

Court of Appeals Finds No Constitutional Violations Related to Pre-Raise the Age Prosecution in Criminal Court

Were the constitutional rights of defendants who were prosecuted as adults in criminal court for offenses that they committed at ages 16 or 17, and prior to December 1, 2019, violated because the jurisdictional changes under raise the age were not retroactive? The North Carolina Court of Appeals does not think so. The decision in [State v. Garrett](#), 2021-NCCOA-591, answers this question.

The question in *Garrett*

The *Garrett* decision involves the criminal prosecution of a defendant who was charged with felonious breaking or entering and larceny after breaking or entering at the age of 16. The offense occurred on December 13, 2015, long before the raise the age legislation was passed ([S.L. 2017-57, §§ 16D.4.\(a\)-16D.4.\(tt\)](#)) and took effect (beginning with offenses committed on December 1, 2019). He was charged in October 2016, and his case was set for trial in late 2017. Because he failed to appear, the case did not proceed to trial until 2019, after the raise the age legislation was passed.

Under the law in place at the time of the offense, there was no juvenile jurisdiction for this offense. Juvenile jurisdiction ended once a youth turned 16. Mr. Garrett was charged as an adult in the criminal justice system from the outset of the case. Had he been charged with committing the same offenses after raise the age took effect, his case would have begun as a juvenile matter. It could have become a criminal matter through the process of discretionary transfer, which requires a hearing and a judicial determination that the protection of the public and the needs of the juvenile would be served by transfer of the case to superior court. [G.S. 7B-2203](#). The question in *Garrett* was whether criminal prosecution under the statute in place at the time of the offense violated the defendant's constitutional rights given the raise the age changes.

Trial court granted motion to dismiss

As a criminal matter, this case fell under the jurisdiction of the Mecklenburg County Superior Court. In light of the expansion of juvenile jurisdiction that applied prospectively in cases with the same facts as the facts in *Garrett*, the trial court granted the defendant's motion to dismiss under [G.S. 15A-954\(a\)\(4\)](#). The court found that his constitutional rights had been flagrantly violated and that there was irreparable prejudice to his preparation of the case, leaving no remedy but dismissal. The holding included that the defendant's constitutional rights against cruel and unusual punishment and to equal protection and due process of the laws had all been flagrantly violated. These holdings relied on

- The evolving standards of decency related to the treatment of juveniles in the criminal

justice system as evidenced by the line of U.S. Supreme Court cases that emphasize the reduced culpability, unique vulnerability, and malleability of juveniles (citing *Roper v. Simmons*, 543 U.S. 551 (2005) (prohibiting the juvenile death penalty); *Graham v. Florida*, 560 U.S. 48 (2010) (prohibiting juvenile life without parole in non-homicide offenses); *Miller v. Alabama*, 567 U.S. 460 (2012) (prohibiting mandatory life without parole for any juvenile offense); and *Montgomery v. Louisiana*, 577 U.S. 190 (2016) (applying *Miller* retroactively)).

- The U.S. Supreme Court decision in *Kent v. United States*, 383 U.S. 541 (1966), which required a hearing, assistance of counsel, and a statement of reasons when ordering a discretionary transfer of a case from juvenile to criminal court.
- The failure to find a rational basis for distinguishing between automatic criminal prosecution and punishment at the time of this offense versus a 16-year-old who committed the same offense beginning on December 1, 2019.

The trial court also noted that the defendant was being denied what it called his “right to be treated as a juvenile, which he was at the time he allegedly committed these crimes, with all the attendant benefits granted juveniles to reform their lives.” Slip op. at ¶6 (citing conclusion of law 9. from the trial court’s order).

Court of Appeals finds no Constitutional violations

The Court of Appeals drew completely different conclusions. Not only did the Court of Appeals hold that none of the defendant’s constitutional rights were flagrantly violated, it held that there were no constitutional violations at all.

