

## Decline Hearing, After Trial

By: Wayne Fricke; Nov 2008

My client was arraigned in Snohomish County Juvenile Court on June 1, 2007, for the crime of Controlled Substances Homicide. There was no request for a declination hearing and the case was retained in juvenile court. A fact finding hearing was set for October 2, 2007, and, since my client was about to turn 18 years old, juvenile jurisdiction was extended through December 31, 2007. Over the objection of my client, her juvenile case was dismissed without prejudice and again over her objection, she was arraigned in adult court on the charge of Manslaughter 1<sup>o</sup> because it was an automatic decline charge. This occurred prior to December 31, 2007.

After the jury did not find her guilty of Manslaughter 1<sup>o</sup>, the case was required to be returned to juvenile court for sentencing on the lesser charge. I was then presented with the issue as to whether a declination hearing should be held upon the transfer of the case to juvenile court.

When the case was initially filed in Juvenile Court, the respondent, state and court had the opportunity to seek to have the matter declined to Superior Court. RCW 13.40.110 allows for the prosecutor, the respondent, or the court on its own motion “before a hearing on the information as it merits” to file a motion requesting that the case be transferred to adult criminal prosecution. RCW 13.40.110(1) The only restriction is that the hearing be held within 14 days. JuCR 8.1(b) provides:

In any case where declining jurisdiction will allow criminal prosecution for a felony, the decline hearing shall be held within 14 days after the information is filed unless the time is extended by the court for a good cause.

As noted above, this case originated in Juvenile Court and the court never waived its exclusive original jurisdiction. In fact, the same prosecuting attorney’s office waived a declination hearing, indicating that it felt that juvenile jurisdiction was appropriate. After the charges were amended, a trial was set, resulting in automatic transfer. When the State failed in its attempt to have my client convicted of the automatic decline charge, the case was returned to juvenile court and the State then sought to have a declination hearing to achieve, through the court’s discretion, what it could not achieve automatically.

The law does allow for this possibility. However, the fundamental goal of the court is to carry out the legislature’s intent. *State v. Alvarez*, 128 Wn.2d 1, 11, 904 P.2d 754 (1995). RCW

13.04.030(e)(v)(E)(II) gives the court the discretion to hold a declination hearing after an adult trial, where there was exclusive jurisdiction in the adult court and the juvenile court had no opportunity to address the relevant factors for either retaining or declining jurisdiction. The legislature essentially codified the Washington Supreme Court's holding in State v Posey, 161 Wn.2d 638, 167 p.3d 560 (2005), which held that a juvenile was entitled to a declination hearing if acquitted of the automatic decline charge in adult court, but convicted of a lesser charge. The final bill report SHB 2061 states:

A case must be transferred to adult court through an automatic transfer procedure that permits the case to be filed directly into adult court and never enter juvenile court. A case may also be transferred to adult court if a court holds a decline hearing and decides to decline juvenile court jurisdiction.

...

If a case is automatically transferred to the adult court, and the prosecutor reduces the charge to an offense that does not require automatic transfer or jurisdiction, the case must be returned to juvenile court, where all further proceedings will be held.

...

If a juvenile offender case is transferred to adult court pursuant to the automatic transfer of jurisdiction statute, and the juvenile is then charged with multiple counts in adult court, the case will be returned to juvenile court for disposition if the juvenile is found guilty in the adult criminal court of the charge for which he or she was transferred or is convicted in the adult criminal court of a lesser included that is not one requiring automatic transfer.

Thus, as intended by the legislature, the opportunity to have a decline hearing is restricted to those cases that "... never enter[ed] juvenile court." There is no provision in the statute or court rules that allows for a second opportunity to have a declination hearing once the juvenile court, the prosecutor's office and the respondent all agreed that the juvenile court should retain jurisdiction.

This is the first time I had been presented with this situation. It was also the first time the court and prosecutor and probation officer were faced with this situation. Notwithstanding the fact that the state had waived declination when the case was initially filed in juvenile court,

the court ordered a declination hearing. Fortunately, after hearing testimony and addressing the issues, the court retained juvenile jurisdiction.

If you are ever faced with this situation in the future, be sure that the juvenile court retains jurisdiction, should the juvenile be found not guilty of the automatic decline charge. While the statute requires the juvenile court to retain some jurisdiction over them, judges and prosecutors will ignore it if not presented to them. In my case, we, fortunately, had extended jurisdiction past the date my client was charged in adult court. The difference in the sentencing range was substantial. Zero to thirty days in juvenile court, as opposed to approximately five years in Superior Court. A substantial difference indeed.

End

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