

**ORAL ARGUMENT — 11/17/98**  
**97-1146**  
**IN THE MATTER OF NJA**

CURRY: This case presents this court with a form of statutory construction which will impact cases that are currently being presented in juvenile courts. The statute has been changed somewhat, but what this court decides today will continue to have an affect on how quickly juvenile cases have to be presented. The State is urging this court not to allow a juvenile court to lose jurisdiction over a juvenile defendant absent a claim of delay or a lack of diligence on the part of the State or the TC.

OWEN: Under your construction of the statute, how long would the juvenile court have jurisdiction once a juvenile turned 18?

CURRY: Assuming allegation or a finding of juvenile delinquency has been made, or other conduct in need of supervision had been made before the juvenile turned 18, it would continue until depending on the disposition made. The only disposition that would allow beyond the age of 18 is the disposition of the Texas Youth Commission.

OWEN: But you could indefinitely have 3-4 years to get the matter to trial in juvenile court after the juvenile turned 18?

CURRY: Theoretically. Probably at that point you would be dealing with a claim of delay or lack of diligence on the part of the State if it took several years.

ABBOTT: There's a speedy trial problem?

CURRY: It would essentially be a speedy trial problem.

OWEN: Well you've already got 1 year built into the statutory scheme as it existed when this case came to trial don't you?

CURRY: Right.

OWEN: And why isn't that enough time under the statute to get the matter to trial - a year?

CURRY: That's what the legislature has provided for. And that appears to be, based upon the clear wording of the language, and there's no inconsistency with the rest of the statute through ch. 51 and on through ch. 54 to ch. 56 for that matter, there is no inconsistency in allowing for that 1 year time period. And again, there is no claim of delay.

OWEN: Why didn't it get to trial within the 1 year period?

CURRY: The record reflects that initially we had attempted to transfer this case to the adult court through a transfer hearing or a waive of jurisdiction hearing, and that failed. There were just other attempts made to deal with the juvenile, and it was decided that the Texas Youth Commission would be the secondary \_\_\_\_\_.

ABBOTT: Is it true that there's no speedy trial complaint by the defendant?

CURRY: No. There has been no allegation of delay or any kind of lack of diligence on the part of the State or the TC.

OWEN: Why didn't you renew under §54.002 a motion to transfer to the CDC, which 54.002 would allow you to do?

CURRY: Not being the trial lawyer, I'm not positive about that. But I suspect it was just felt that it was best that this case remain in juvenile court.

OWEN: If you had done that, this would not have fallen through the cracks, is that correct?

CURRY: That is true. But there are cases in which a prosecutor may justifiably and correctly feel that a transfer to the adult court would not be in the best interest of the child, and that the child should remain in the juvenile court. And that option would not always be available under those circumstances.

HANKINSON: Your interpretation of the section of the statute at issue requires us to focus on when the State makes an allegation or files its pleading or complaint against the juvenile, correct?

CURRY: Yes.

HANKINSON: But the statute is written in terms of focusing on the child as opposed to the allegation isn't it?

CURRY: I think it's focused on both.

HANKINSON: Well the statute reads, that child means a person who is 17 years of age or older and under 18 years of age, correct?

CURRY: Yes.

HANKINSON: And then the additional language is descriptive in terms of who is alleged or

found to have been engaged in delinquent conduct when they are a certain age?

CURRY: I agree with that. If the legislature had intended for things to just \_\_\_\_\_ up at 18 they would have just added a period at the end of 18 in 51.002...

HANKINSON: Not if we're talking about acts that had to occur before the child turned 17, because that's additional descriptive language. In addition to being between 17 and 18 years of age, the alleged wrongful conduct has to have occurred while the child was 17 - additional descriptive language isn't it?

CURRY: Well the conduct always has to occur before the child turns 17. I don't believe that the language is merely descriptive. I think the legislature merely would have ended it with a period and just allowed for no jurisdiction of the juvenile court over an act that occurred before the juvenile...

