

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE,)
)
Plaintiff,)
)
vs.)
)
ARTERRIUS ALLEN, ET AL.)
)
Defendants.)

SECOND DIVISION
NO(s).
305683 (Cortez Sims);
305677 (Montez Murphy)

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VANCE DEAN CLEMM

ORDER DENYING CORTEZ SIMS'S MOTION NO. 8

This matter is before the Court on the motion of the Defendant Cortez Sims,¹ by and through counsel, to dismiss Count 3 of the presentment and any allegation in Counts 1 and 2 regarding predicate acts predating his attaining the age of majority (referred to herein as the "Allen charges"). For the reasons given herein, the Court respectfully denies the motion to dismiss, as well as the request for the alternative relief of holding a transfer hearing.

FACTUAL BACKGROUND

Although the parties did not present proof at the hearing on this motion, the facts are essentially uncontested. For purposes of this motion, Mr. Sims alleges that because his birthday was on May 2, 1997, he would have been between sixteen and seventeen at the time the murder alleged to have been committed in Count 3 of the Allen charges occurred. This crime is alleged to have been committed on January 20, 2014.

Given that he was not yet eighteen years of age at the time the Allen charges were alleged to have been committed, Mr. Sims asserts that the Hamilton County Juvenile Court should have had exclusive jurisdiction over these offenses, at least initially. He further argues that the criminal court could not assume jurisdiction of these offenses until the juvenile court first transferred the case pursuant to Tenn. Code Ann. § 37-1-134(a). Principally, Mr. Sims requests that this Court dismiss Count 3 of the Allen presentment and exclude any predicate act predating

¹ This motion was joined by Defendant Montez Murphy in Case No. 305677. From the record, it appears that Mr. Murphy's date of birth is October 25, 1992. Count 1, § 2, ¶ 41 alleges two predicate acts for which charges are pending in this Court and federal court, and the offense dates for those offenses appear to be February 27, 2017, and, between October and December 2016, respectively. Thus, at this time, it does not appear that Mr. Murphy was a juvenile at any relevant time, and for that reason, the Court respectfully denies Sims's Motion No. 8 as it respects Mr. Murphy's joinder. With the joinder resolved, all references to the "Defendant" herein are related only to Mr. Sims.

his eighteenth birthday on May 2, 2015. Alternatively, he requests that this Court either transfer the *Allen* charges to the juvenile court for a transfer hearing or otherwise conduct a *de novo* hearing itself to determine the likelihood of transfer.

For its part, the State argues that the criminal court has full and plenary jurisdiction over Mr. Sims for the *Allen* charges pursuant to Tenn. Code Ann. § 37-1-134(c). First, the State has shown that the juvenile court previously transferred Mr. Sims to the criminal court on separate charges of first-degree murder, among others, in March 2015.² Once Mr. Sims was transferred to the criminal court to answer those charges, the State next asserts that the juvenile court lost jurisdiction over him with respect to *all* charges brought against him *after* that transfer, including the *Allen* charges. This Court would note that, since that original transfer, a jury has found Mr. Sims guilty of the transferred offenses,³ and his convictions are currently on appeal to the Court of Criminal Appeals.⁴

On October 29, 2018, this Court heard arguments on the present motion to dismiss, and following that argument, the Court took the matter under advisement. The Court commends counsel for their respective advocacy. However, for the reasons given herein, the Court respectfully denies the relief requested.

LAW AND ANALYSIS

The question presented by this motion relates to the jurisdiction of the juvenile court and this question is principally, if not exclusively, one of statutory interpretation. As is well-established, “[t]he paramount rule of statutory construction is to ascertain and give effect to legislative intent without broadening the statute beyond its intended scope.”⁵ This Court must “‘begin with the words that the General Assembly has chosen’ and ‘give these words their natural and ordinary meaning.’”⁶ Importantly, the Court should “not construe statutory language to unduly expand it beyond its plain and obvious import.”⁷

To begin with first principles, Article VI, section 1 of the Tennessee Constitution grants to the General Assembly the “the power to ‘create courts of general, special or limited

² In its response to Sims’s Motion No. 8, the State has included a transcript from that transfer hearing, which occurred on March 15, 2015.

³ See *State v. Sims*, No. 295685 (Hamilton County Criminal Court, First Division). The jury’s verdict finding Mr. Sims guilty of these charges was returned in open court on April 7, 2017.

⁴ See *State v. Sims*, No. E2018-01268-CCA-R3-CD (Tenn. Crim. App.).

