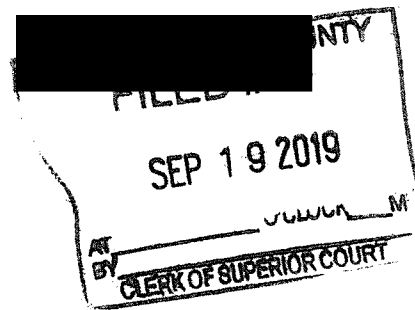


STATE OF NORTH CAROLINA
COUNTY [REDACTED]

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
File Nos. [REDACTED]

STATE OF NORTH CAROLINA)
)
 vs.)
 [REDACTED])
)



ORDER GRANTING DEFENDANT’S MOTION TO DISMISS

THIS MATTER came on before the undersigned Judge presiding in the Superior Court for [REDACTED] County on Defendant’s Motion to Dismiss on August 14, 2019.

Based upon the evidence presented, the Court makes the following **FINDINGS OF FACT:**

1. [REDACTED] hereinafter Defendant, is charged with Breaking and/or Entering and Larceny after Breaking and/or Entering in [REDACTED]
2. Breaking and/or Entering is a class H felony and Larceny after Breaking and/or Entering is a class H felony.
3. The State alleges that on December 13, 2015, Defendant broke into the apartment of [REDACTED] and stole items from within.
4. Defendant was born on [REDACTED] 1999 and was sixteen at the time of this alleged offense.
5. Defendant’s cases were originally scheduled for trial during the fall of 2017, but Defendant failed to appear for calendar call. The State called the case for trial on August 14, 2019, after Defendant had been arrested on the Order for Arrest from the missed court date.
6. North Carolina is currently the last state in the country to automatically prosecute sixteen- and seventeen- year-olds as adults.
7. In 2017, the Juvenile Justice Reinvestment Act passed with bipartisan support. In N.C.G.S. 7B-1601, The Juvenile Justice Reinvestment Act increased the age of juvenile court jurisdiction to eighteen effective December 1, 2019. For class H and I felonies committed by sixteen-year-olds, the court must affirmatively find after hearing that “the protection of the public and the needs of the juvenile will

be served by transfer to superior court;” otherwise the juvenile court retains exclusive jurisdiction.

8. Despite Defendant’s age at the time of the alleged offense, he is not eligible for juvenile court under N.C.G.S. 7B-1601 because the law does not go into effect until December 1, 2019.
9. In juvenile transfer hearings, the court must consider eight factors in determining whether a case should remain in juvenile court or be transferred to adult court. Those eight factors are the age of the juvenile, the maturity of the juvenile, the intellectual functioning of the juvenile, the prior record of the juvenile, prior attempts to rehabilitate the juvenile, facilities or programs available to the court prior to the expiration of the court’s jurisdiction and the potential benefit to the juvenile of treatment or rehabilitation, the manner in which the offense was committed, and the seriousness of the offense and protection of the public.
10. In a 2015 report issued by the North Carolina Commission on the Administration of Law, the Commission compared adult and juvenile criminal proceedings. Juveniles prosecuted in adult court face detention in jail and the heightened risk of sexual violence posed to youthful inmates, no requirement of parental notice or involvement, active time in adult prison, risk of physical violence, public records of arrest, prosecution and conviction, and collateral consequences imposed by a conviction. Juvenile court, on the other hand, requires an evaluation of a complaint that includes interviews with juveniles and parents, mandatory parental involvement, individualized consequences, treatment, training and rehabilitation, monthly progress meetings, and a confidential record of delinquency proceedings.
11. Defendant alleged that his constitutional rights have been flagrantly violated and that there is such irreparable prejudice to Defendant’s preparation of his case that there is no remedy but to dismiss the prosecution under N.C.G.S. 15A-954(a)(4).
12. Defendant alleged three grounds under which his constitutional rights have been violated. Each ground would be sufficient for dismissal under N.C.G.S. 15A-954(a)(4). The three grounds are cruel and unusual punishment under the 8th Amendment, violation of Defendant’s due process rights, and a violation of Defendant’s equal protection rights. Defendant asserted his rights under the corresponding provisions of the North Carolina Constitution as stated in his Motion.
13. Defendant alleged that his 8th Amendment rights have been violated in that his prosecution in adult court for an offense allegedly committed when he was sixteen constitutes cruel and unusual punishment.
14. The 8th Amendment draws its meaning from the evolving standards of decency that mark the progress of a maturing society.