HANKINSON: How then do you explain how we should read this particular provision of the statute so that our focus is not upon the child, but instead upon the State's action in bringing its complaint against the child?

CURRY: I think it should be viewed on both. We are not contending that the age of the child should be irrelevant. The age of the child is something to be considered. And the juvenile court maintains exclusive original jurisdiction over acts that occurred before the child turned 17.

HANKINSON: It maintains jurisdiction over the child, correct?

CURRY: Yes. Over the child and the allegations assuming a transfer is never made.

HANKINSON: So tell us how you would have us read this statute so that jurisdiction would not terminate when the child turned 18?

CURRY: Well jurisdiction would not terminate when the child turned 18 if a disposition is ultimately to be made to the Texas Youth Commission (TYC). That is the only disposition that is allowed to be continued beyond that.

HANKINSON: I understand that that's another provision of the statute. But we're not looking at that provision of the Family code right now. We're looking specifically at the definition of 'child' since we're trying to decide what the original exclusive jurisdiction of the court over a child is, correct?

CURRY: Yes.

HANKINSON: So how would you have us read 51.02(2)(B), so that we would reach the result

that you're asking us to reach?

CURRY: If the state makes an allegation or a finding of delinquent conduct is made after the child has turned 17, but before the child has turned 18, the juvenile court under §51.04(A) will maintain exclusive original jurisdiction over that child during that time period. If the allegation is made after the child turns 18, or if a finding is made - both are made after the child turns 18, that obviously is going to be too late. But that did not occur in this case. The allegation was made before the child turned 18. After the child turning 17, based upon an act before the child turned 17, that would be sufficient to allow the juvenile court to maintain jurisdiction.

SPECTOR: When was the finding?

CURRY: The finding was made after the child turned 18 ultimately.

SPECTOR: Well you just said if it was made before the child...

CURRY: The statute says 'or'. If there is an allegation made 'or' a finding has been made before. In this case, the allegation was made before.

SPECTOR: But the finding was not until he had turned 18?

CURRY: That's correct. And this would be consistent with the rest of the statutory scheme as set forth in our brief in §54.04(E): The Texas Youth Comm. is required to accept a child properly committed to it by a juvenile court even though the child has maintained the age of 17 years of age or older at the time of the commitment. I know that that's not necessarily determinative of the Act, but it still reveals that there is no inconsistent argument that we're making with the rest of the statutory scheme set forth in the family code.

Also in 54.05(B), which was amended in 1985, allowed for a commitment to the TYC to proceed beyond the age of 18. The respondent and the CA have correctly, I think, or at least justifiably relied upon dicta in the CCA decision of *Ex parte Mercado*, which dealt with a prior version of the statute. In that case, the court held that the juvenile status of a person who seizes to be a child after the age of 18 could no longer be prosecuted - dealt with by the juvenile court. That was certainly dicta in that case. But it is also dealing with a prior version of the statute which was amended in 1985. Section 54.05(B) was amended to allow for commitments to the TYC to proceed beyond that period.

So the State would urge this court not to even follow *Ex parte Mercado*, or certainly recognize that it was dicta and certainly not controlling under the current version of the statute. The State would urge this court to follow the long-line of admittedly not directing on point cases, from several CAs throughout this state that hold, that when a juvenile court's jurisdiction is properly invoked, as it was in this case, ie., we all concede that at some point in time the juvenile

court did properly have jurisdiction over this juvenile defendant, that jurisdiction should continue even though the defendant reaches an age...

OWEN: In everyone of those cases it involved a transfer to the DC did it not?

CURRY: Yes.

OWEN: Which is specifically contemplated by the statute?

CURRY: Right. As I conceded in my brief there are no cases directly on point. Essentially this court is dealing with a case of first impression. This particular situation apparently has never been in front of this court or at least any other CA in a published opinion. But it is going to be of some significance. The current version of the statute does allow for a waiver of an objection to jurisdiction if the defendant does not make that objection at the time of the hearing. But if the defendant does make the objection at the time of the hearing, the TC is going to have to rule in accordance with how this court rules in this case today.