⁵ See *Baker v. State*, 417 S.W.3d 428, 433 (Tenn. 2013) (citing *Carter v. Bell*, 279 S.W.3d 560, 564 (Tenn. 2009)).

⁶ See *Baker v. State*, 417 S.W.3d 428, 433 (Tenn. 2013) (quoting *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 526 (Tenn. 2010)); cf. also Tenn. Code Ann. § 1-3-105(b) (“As used in this code, undefined words shall be given their natural and ordinary meaning, without forced or subtle construction that would limit or extend the meaning of the language, except when a contrary intention is clearly manifest.”).

⁷ See *Givens v. Mullikin ex rel. Estate of McElwaney*, 75 S.W.3d 383, 413 (Tenn. 2002).

jurisdiction within a particular county or locality.”⁸ Our Supreme Court has recognized that “[u]nlike circuit or chancery courts, which are courts of general jurisdiction, juvenile courts in Tennessee are courts of limited jurisdiction.”⁹ Because of this limited jurisdiction, “[j]uvenile courts may exercise only such jurisdiction and powers as have been conferred on them by statute” by the General Assembly.¹⁰ The Court of Appeals has also recognized that “[b]ecause juvenile courts were unknown at common law, they may exercise only those powers that have been conferred on them by statute,”¹¹ though these courts have full power to act “within their statutory jurisdiction.”¹²

The limited nature of a juvenile court’s jurisdiction is important, and our Supreme Court has recognized that when construing the powers of a juvenile court, those powers must be strictly construed:

Generally, in states where such [juvenile] courts exist, they have jurisdiction over matters relating to the care, control and custody of infants, but can exercise such jurisdiction and powers only as have been conferred on them by the statute creating them; and jurisdiction must be strictly construed, *and cannot be enlarged* by a provision in the statute requiring the statute to be liberally construed, so that its purposes may be carried out.¹³

With these basic principles in mind relating to a juvenile court’s authority to act, the Court notes that the General Assembly has provided that the juvenile court has exclusive original jurisdiction over children alleged to be delinquent.¹⁴ However, upon petition, notice, and hearing, the juvenile court may transfer a child to the criminal court for trial as an adult.¹⁵

The transfer of a child to criminal court has significant effects other than upon the immediate charges that are the subject of the transfer. Rather, a transfer of a juvenile in one case actually eliminates the jurisdiction of the juvenile court over the child as to all subsequent delinquent acts and criminal charges, that is, at least until the juvenile is acquitted of the charges

⁸ See *State v. Keller*, 813 S.W.2d 146, 148 (Tenn. Crim. App. 1991) (emphasis added) (quoting *State ex rel. Ward v. Murrell*, 169 Tenn. 688, 90 S.W.2d 945, 946 (1936)); see also *Moore v. Love*, 171 Tenn. 682, 107 S.W.2d 982, 986 (1937) (“We are of the opinion that once the Legislature has established the courts it may alter the jurisdiction thereof under the Constitution and its proper interpretation[.]”).

⁹ See *In re D.Y.H.*, 226 S.W.3d 327, 330 (Tenn. 2007); see also *Stambaugh v. Price*, 532 S.W.2d 929, 932 (Tenn. 1976) (“The juvenile court is one of limited jurisdiction, while both the circuit and chancery courts are courts of general jurisdiction.”); *In re S.L.M.*, 207 S.W.3d 288, 296 (Tenn. Ct. App. 2006) (“Juvenile courts are courts of record with special and limited jurisdiction.” (footnote omitted)).

¹⁰ See *In re D.Y.H.*, 226 S.W.3d 327, 330 (Tenn. 2007).

¹¹ See *In re S.L.M.*, 207 S.W.3d 288, 296 (Tenn. Ct. App. 2006).

¹² See *In re S.L.M.*, 207 S.W.3d 288, 296 (Tenn. Ct. App. 2006); see also *Cartwright v. Juvenile Court at Nashville*, 113 S.W.2d 754, 756 (Tenn. 1938) (“It is true that a Juvenile Court is one of limited and special jurisdiction. Within its jurisdiction, however, its powers are full.”).

¹³ See *State ex rel. Hyatt v. Bomar*, 358 S.W.2d 295, 296 (Tenn. 1962) (citing with approval “Infants” in 43 *Corpus Juris Secundum* § 6) (emphasis in original).

¹⁴ See Tenn. Code Ann. § 37-1-103(a)(1).

