatise of the Law of Judgments § 226 (5th ed. rev. 1925)). The opinion's distinction between "jurisdiction of the subject matter" and "the power or authority to render the particular judgment" rests on an antiquated understanding of subject matter jurisdiction. *Compare* 1 Freeman, *supra*, § 226, *with* Restatement (Second) of Judgments § 11 (1982).[2] It is not even clear that the

[1] In dicta, the *Werner* opinion stated that "[t]he issue, then, is not whether the adult division of the [superior court] had the power to hear and determine the charges against [the juvenile]. It did not." *Werner*, 129 Wn.2d at 494. However, *Werner* also affirmed that the superior court maintained constitutional subject matter jurisdiction over juvenile criminal cases. *Id*. at 493. *Werner*'s distinction between a court's subject matter jurisdiction and its "power to hear and determine" a criminal case is not entirely clear and thus provides limited value as precedent.

[2] *Werner* relied on *Little* for the assertion that every valid judgment contains three jurisdictional elements. *Werner*, 129 Wn.2d at 493 (quoting *Little*, 96 Wn.2d at 197).

precedents relied on by *Werner* recognized such a distinction. *See Little*, 96 Wn.2d at 197 ("We have found no case holding that trial procedural requirements, such as the time for deciding issues, are jurisdictional."). Unfortunately, *Werner* is not our only opinion embracing this antiquated distinction. *See In re Per. Restraint of Dalluge*, 152 Wn.2d 772, 283, 100

Little relied on a legal treatise from the early 20th century to establish this proposition. *Little*, 96 Wn.2d at 197 (citing 1 Freeman, *supra*, § 226). The legal treatise gives illustrative examples of cases invalidating judgments that fail to satisfy all three of the jurisdictional elements. 1 Freeman, *supra*, § 226 n.17.

One example the treatise cites is *Grannis v. Superior Court*, 146 Cal. 245, 79 P. 891 (1905). In *Grannis*, a California statute prohibited courts from entering a final divorce decree until one year after the entry of an interlocutory decree. *Id*. at 247. The California Supreme Court held that a divorce decree that failed to comply with these statutory prerequisites was void. *Id*. at 252. The court reached this conclusion even though the court had subject matter and personal jurisdiction. *Id*. at 247. As *Grannis* illustrates, the third jurisdictional element contemplated by Freeman refers to procedural requirements that a court must follow before entering a valid judgment.

Freeman's jurisdictional analysis is inadequate. Modern treatises do not distinguish three jurisdictional elements. Rather, modern commentators distinguish between mere legal errors and errors affecting a court's subject matter jurisdiction. *See* Restatement (Second) of Judgments § 11.

Failure to comply with Title 13 RCW's procedural provisions does not impact the subject matter jurisdiction of the superior courts. The subject matter jurisdiction of the superior courts over juvenile offenders derives from article IV of the state constitution. *Werner*, 129 Wn.2d at 493; *In re Per. Restraint of Dalluge*, 152 Wn.2d 772, 283, 100 P.3d 279 (2004). The legislature cannot restrict a superior court's constitutional jurisdiction. *Werner*, 129 Wn.2d at 496. Additionally, *Little* itself expressly rejects the view that mere procedural errors strip a superior court of jurisdiction. *See Little*, 96 Wn.2d at 197 ("We have found no case holding that trial procedural requirements, such as the time for deciding issues, are jurisdictional."). For these reasons, we do not adopt the inadequate jurisdictional analysis announced by Freeman.

P.3d 279 (2004).

Our prior opinion discussing Posey's own case also involved an idiosyncratic use of the term "jurisdiction." *See generally Posey* I, 161 Wn.2d 638. Two reasons suggest that *Posey* I used the term "jurisdiction" in an uncharacteristic way. First, a court's jurisdiction *cannot* hinge on the result it reaches. "'Jurisdiction means the power to hear and determine.'" *Werner*, 129 Wn.2d at 493 (quoting *State ex rel. McGlothern v. Superior Court*, 112 Wash. 501, 505, 192 P. 937 (1920)). It is conceptually incoherent to suppose that a court's power to determine a case depends on its determination in the case.[3] Second, we *affirmed* Posey's conviction. *Posey* I, 161 Wn.2d at 649. If the superior court truly lacked jurisdiction to decide Posey's case, his conviction too would have been a nullity. However, we upheld Posey's conviction and remanded for resentencing. *Id*.[4]

The juvenile courts are properly understood, jurisdictionally, as a separate division of the superior courts. *See Campbell*, 34 Wn.2d at 775; *Dillenburg*, 70 Wn.2d at 352-53; *Werner*, 129 Wn.2d at 492; *In re Boot*, 130

[3] We do not however question the unproblematic assertion that a court is competent to determine its own jurisdiction. *See* Restatement (Second) of Judgments § 11.