OWEN: How many other cases are there like this?

CURRY: I'm not aware of any.

OWEN: Is this generally a problem if you can't get the juveniles to trial before they are 18?

CURRY: I suspect - I'm only generally aware, and this is probably dancing a little outside of the record, I am generally aware that juvenile crime has been increasing a little bit and that may increase the docket loads. But I'm not specifically aware of any problem so to speak. In a county as large as Harris, you're going to confront problems where it takes a little bit longer to proceed with these cases.

ENOCH: If the juvenile court has jurisdiction - can a felony DC - can an adult court have jurisdiction?

CURRY: No. If they properly have jurisdiction, then the adult court cannot have jurisdiction.

ENOCH: Can an adult court get jurisdiction of a child that is 17 years or younger?

CURRY: No.

ENOCH: If I commit a crime at 17, can the adult court take jurisdiction?

CURRY: They can. In specific situations they can.

ENOCH: But if the statute says, that if the allegation is for a crime committed before they turn 17, then the adult court can take jurisdiction?

CURRY: No. Adult court can take jurisdiction in that situation only if a transfer is made. But a transfer did not occur in this case.

ENOCH: Without the juvenile court transferring the case it cannot occur?

CURRY: Right.

ENOCH: If the allegation is made before the child reaches the age of 18, then an allegation is made that a crime was committed before the child reached 18, can that be brought by indictment in an adult court?

CURRY: It can be. If the case originally fell in juvenile court it can fall in adult district court. The only way that can happen is to a waiver of jurisdiction, the transfer of jurisdiction from the juvenile court to the CDC.

ENOCH: If the juvenile statute is read as you recommend that the court read that statute, does that create a problem with adults being charged with a crime that was committed after they turned 17, but before they were 18 in having to be brought in juvenile court and having to have a transfer...

CURRY: No. The delinquent conduct has to occur before the child turns 17. So there is not going to be a situation where adult conduct is going to be at all dealt with by the statute.

ABBOTT: Let me get a clarification of your take on the other side's argument. If a person who is 16 commits a crime for which they can be charged, is charged in juvenile court when they are 17, and disposition is not achieved until after they turn 18, the argument on the other side is that person walks?

CURRY: As I understand it, yes.

ABBOTT: And so the consequence here is that this person who had been convicted of murder would be set free and would be subject to no further charges?

CURRY: That is correct. That is my understanding of their argument.

BAKER: Is your argument that unless the court holds as you suggest, then the State will have to try in the juvenile court juveniles who fall under this statute before they reach 18?

CURRY: Yes. The acts defining of delinquent conduct will have to be made before the child turns 18.

BAKER: And so that's the sole basis for your real argument to this court, that it's going to force the State to try a juvenile in the juvenile court within 1 year period of time?

CURRY: That is correct.

BAKER: And what's wrong with that policy?

CURRY: There's nothing wrong with it except in this particular case there is no claim of delay.

BAKER: That's not the point. Your opening argument indicated that this case had far reaching implications, not just for this particular child, but for all kinds of cases that fall in this category. So why should we have a policy that permits the State to delay for whatever reason beyond 18 under the scheme of the juvenile code?

CURRY: I think absent a claim of delay or a claim of lack of diligence, that the State should be allowed to continue with a proceeding as long as it is proceeding diligently. I think the juvenile court should be allowed to control its heavy docket flow that it may have especially in a large county, such as Harris county.

HANKINSON: But if the legislature has determined that the jurisdiction of the juvenile court has an outside limit, then the juvenile court lacks the power after that limit is reached to act with respect to that juvenile. It's not a question just of constitutional implication is it?

CURRY: No, I agree with you.

HANKINSON: If the court has no power because the legislature said this is the end of the jurisdiction, then that's an entirely different question?