Equal Protection

The Court of Appeals first held that the Supreme Court of North Carolina expressly rejected the same kind of equal protection claim in *State v. Howren*, 312 N.C. 454 (1984). In that case, the court held that a statutory change regarding the number of breath analyses needed to charge someone with driving while impaired was not an equal protection violation. It treated the same group of people differently before and after the statutory change. The change in the law did not involve different classifications for different groups of people. The Court of Appeals held that the defendant’s right to equal protection was not violated in *Garrett* for the same reason. The variation in jurisdiction for the same offense at the same age did not create classifications between different groups of people. It treated the same group of people differently based on the law in place at the time of the offense.

Cruel and Unusual Punishment

The defendant’s argument that his right against cruel and unusual punishment was violated was based on the Eighth Amendment’s substantive limits on what can be made and punished as criminal. The Court of Appeals held that trying the defendant as an adult did not trigger this Eighth

Amendment protection. It first distinguished the facts of this case from the one instance in which any North Carolina or U.S. Supreme Court decision has applied this principle—to the status of being addicted to drugs or alcohol (*Robinson v. California*, 370 U.S. 660 (1962)). The Court went on to assert that prosecution of juveniles as adults does not involve the *substance* of what is made criminal, but the *procedure* to be followed when a juvenile is alleged to have committed a criminal offense. The Court noted that the crimes themselves are “undoubtedly within the police powers of North Carolina.” Slip op. at ¶ 21. The court therefore held that the defendant had no Eighth Amendment claim.

Due Process

The Court of Appeals responded directly to the trial court’s finding that the defendant had a right to be treated as a juvenile in its analysis of the defendant’s due process claim. The Court noted that it was not clear that the trial court found the existence of a fundamental right or a protected interest. However, it also held that there is no protected interest or fundamental right related to “being tried as a juvenile in criminal cases, as opposed to being tried as an adult. We decline to create such a right under the veil of the penumbra of due process.” Slip. Op. at ¶ 24.

The *Garrett* court went on to note that *Kent* was neither controlling nor instructive, reasoning that *Kent* applies only to the kind of discretionary transfer statutory scheme that existed in that case. In addition, the Supreme Court of North Carolina has held that the list of factors to be considered for transfer, contained in the appendix of the *Kent* decision, are not binding on North Carolina (citing *State v. Green*, 348 N.C. 588 (1998)).

Finally, the Court applied a rational basis test to the claim that the defendant’s right to substantive due process was violated. The Court found that the State has a legitimate interest in updating statutes to reflect current ideals of fairness. In addition, prosecuting and sentencing defendants under the statutory scheme in place at the time of the offense is rationally related to the state’s legitimate interest in “having clear criminal statutes that are enforced consistently with their contemporaneous statutory scheme.” Slip op. at ¶ 29.

Questions remain

The court’s analysis in *Garrett* leaves some unanswered questions. First, how does the line of U.S. Supreme Court decisions, beginning with *Roper v. Simmons* and holding that juveniles should be treated differently than adults under the criminal law, connect with the analysis by the Court of Appeals? While the *Garrett* trial court found that those decisions provide powerful evidence of evolving standards of decency related to the treatment of juveniles under the criminal law, the Court of Appeals did not include consideration of those decisions in its analysis.

Second, at times the Court of Appeals in *Garrett* characterized the juvenile justice system as simply a different forum for criminal prosecution. For example, the court noted that this case was not about

criminalization because “prosecution as an adult does not criminalize a status, but instead punishes criminal behavior by juveniles according to the procedures in place at the time of the offense.” Slip op. at ¶21. This view is somewhat at odds with the holding by the Supreme Court of North Carolina that juvenile proceedings are not criminal prosecutions and that a finding of delinquency is not synonymous with a conviction, see *In re Burrus*, 275 N.C. 517 (1969), and Juvenile Code provisions specifying that an adjudication of delinquency is not a criminal conviction, see [G.S. 7B-2412](#). This leaves open the question of whether the difference between juvenile and criminal prosecution is simply procedural or whether it involves shifting cases from a civil to a criminal realm, resulting in exposure to criminal punishment that is protected by the Eighth Amendment instead of a civil penalty imposed in the context of a juvenile proceeding.

This may not be the last word

The defense in Garrett filed a petition for discretionary review with the Supreme Court of North Carolina. If granted, we may have more to come regarding these constitutional claims.