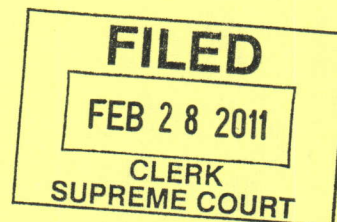


COMMONWEALTH OF KENTUCKY  
KENTUCKY SUPREME COURT  
CASE NUMBER: 2009-SC-115



JAMES JACKSON

APPELLANT

VS.

Appeal from McCracken Circuit Court  
Hon. Craig Zeiss Clymer, Judge  
Case No: 05-CR-00008

COMMONWEALTH OF KENTUCKY

APPELLEE

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**REPLY BRIEF FOR APPELLANT**

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Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Rebecca Hobbs".

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 28, 2011, the foregoing "Reply Brief for Appellant" was served by first class mail or messenger mail upon the following:

- Hon. Craig Z. Clymer, Circuit Judge, McCracken County Courthouse, 301 South 6<sup>th</sup> Street, Paducah, Kentucky 42003-1794;
- Hon. Daniel Boaz, Commonwealth's Attorney, McCracken County Courthouse, 301 South 6<sup>th</sup> Street, Paducah, Kentucky 42003-1794;
- Hon. Michael Murphy, McCracken County Attorney, McCracken County Courthouse, 301 South 6<sup>th</sup> Street, Paducah, Kentucky 42003-1794; and
- Hon. Joshua Farley, Assistant Attorney General, Capital Center Complex, 1024 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601.

I also certify that the record was not checked out from the Kentucky Supreme Court.

A handwritten signature in black ink, appearing to read "Rebecca Hobbs", written over a horizontal line.

## PURPOSE OF THIS REPLY BRIEF

The purpose of this Reply Brief is to respond to the arguments of the Commonwealth that James Jackson received "a distinct benefit" from his guilty plea and criminal conviction resulting in a ten (10) year prison sentence.

### ARGUMENT

**I. APPELLANT'S CONVICTION AS A YOUTHFUL OFFENDER RESULTING FROM THE DISTRICT COURT'S TRANSFER OF HIM TO CIRCUIT COURT WHEN HE WAS FIFTEEN (15) YEARS OLD, DESPITE THE FACT THAT HE WAS STATUTORILY IMMUNE FROM CRIMINAL PROSECUTION, WAS A DUE PROCESS VIOLATION OF SUCH MAGNITUDE THAT IT MUST BE VACATED AS A RESULT OF THIS COLLATERAL PROCEEDING**

The Commonwealth argues on appeal that appellant has attempted to "reap a double benefit" by filing the instant appeal (Appellee's Br. at 8). The Commonwealth claims that not only did appellant (a fifteen-year-old at the time of his offense) receive a ten (10) year sentence when he was facing a maximum sentence of twenty (20) years, but appellant now wants to "denigrate the plea process by also challenging his transfer to the very court in which he plead guilty" (Appellee's Br. at 8).

The bulk of the Commonwealth's brief ignores the central issue on appeal in this post conviction action: the fact that there was no statutory authority for James Jackson's transfer from district court as a public offender to circuit court as a youthful offender to be tried for criminal offenses. The Brief for Appellant explains at great length that there was no legal theory and no statutory authority upon which the district court could have based its decision to transfer James Jackson to the circuit court for trial on criminal

offenses as a youthful offender (Appellant's Br. 4-10). Nowhere in its Brief does the Commonwealth dispute James Jackson's argument that he was never eligible for transfer to circuit court as a youthful offender. In fact, when the Commonwealth addresses the issue at last, on page twelve of its fourteen-page-brief, it "concedes that there is some evidence that the Appellant's juvenile transfer was improper" (Appellee's Br. at 12).

Either James Jackson met the minimum eligibility requirements for transfer to the circuit court for trial as a youthful offender or he did not meet these requirements. If appellant is correct in his main contention and he did not meet the minimum eligibility requirements, then the Commonwealth's argument that a remand to the trial court for a determination of whether his guilty plea was voluntary (Appellee's Br. 12) is misplaced.


There simply are no circumstances under which a sane individual would voluntarily plead guilty to a criminal charge in circuit court if that individual was aware that no authority existed for him to be charged, criminally, in the first place. Appellant fell within a class of juvenile offenders who were statutorily immune from criminal prosecution; a class of juvenile offenders who could not have been lawfully deprived of the special protections of the juvenile court system. See Kent v. United States, 383 U.S. 541, 553, 86 U.S. 1045, 1053, 16 L.Ed.2d 84 (1966).

The issue on appeal is not just a matter of an ineffective assistance of counsel claim. This case is an example of a breakdown in the entire court process: (1) the County Attorney sought to transfer a child to circuit court even though he was statutorily ineligible; (2) the defense attorney failed to alert the court or her client to the fact that he was ineligible for transfer to circuit court for trial as a youthful offender; and (3) the district court ordered the transfer of a child to the circuit court even though he was

statutorily immune from criminal prosecution; and (4) the circuit court accepted jurisdiction of a juvenile that was not properly before it. That is why this Court must find that the due process error in this case, which is apparent from the record, is of such magnitude as to render the judgment of conviction fundamentally unfair and appellant's criminal convictions must be vacated and dismissed with prejudice.

Neither the appellant, nor the court nor the Commonwealth can be understood to have reaped a benefit from the criminal conviction of a child whom the legislature sought to protect from criminal prosecution.

Respectfully Submitted,  
COUNSEL FOR JAMES JACKSON



Rebecca L. Hobbs