CURRY: That's true. I fully concede that. I do admit that there is a point in which I lose.

ABBOTT: And the point of which you lose is if charges are not brought, if allegations are not made before they are 18?

CURRY: Yes.

ABBOTT: As long as the allegations are made before they are 18, the court doesn't lose jurisdiction?

CURRY: Yes, that is our position.

GONZALEZ: This child was charged with killing somebody with a baseball bat?

CURRY: Yes, as a party. This isn't the actual individual who wielded the bat, but she was charged as a party under what would be 7.02 of the Texas Penal Code.

GONZALEZ: She is currently in custody?

CURRY: No, I believe she is still out on bond. There is a provision in ch. 56 of the Family Code that allows juvenile court to release a defendant on bond. I believe that's where she still is.

GONZALEZ: She was represented by counsel at the time at the adjudication hearing?

CURRY: Yes.

GONZALEZ: Was there any objection to the fact that the court lacked power or jurisdiction at the time she was before the court?

CURRY: Yes.

GONZALEZ: The defense counsel and the child challenged the court's jurisdiction or power?

CURRY: I'm not sure exactly what point. I was in court when the objection was made, and the court merely disagreed with the counsel's objections.

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RESPONDENT

POLLAND: For clarification purposes, the respondent was adjudicated delinquent in the 315<sup>th</sup> DC of Harris County for aggravated assault. As the court well knows this case was appealed to the 1<sup>st</sup> CA. They reversed and ordered a dismissal of the case with the major theory of their opinion being that the case no longer had jurisdiction, that the juvenile court had lost jurisdiction over NJA because she was over 18 at the time of the hearing. And to clarify Justice Gonzalez's questions, I was the trial attorney. I was the certification attorney of this case, and we objected prior to the trial the actual case that the court had lost jurisdiction and we were overruled by the judge and went forward.

ABBOTT: Why can it not be a fair interpretation of the statute that as long as allegations are made or charges are brought before the person turns 18, that jurisdiction vest in the juvenile



court?

POLLAND: Because that's not what the law states. The law states, the jurisdiction goes to the juvenile court if the conduct occurs prior to age 17. Then the State is given the opportunity to file on that conduct. Between ages 17 and 18 it has to dispose of the case during that time.

ABBOTT: Read the specific language of the statute that says it must be disposed of before 18?

POLLAND: Well the language states in defining jurisdiction of what a child is, that a child is either from the ages of 10 to 17 for the purposes of the juvenile code, or 17 years of age or older, and under 18, who is alleged to or found to have been engaged in delinquent conduct before becoming 17. So the definition of child gives us the guide as to where we need to go and where the jurisdiction lies.

ABBOTT: But it doesn't say anything about disposing of it before they are 18.

POLLAND: It does. Because it says 17 years of age or older and 18 who is alleged to or have found to have been engaged in delinquent conduct prior to becoming 17.

ABBOTT: It says "alleged to."

POLLAND: But you have to have that done within the year is what the statute states.

ABBOTT: And the allegation was made before they turned 18?

POLLAND: The allegation was made prior to reaching age 18 about the delinquent conduct.

ABBOTT: Well I don't understand why that doesn't fit within the description.

POLLAND: Because you have to find it - you have to be over 17 and under 18, which gives you the time period of when you have to make that finding. There is no restriction when you are under 17, because that's not a problem. So the legislature has told us that you have to get these cases disposed of by age 18.

ABBOTT: The problem I'm having is, I can't see the language that you're talking about that says, that disposition has to be achieved before turning 18. Where is that language?

POLLAND: Well that's where we go to *Ex parte Mercado* in their dicta in their opinion.

ABBOTT: Tell me where the language is in the statute that says that disposition has to

be achieved before they turn 18?