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15. The Supreme Court has addressed the treatment of juveniles in the criminal justice system in a recent line of cases.
 16. In its analysis in this line of cases, the Court looked to the consensus of legislative action in states around the country because consistency in the direction of change is powerful evidence of evolving standards of decency.
 17. Every state in the country to have addressed the age of juvenile prosecution has raised the age, not lowered it or left it the same.
 18. The Supreme Court held in *Roper v. Simmons*, 543 U.S. 551 (2005) that American society views juveniles as categorically less culpable than adult offenders due to their lack of maturity and underdeveloped sense of responsibility, vulnerability to negative influences and outside pressures, and malleable character.
 19. In *Roper*, the Court held that in regard to juveniles, the death penalty did not serve its intended aims of deterrence or retribution.
 20. In *Graham v. Florida*, 560 U.S. 48 (2010), the Court held that juveniles convicted of non-homicidal offenses should not be sentenced to life without parole.
 21. In *Miller v. Alabama*, 567 U.S. 460 (2012), the Supreme Court held that sentencing juvenile defendants to mandatory life in prison without parole violated the 8th Amendment.
 22. In *Montgomery v. Louisiana*, 577 U.S. ____ (2016), the Supreme Court held that *Miller* applied retroactively to defendants sentenced to life without parole prior to 2012 and that hearings could be conducted in these cases to consider eligibility for parole status.
 23. The case law discussed in the Report and in the cases cited heavily on scientific research. The scientific research indicates that the development of neurobiological systems in the adolescent brain cause teens to engage in greater risk-taking behavior; that teenage brains are not mature enough to adequately govern self-regulation and impulse control; that teens are more susceptible to peer influence than adults; that teens have a lesser capacity to assess long-term consequences; that as teens mature, they become more able to think to the future; and that teens are less responsive to the threat of criminal sanctions.
 24. Defendant alleges that his due process rights have been violated in that he has been automatically prosecuted in adult criminal court without a hearing and findings in support of transfer.

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25. As of December 1, 2019, North Carolina will no longer permit a sixteen-year-old charged with class H felonies to be automatically prosecuted, tried and sentenced as an adult.
 26. In *Kent v. United States*, 383 U.S. 541 (1966), the Supreme Court held that the process of transferring a juvenile to adult court is one with such tremendous consequences that it should require attendant ceremony such as a hearing, assistance of counsel, and a statement of reasons.
 27. Defendant alleges that his right to equal protection under the Constitution has been violated.
 28. The Equal Protection clause of the Constitution protects against disparity in treatment by a State between classes of individuals with largely indistinguishable circumstances.
 29. Legislation is presumed valid and will be sustained if classification is rationally related to a legitimate state interest.
 30. A criminal statute is invalid under the NC Constitution if it provides different punishment for the same acts committed under the same circumstances by persons in like situations.
 31. There is no rational basis for distinguishing between automatic prosecution and punishment of Defendant in adult court now and punishment of a sixteen-year-old after December 1, 2019.
 32. Each of the constitutional violations raised by Defendant and found by the Court have caused irreparable prejudice to Defendant in that the State has denied Defendant the age-appropriate procedures of juvenile court and, correspondingly, exposed him to the more punitive direct and collateral consequences of adult court.

Based upon the foregoing **FINDINGS OF FACT**, the Court makes the following **CONCLUSIONS OF LAW**:

1. The holding in *State v. Wilkerson*, 754 S.E.2d 829 (2014), is not controlling and the underlying rationale is not applicable to the case at bar.
2. That Defendant is not covered by the Raise the Age law in North Carolina; however, based upon the same reasoning that went into the Raise the Age law, “evolving standards of decency,” and the reasoning contained in the cases cited by the Defendant, that his prosecution in adult court violates his rights.
3. By his being prosecuted as an adult in this case, Defendant’s 8th Amendment right against cruel and unusual punishment is being violated.

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4. By his being prosecuted as an adult in this case, Defendant's right to due process is being violated.
 5. By his being prosecuted as an adult in this case, Defendant's right to equal protection under the laws is being violated.
 6. Once an equal protection violation has been established, the burden shifts to the State to demonstrate an inability to remedy the violation in a timely fashion.
 7. The State did not meet its burden in this case.
 8. As a result of the continuing attempts to prosecute the Defendant as an adult in these cases, Defendant's constitutional rights have been flagrantly violated and there is such irreparable prejudice to the Defendant's preparation of his case that there is no remedy but to dismiss the prosecution pursuant to N.C.G.S. 15A-954.
 9. Defendant is being deprived of his right to be treated as a juvenile, which he was at the time he allegedly committed these crimes, with all of the attendant benefits granted to juveniles to reform their lives.

10. That Assistant District Attorney, on behalf of the State, has had an opportunity to review these **FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER.**

IT IS THEREFORE **ORDERED** that:

The Motion to Dismiss is **GRANTED** as to the charges of Breaking and/or Entering, and Larceny after Breaking and/or Entering pursuant to N.C.G.S. 15A-954(a)(4).

This the 18th day of September, 2019.


Superior Court Judge