¹⁵ See Tenn. Code Ann. § 37-1-134(a).

or the charges are dismissed. As the General Assembly has provided in Tenn. Code Ann. § 37-1-134(c),

The transfer pursuant to subsection (a) terminates jurisdiction of the juvenile court with respect to any and all delinquent acts with which the child may then or thereafter be charged, and the child shall thereafter be dealt with as an adult as to all pending and subsequent criminal charges[.]¹⁶

Following the loss of jurisdiction over a juvenile due to a transfer, the juvenile court may regain jurisdiction over that child in only two circumstances: (1) the child is ultimately acquitted of the transferred offenses in criminal court; or (2) the State later dismisses the transferred charges.¹⁷

Although statutes can sometimes be unclear in their intended meaning, this is not one of those times. The language of the juvenile transfer statute is plain, clear, and unambiguous in describing the consequences of a transfer on new charges brought after the transfer. Here, the legislature has repeatedly used the term “all” when describing the types of later charges affected by a juvenile court transfer. Generally speaking, the term “all” means “all,”¹⁸ and the juvenile transfer statute simply cannot be read to mean that the juvenile court retains jurisdiction over some later-brought charges, but not others, following a transfer. Indeed, in interpreting this statute, the Court of Criminal Appeals has recognized that

[t]his language provides that unless the juvenile is acquitted of the charges or the charges are dismissed, the juvenile court has lost *all jurisdiction* over the juvenile from that point forward. Specifically, the criminal court retains jurisdiction over the juvenile regarding *all subsequent charges* and the juvenile has adult status for any and *all subsequent proceedings*.¹⁹

This interpretation applies even when the subsequent charges are otherwise unrelated to the offenses that were the subject of the juvenile transfer proceedings.²⁰

¹⁶ See Tenn. Code Ann. § 37-1-134(c); see also *State v. Darden*, 12 S.W.3d 455, 458 (Tenn. 2000) (“Following an effective transfer, jurisdiction over the case is vested in the criminal or circuit court. See *id.* § 37-1-134(c). The transfer statute provides that the juvenile court’s jurisdiction is terminated ‘with respect to any and all delinquent acts with which the child may then or *thereafter* be charged, and the child shall thereafter be dealt with as an adult as to all pending and *subsequent* criminal charges.’ *Id.* (emphasis added). The emphasized language clearly contemplates that following the transfer hearing and the termination of the juvenile court’s jurisdiction, a defendant may be charged in an adult court with other criminal offenses.”).

¹⁷ See Tenn. Code Ann. § 37-1-134(c) (provided, that if a child transferred pursuant to this section is acquitted in criminal court on the charge or charges resulting in such transfer, or if such charge or charges are dismissed in such court, this subsection shall not apply and the juvenile court shall retain jurisdiction over such child.”).

¹⁸ See *Culbreath v. First Tennessee Bank Nat. Ass’n*, 44 S.W.3d 518, 524 (Tenn. 2001).

¹⁹ See *DeMarcus v. State*, No. M2002-01335-CCA-R3-PC, 2003 WL 21486984, at *2 (Tenn. Crim. App. June 27, 2003) (emphasis added).

²⁰ See *Sterling v. State*, W1999-00608-CCA-R3-CD, 2001 WL 1117518, at *3 (Tenn. Crim. App. Sept. 24, 2001) (stating that “we need not reach the issue of whether there was sufficient evidence to support the transfer of the defendant for the charges of especially aggravated kidnapping and aggravated robbery of Ms. Escamilla and Ms. Alma because a valid transfer based upon the unrelated aggravated robbery charge was sufficient to divest the juvenile court of jurisdiction in all pending and subsequent criminal charges against the defendant including the instant offenses. . . . Because the defendant has not presented any evidence to establish that the

In the case at bar, Mr. Sims was originally transferred to this Court to face charges of first degree murder in what became Case No. 295685. Although it is true that the judgments of conviction in Case No. 295685 are not yet final, Mr. Sims has not been acquitted of those charges, nor have they been dismissed. As such, jurisdiction over “any and all” charges brought against Mr. Sims *after* his transfer in March 2015 is properly vested in this Court, not the juvenile court. Moreover, because no transfer to criminal court is needed for the charges brought in the *Allen* presentment—those charges are properly brought in this Court in the first instance—no need exists for any court to hold a transfer hearing.