POLLAND: It's the interpretation of what the language says. It doesn't say - there is nothing in here that says anything about - the word 'disposition' isn't used. I mean that's clear. But likewise, the legislature could have put in here if they wanted to broaden the time when the child could be brought to trial for delinquent conduct that occurred prior to age 17, they could have said 19, 20, or 21, but they didn't. They chose to say between age 17 and under age 18.

ABBOTT: You concede that the statute does not require on its face the disposition to be achieved before they turn 18?

POLLAND: I would concede that the definition of child for jurisdictional purposes doesn't use the word disposition. But I believe that the statute does say that you have to take care of this matter between that time period.

HANKINSON: What it requires though isn't it that a child be between the ages of 17 and 18 years of age? I mean, that's the descriptive of who the person is for jurisdictional purposes.

POLLAND: I agree.

HANKINSON: And the additional language in the statute as I understand your argument is that it's descriptive in terms of further describing the child and the kind of conduct the child engaged in?

POLLAND: I agree with that.

HANKINSON: So the initial threshold language in the statute is a child between 17 and 18 years of age?

POLLAND: Exactly. I mean, if you don't get past that, then it's over. And that was the argument that we made to the TC, that the court had lost jurisdiction.

HECHT: Why put alleged, or in the statute?

POLLAND: Because the conduct has to be alleged to have occurred before age 17.

HECHT: But it doesn't matter if it is or not. Under your theory if it's not adjudicated that's the determining factor?

POLLAND: I guess there are two requirements. The first requirement is if you're under age 17, you are a juvenile under our law. If you are over 17, you're an adult and your conduct goes to adult court. So the first requirement is, that the conduct you engage in has to have taken place prior

to the age of 17. That's the threshold question. That's why the first definition of child is the way it is. And the second issue then becomes if the conduct occurred prior to 17, we're still going to give the State an opportunity. Because obviously you could have conduct committed at age 16 - 364 days into that year, but you're still a juvenile under the eyes of the law. Obviously, under that scenario the State's not going to be able to get the case tried within a day. So the statute gives the state 1 year to take care of their business in this case. And if there's a problem, and the State has talked about saying maybe they didn't have enough time, the juvenile courts have gotten busier, that's certainly something that could be responded to, not legislated by this court, but responded to by the legislature and the State certainly has that opportunity to ask the legislature to give them more time.

HECHT: Why put alleged, or in the statute?

POLLAND: All I can do is rely on what the CCA said in their opinion in *Ex parte Mercado* where they said, they don't believe the legislature intended to impede adult prosecution of adjudicated delinquent for offenses committed between their 17<sup>th</sup> and 18<sup>th</sup> birthdays. They believe a reasonable interpretation of the statutory provisions is that it's not subject to prosecution as an adult for an offense against the penal code committed prior to 17 save for those specifically accepted by the penal code, §807(B), or in which the juvenile court waives its jurisdiction. Which, by the way, they tried to do in this case. The juvenile court tried to certify NJA as an adult and they were unsuccessful.

ABBOTT: So what that means is that in those situations when certification is unsuccessful, that alone is going to pretty much put this case in the cracks, and frequently allow the person who may have committed the crime to walk?

POLLAND: Well the State had an opportunity to get this case tried prior to that if they were concerned about the age of 18. I think they just ignored her age and didn't realize it was a problem. I would also point out if we go to the logical conclusion of what the State is asking you to do, there is no limit on when people could be tried in juvenile court. We could have people there 22, 23, 24, and 25 if the State could argue...

ABBOTT: The speedy trial would take care of that.

POLLAND: Well I think the best way to look at speedy trial is since we got rid of the statutory Speedy Trial Act at least on the criminal side, how many cases have been reversed on speedy trial grounds? The answer is, not many. And the State could have excuses. Certainly in courts like Harris county, which some of you have familiarity with, with big dockets and things going slowly. But there is a reason why cases don't get reached. But under the State's interpretation absent speedy trial, which is not an issue in this case, juvenile jurisdiction would be continuing on. It could go on for many years and we would...

HECHT: Are there 25 year olds who have been tried?

POLLAND: No.