[4] Our remand for resentencing in the juvenile court was based on the assumption that Posey remained a juvenile. *Posey* I, 161 Wn.2d at 641.

Wn.2d 553, 561 n.4, 925 P.2d 964 (1996). By adopting RCW 13.04.050, the legislature *did not* deprive the superior courts of their original jurisdiction over crimes committed by juveniles. *Werner*, 129 Wn.2d at 493. The legislature *cannot* deprive the superior courts of constitutional jurisdiction over crimes committed by juveniles. *Id*. at 496. Where our precedents contain language at odds with the constitutional powers of the superior courts, the constitution prevails.

C. The Superior Court Retained Jurisdiction To Sentence Posey

A jury convicted Posey of two counts of rape in the second degree. *Posey* I, 161 Wn.2d at 641. Second degree rape is a felony offense. RCW 9A.44.050(2). The Yakima County Superior Court has jurisdiction over felony offenses. Wash. Const. art. IV, § 6. Therefore, the Yakima County Superior Court possessed jurisdiction to sentence Posey.

Posey argues that *no* court had jurisdiction to sentence him. He contends that because the jury found him not guilty of the first degree assault charge, the superior court lacked jurisdiction. As authority for this point, he cites this court's previous opinion in this case. *See Posey* I, 161 Wn.2d at 647. Posey further contends that the juvenile court lacked jurisdiction over

him due to RCW 13.40.300(3), which states that "[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."

This argument fails. The superior court always retains its jurisdiction over felony offenses. This jurisdiction derives directly from the constitution. *See* Wash. Const. art. IV, § 6. The legislature by statute cannot alter the constitutional jurisdiction of the superior courts. *Werner*, 129 Wn.2d at 496.

Posey's argument wrongly assumes that the juvenile court and the superior court are different courts with different jurisdictional requirements. Juvenile courts are not separate and distinct from superior courts. Properly understood, "the superior court, sitting in juvenile court 'session,' grants to prosecuting officials the 'authority to proceed,' in an appropriate case, with the criminal prosecution of a child under 18 years of age." *Dillenburg*, 70 Wn.2d at 353. If a particular judge receives the designation of "'juvenile court judge,'" "the other departments of the superior court in that county do not lose jurisdiction in . . . juvenile court matters." *Campbell*, 34 Wn.2d at 775. "[U]nder Article IV, § 6, the Legislature has not vested jurisdiction exclusively in some court other than the superior court by enacting RCW

13.04.030 because the juvenile court is a division of the superior court, not a separate court." *Werner*, 129 Wn.2d at 493.

Long established precedents from this court recognize that juvenile courts are simply departments (or divisions) of the superior courts. *See Campbell*, 34 Wn.2d at 775; *Dillenburg*, 70 Wn.2d at 352-53; *Werner*, 129 Wn.2d at 492; *Boot*, 130 Wn.2d at 561 n.4. The legislature has acknowledged this. *See* RCW 13.04.021(1) ("The juvenile court shall be a division of the superior court.").

The constitution grants the superior courts original jurisdiction "in all criminal cases amounting to felony . . . ." Wash. Const. art. IV, § 6. The legislature *cannot* rescind this constitutional jurisdiction or vest it exclusively in another court. *Werner*, 129 Wn.2d at 496. Because the superior court's jurisdiction derives from the constitution, and the juvenile session lacked statutory authority to act in Posey's case, the superior court retained jurisdiction to sentence him for his crimes.

Conclusion

The constitution grants jurisdiction to the superior courts "in all cases amounting to felony. . . ." Wash. Const. art. IV, § 6. By later legislation, a

separate division of the superior courts adjudicates cases involving juveniles. Title 13 RCW *does not* alter the constitutional felony jurisdiction of a superior court. *Werner*, 129 Wn.2d at 493. Moreover, the legislature does not have the power to alter the constitutional jurisdiction of a superior court under article IV. *Id*. at 496. Where a person is no longer subject to the procedures governing juvenile adjudications, the superior court retains such constitutional jurisdiction. We affirm the Court of Appeals decision upholding the sentence imposed against Posey by the Yakima County Superior Court.

AUTHOR:

Justice James M. Johnson

WE CONCUR:

Justice Charles W. Johnson

Justice Debra L. Stephens

Justice Tom Chambers

Justice Charles K. Wiggins

Justice Susan Owens

Justice Mary E. Fairhurst