It matters not that the murder alleged to have been committed in Count 3 of the *Allen* presentment occurred prior to the transfer of the charges in Case No. 295685. The plain language of the juvenile transfer statute focuses on *when the new charges are brought*, not when the criminal conduct is alleged to have occurred.²¹ That said, even if the *Allen* charges were actually pending in the juvenile court at the time Case No. 295685 was transferred, the juvenile court would also have been required to transfer the *Allen* charges along with those in Case No. 295685.²² Simply stated, there is no circumstance in which Mr. Sims would have been entitled to a transfer hearing in juvenile court on the *Allen* charges once the juvenile court relinquished jurisdiction in March 2015.²³

unrelated aggravated robbery charge was dismissed or that he was acquitted of such charge, he has failed to show that the criminal court did not have jurisdiction over the instant offenses[.] Thus, the defendant's claim that the trial court lacked jurisdiction to try him as an adult is without merit.”).

²¹ See *Leavy v. State*, W2001-03031-CCA-R3-PC, 2004 WL 42220, at *1 n.1 (Tenn. Crim. App. Jan. 8, 2004) (observing that “the juvenile court judge erred in re-asserting jurisdiction” to consider transferring new charges after previously transferring the juvenile to criminal court).

²² See Tenn. Code Ann. § 37-1-134(c) (“The transfer pursuant to subsection (a) terminates jurisdiction of the juvenile court with respect to any and all delinquent acts with which the child *may then* or thereafter *be charged*.” (emphasis added)).

²³ Under the law prior to the 1994 amendments to Tenn. Code Ann. § 37-1-134(c), a different result may have obtained. At that time, the transfer of a child to criminal court only “terminate[d] the jurisdiction of the juvenile court over the child with respect to the delinquent acts alleged,” see *State v. Hale*, 833 S.W.2d 65, 66 (Tenn. 1992), and the statute did not address the juvenile court’s jurisdiction over later charges. However, in 1994, the General Assembly amended this statute to make clear that the transfer of a child to criminal court “terminates jurisdiction of the juvenile court with respect to any and all delinquent acts with which the child may then or thereafter be charged, and the child shall thereafter be dealt with as an adult as to all pending and subsequent criminal charges.” See 1994 Tenn. Pub. Acts, ch. 895, § 2. Of course, “[w]hen the legislature amends a statute, it presumably does so either to change the law or to clarify it.” See *State v. Odom*, 928 S.W.2d 18, 30 (Tenn. 1996). As such, while Mr. Sims’s argument may have had more support under the language of the previous law, the legislature’s change in that law demonstrates that a different conclusion is now intended under present law.

In a similar manner, subsection (e) does not take away from the plain import of the amended jurisdictional provisions in subsection (c), as Mr. Sims argues. Subsection (e) reinforces the notion of presumptive juvenile jurisdiction for defendants under the age of 18 years who commit criminal acts, but it also recognizes that this presumptive rule is changed when a transfer of the case occurs. Notably, subsection (e) itself does not address precisely *what* happens when a “case” is transferred, but subsection (c) does: the transfer deprives the juvenile court of further jurisdiction to resolve the delinquent acts then currently charged, as well as all delinquent acts that are “thereafter” charged. As such, the Court does not find that subsection (e) is particularly helpful in resolving the issues raised by Mr. Sims’s motion. Cf. *State v. Darden*, 12 S.W.3d 455, 458 (Tenn. 2000) (rejecting the argument that subsection (e) requires additional charges to be brought in juvenile court in light of language of subsection (c), which “clearly contemplates that following the transfer hearing and the termination of the juvenile court’s jurisdiction, a defendant may be charged in an adult court with other criminal offenses.”).

Ultimately, in interpreting statutes, this Court may not “alter or amend that [statutory] language or to make it mean something other than that which it says.”²⁴ To grant any of the relief requested would require this Court not only to disregard the plain language of the juvenile transfer statute, but also to create jurisdiction in the juvenile court where the legislature has not chosen to vest it.²⁵ Properly understood, the judicial power of this state extends only to the interpretation of law, not to its making.²⁶ As such, the Court respectfully declines to remake the juvenile transfer statute, under the guise of construing it, to create either a right of dismissal or of a transfer hearing under these circumstances.²⁷

CONCLUSION

With respect to courts of limited jurisdiction, such as the Hamilton County Juvenile Court, it is the exclusive prerogative of the legislature to define the nature of the matters or issues that come before those courts.²⁸ Based upon the plain language of Tenn. Code Ann. § 37-1-134(c), the General Assembly has removed from the juvenile court all jurisdiction over a juvenile once that juvenile has been transferred to the criminal courts—at least until the child is acquitted of the transferred charges or those charges are dismissed.