HECHT: Twenty-two year olds?

POLLAND: Not that I am aware of. And the other thing I want to address, because y'all talked about it, is the argument involving the Texas Youth Commission. The TYC and what the TYC's rules are really have nothing to do with the facts in this case. First, a youth that has to be committed, they have to be properly committed, which means the court had to have jurisdiction to do so. After that, the TYC can make the decision itself whether a child can be held till age 21. So we're not talking about a court ordering it. It's the commission's decision. And trying to craft the Texas youth controls, the controls over juveniles who are adjudicated delinquent and sent there in linking that back to the Texas Family Code, §51.02 child definition, I think is absurd and not within the legislative intent of this case.

The TYC in cases where - well let's take a scenario like this. Let's say that we had a case where we were in that age period of 17 to 18, and we went past 18 like we did in the case of *NJA*. But instead of the judge adjudicating the juvenile delinquent and deciding that the child's going to go to the TYC, he wants to sentence the child to probation, or probation with supervision of the chief juvenile probation officer, which is allowed to be done, which is a less onerous sentence for juveniles. Well under the theories advocated by the State, they would concede that in fact the State had lost jurisdiction over this child, because the commitment was not to the Texas Youth Council, but instead to something else.

OWEN: Could the TC on its own motion, once the child had turned 18, have waived jurisdiction and sent her to the CDC?

POLLAND: No.

OWEN: Why not?

POLLAND: Because the conduct occurred prior to age 17.

OWEN: But doesn't the statute specifically say, once the child is 18 or over, the TC may waive jurisdiction if it finds certain factors?

POLLAND: In this case, we had the certification hearing in front of the judge urged by the State prior to 18.

OWEN: Even after the child turned 18, the statute specifically says in (b) that when the child is 18 or older, the judge may waive jurisdiction if certain factors are met. So your theory that the judge totally loses jurisdiction doesn't wash with that statute does it?

POLLAND: The judge lost jurisdiction in this instance, because otherwise we are going to have the situation where the judge had already heard a certification hearing on the case prior to the child reaching age 18 and found not certified.

OWEN: Can the juvenile court on its own motion waive jurisdiction?

POLLAND: I don't believe they can do so after we've already had a certification hearing and a judge denied certification, a waiving of jurisdiction and sent it to the adult court.

OWEN: Had there not been a hearing, could the juvenile court on its motion...

POLLAND: Under that scenario, that certainly is a possibility, but that's not what happened. I guess the argument could be made then that my client would have been subject to double jeopardy. She already had a certification. The judge already made a finding on the record that stated, not sustain its burden to allow a waiver of jurisdiction, and to allow that to come back and be done again because the child is now over 18 would, I think, violate double jeopardy.

OWEN: But you do concede, that at least in some instances, the juvenile court does have jurisdiction over...

POLLAND: Yes. If we had a scenario where the child's conduct was under 17 nothing happens and we reach the point where the judge wants to go ahead and waive jurisdiction, they can go forward and do that if they haven't tried to do it before. But the problem in this case is that they already had.

OWEN: Even after the child turns 18, the juvenile court has jurisdiction to do that?

POLLAND: Yes, because it's conduct before 17. And that's the problem we get into. Our position in this case is the court lost jurisdiction at age 17. And we believe that it did not change. If the juvenile court's jurisdiction had been properly invoked, the mere fact of her reaching majority according to the State does not cause the court to lose jurisdiction. As I stated, if we take this to a logical conclusion, we've got a real problem, and we could have juvenile jurisdiction going on for significantly longer time. And again that is something if the legislature feels we don't have enough time for the juvenile courts to hear these cases they can address that by changing the time. They can raise the age to 19, 20, etc. But the problems then we run into is TYC jurisdiction ends at age 21 by their own rules.

ENOCH: I understood Judge Owen's question to say that there is a statute in the juvenile code that permits a juvenile court to transfer a child to the adult courts after the child reaches 18. And I understood your answer to say, maybe there's a finding prior to them turning 18?

POLLAND: In this case we already had a hearing...

ENOCH: I'm not concerned about anything that happened in this case about certification. The only thing I'm interested in, is there a provision in the statute that permits the juvenile court to transfer a child who turns 18 to the adult courts? Is there such a provision?

POLLAND: I believe that the courts do not have jurisdiction over the children once they reach 18. I don't think that past 18 they can transfer jurisdiction. I don't think they can do anything.

OWEN: Even though the statute specifically says 18 or over? Subsection (B)?

POLLAND: I will be happy to look at it and address it. According to what we believe the law states, as stated by the legislature, jurisdiction ends at 18. Between 17 and 18, the court has jurisdiction and the State as they did in this case and they do in many cases can request certification of a child as an adult so they can be sent to adult court. Again, the issue in this case is whether they can do it again? The answer is clearly, no, because that would be double jeopardy. They already tried it and it didn't work. The hypothetical situation whether they could do it after they are 18, I do not believe that any child can be certified unless there is a hearing and the rules of the juvenile code are followed, as we are attempting to do in this case and were unsuccessful.

ABBOTT: Convicted juveniles go to TYC?

POLLAND: Not necessarily. That is one of the available options for punishment by a court after a child is adjudicated delinquent. That is the required finding. After they are adjudicated delinquent, the court has a number of choices. The first being, giving them probation, sending them home with their parents. The second is, giving probation and giving custody to the chief juvenile probation officer. In our case, in Harris county. I don't know how it works in smaller counties. And the chief juvenile probation officer then decides an appropriate placement that is controlled by the county either in private or public placement. And the third level of sanctions is adjudication delinquent with custody to the TYC.

HECHT: So you do agree with petitioner that if your reading is correct someone who is not adjudicated before 18 could not be tried for the events of old?

POLLAND: That's right. If they have not adjudicated them by age 18, they cannot try them for the offense because they lose jurisdiction. And part of the problem is that the court's punishment options are not just limited to TYC. The law states that for everything else after age 18, the juvenile court loses all control and jurisdiction. So in juvenile court all probations end at age 18. They don't go past that. And the only punishment then allowed, is TYC. So then we have a scenario, which is certainly possible, if we do what the State wants, we could be trying these kids after age 18, and they don't lose jurisdiction. And the court decides they want to give them probation and can't do it because under the law it no longer has control over those children for the purposes of punishment. So then we create an absurdity, meaning that the only option would be either to acquit or to send them to the TYC, which is I guess something we would probably want to avoid given the reasoning

behind the legislature giving the juvenile judges choices of how to handle our children in juvenile court.

ABBOTT: And since TYC loses jurisdiction at age 21, that would mean that we wouldn't be prosecuting any kids who may be 22 or 25?

POLLAND: Under their theory, you could prosecute, but you couldn't do anything with them. So you could be adjudicated delinquent at that age if there wasn't that constitutional speedy trial issue, but there was nothing the court could do to punish them. And I guess you could argue that that would still have some significance because of the change in our law that now allows juvenile convictions in certain circumstances to be used for enhancement purposes in adult criminal cases. So there still has some value to the State in terms of that if there is future criminal conduct. But in terms of what the punishment would be, what ends at 18 for everything, the TYC ends at age 21. And we believe that *Mercado* is an important decision and we believe that the change in the law in 51.02, definition of the Texas Family Code was not such that what this court had to say should not be ignored. I know that this court has a lot of respect for the CCA.

We believe that under the circumstances there is no need for this court to go legislating and to create new rights for the State to get its cases heard within the time periods that we believe the statutes have laid out. And we believe that the statute is clear that based on the definition of child, that what this is is a jurisdictional case. It's not a technicality. It's not a legal technicality. It's jurisdictional. And the State in this instance had lost jurisdiction, the court had lost jurisdiction to go forward with this case, because the child at the time of the trial had already reached the age of 18. The State did have opportunities to try this case prior to the child being age 18, and why they didn't I can't tell you. I said we don't complain that they didn't give the child a speedy trial. The case had been set for trial a few times before her age of 18, and for whatever reason, it didn't get reached. We appeared each time and we were ready to go to trial.