Accordingly, the Court concludes that Mr. Sims’s transfer from juvenile court in Case No. 295685 terminated the jurisdiction of the juvenile court not only for those transferred offenses, but also for *all* offenses later charged against him including the *Allen* charges now before the Court. In addition, because Mr. Sims has not been acquitted on the originally

²⁴ See *Town of Mount Carmel v. City of Kingsport*, 397 S.W.2d 379, 382 (Tenn. 1965); see also *Armbrister v. Armbrister*, 414 S.W.3d 685, 704 (Tenn. 2013) (“Courts may neither alter or amend statutes nor substitute our own policy judgments for those of the General Assembly.”); *Limbaugh v. Coffee Med. Ctr.*, 59 S.W.3d 73, 83 (Tenn. 2001) (“Courts are not authorized to alter or amend a statute.”).

²⁵ Indeed, to the extent that Mr. Sims requests a transfer to juvenile court to hold a transfer hearing, the act would be—in essence, if not in fact—one creating authority in a court of limited jurisdiction to act where not otherwise authorized to do so by statute.

²⁶ See, e.g., *Roberts v. State*, 2 Tenn. 423, 425 (1815) (“The Court is not responsible for the acts of the Legislature; we sit here to declare the law, and not to make it.”); *Daniel v. Larsen*, 12 S.W.2d 386, 387 (Tenn. 1928) (“The power to make laws and classify the objects embraced within their provisions is given exclusively to the Legislature, and the power to extend their provisions beyond their original scope cannot be conferred either by statute or by legislative declaration upon the courts.”); *Fields v. Metro. Life Ins. Co.*, 249 S.W. 798, 800 (Tenn. 1923) (“When the Legislature has declared, by law, the public policy of the state, the judicial department must remain silent, and if a modification or change in such policy is desired[,] the lawmaking department must be applied to, and not the judiciary, whose function is to declare the law[,] but not to make it.”); *Dorning v. Bailey*, No. M2004-02392-COA-R3-CV, 2006 WL 287377, at *13 (Tenn. Ct. App. Feb. 6, 2006) (same).

²⁷ See *McBrayer v. Dixie Mercerizing Co.*, 144 S.W.2d 764, 768 (Tenn. 1940) (“This court cannot, of course, under the guise of construction amend or alter the statute.”); see also *Pfizer, Inc. v. Johnson*, No. M2004-00041-COA-R3-CV, 2006 WL 163190, at *2 (Tenn. Ct. App. Jan. 23, 2006) (“[W]hen the words of a statute clearly mean one thing, the courts cannot give them another meaning under the guise of construing them.” (citing *Henry v. White*, 250 S.W.2d 70, 72 (Tenn. 1952))).

²⁸ See *Spurgeon v. Worley*, 90 S.W.2d 948, 949 (Tenn. 1936) (“The broad power conferred by article 6, § 1, upon the Legislature to establish courts necessarily conveys power to define their jurisdiction and to transfer jurisdiction from existing courts, including the courts of justices of the peace, to the newly created court. Without such power a special court could serve no purpose.”).

transferred charges, nor have those charges been dismissed, the jurisdiction of the juvenile court has not been restored or reinstated.²⁹ As such, Mr. Sims is not entitled to a transfer hearing in any court, and this Court therefore concludes that the motion should be respectfully denied.

It is so ordered.

Enter, this the 26th day of November, 2018.



TOM GREENHOLTZ, Judge

²⁹ See *State v. Darden*, 12 S.W.3d 455, 458 (Tenn. 2000) (“The transfer statute does restore the juvenile court’s jurisdiction if ‘a child transferred pursuant to [the transfer statute] is acquitted in circuit court on the charge or charges resulting in such transfer, or if such charge or charges are dismissed in such court.’”); see also *State v. Prindle*, No. W2012--0228-5-C-CA--R3CD, 2014 WL 683879, at *24 (Tenn. Crim. App. Feb. 19, 2014) (“Once a juvenile has been transferred out of juvenile court pursuant to Tenn. Code Ann. § 37–1–134(a), the criminal court has jurisdiction to indict and try that juvenile as an adult. The criminal court thereafter has jurisdiction over the child, unless the transfer proceedings are, in effect, reversed by reason of acquittal or dismissal of all the charges in the criminal court. Tenn. Code Ann. § 37–1–134(c). If the child is completely absolved of all criminal charges, and the transfer proceedings are rendered invalid as a result, the juvenile court then retains jurisdiction over the child.” (quoting *State v. Morrow*, No. 01 C01–9612–CC00512, 1998 WL 917802, at *6 (Tenn. Crim. App. Dec.22, 1998), *perm. app. granted* (Tenn. June 7, 1999), *perm. app. dismissed* (Tenn. May 15, 2000))).