We believe the jurisdictional limits of this case call for this court to sustain what was found by the CA and find that in the matter of NJA that the State of Texas has lost jurisdiction.

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#### REBUTTAL

CURRY: I have cited on page 8 of my brief, a case from the Amarillo CA, which deals with the situation of an allegation of delay or claim of lack of speedy trial. So that claim can be made. I am not here before this court contending that we're getting ready to prosecute 22 or 25 year olds. That is not why I am here today. This is also not a situation where I think I'm asking this court to legislate. I am asking this court to construe the statute reasonably. And I believe that a reasonable construction of the statute does allow for that 1-year time period as long as the allegation has been made.

HANKINSON: Would you respond to Mr. Polland's argument that the only options available for punishment would be to send the child to TYC after the child turns 18, and therefore, since the power of the court with respect to the punishment aspect is limited after the child turns 18, to read the statute the way you want to puts the TC in a very untenable position?

CURRY: I think if a conduct on the part of a child is serious enough, but perhaps not serious enough to be transferred to adult court, it would still be sufficient to allow the juvenile court to commit someone to the TYC.

HANKINSON: So it's okay for the child to be prosecuted and the TC to only have the option of acquitting or sending the child or committing the child to TYC without any option for probation or any of the other possibilities that would exist before the child turned 18? That's acceptable to you.

CURRY: If the conduct is considered to be serious enough for commitment to the the TYC.

HANKINSON: Well I understand. But if the conduct is not serious enough and the TC is sitting there saying: I can't acquit, but I really hate to send the child to TYC, what do I do?

CURRY: If the conduct is not serious enough for commitment to the TYC, then there is no provision. There is nothing that the juvenile court can do at that point.

HANKINSON: Except to acquit?

CURRY: Except allow for no punishment.

HANKINSON: To make a finding that a child was engaged in delinquent conduct, but not punish the child?

CURRY: Right. There is nothing provided for that I am aware of. The statute does say that all dispositions terminate at that time except for commitment to the TYC. And that was added in 1985 when determinant sentencing was set up. So that would be my response. I am not claiming that this statute is completely of one whole cloth, that there are not holes. I am not aware of any statutory scheme that the legislature creates something where there aren't possibilities, and that's why we have courts to allow for interpretations. But again I am not asking this court to legislate. I am not asking this court to look beyond what the clear, plain meaning of the statute says. And it says that, the juvenile court still maintains jurisdiction under 51.04(a) if the individual is still a child under 51.02(1) either (a) or (b). And it's the state's contention that this juvenile defendant was a child under 51.02(1)(b), because the juvenile court's jurisdiction had been properly invoked, that the allegation had been made before the child turned 18.

There is under any hostility of appeal, no allegation of delay or lack of



diligence on the part of the state or the TC. So in that situation, the juvenile court can and should maintain jurisdiction.

The respondents have relied, lastly, upon some cases in which cases are reversed on appeal after the juvenile turns 18. That is based on this court's decision in *Carillo*, 480 S.W.2d 712.

ABBOTT: Before a juvenile can be sent to TYC, are there certain statutory and prerequisites that must be satisfied concerning the type of conduct that the juvenile engages in? In other words, could a juvenile steal a stick of gum and be sent to TYC, or is it defined that the crime must be one involving robbery or more serious type of crime?

CURRY: I don't believe - I mean certainly appeals can be made with regard to the sufficiency of the abuse and discretion on the part of the TC in committing someone to TYC. But I'm not aware of any specific statutory provision delineating specific offenses that are solely for TYC, and these aren't "serious enough." There is that provision with regard to transfer to adult court certain offenses depending on the age of the child.