

December 18, 2010

## **Judge, Not Jury, Decides Whether to Charge Juveniles as Adults in New Mexico**

Juvenile criminal offenders may be charged as adults for the commission of very serious criminal offenses. In order to charge the child as an adult, and thereby expose the child to adult criminal sentencing, the Court must conduct an amenability hearing.

The amenability hearing is held to determine whether or not the juvenile is amenable to treatment and rehabilitation through the juvenile justice system. If the court finds the juvenile is not amenable to treatment and rehabilitation, then the child is tried as an adult. The consequences for the child are enormous as the child is taken outside the sentencing scheme of the juvenile justice code which limits possible incarceration up to the child's 21st birthday.

The New Mexico Supreme Court in *State v. Rudy B* took up the issue of whether amenability findings should be determined by a jury. In New Mexico, these findings have always been done by the judge. The attorneys for *Rudy B* challenged the judge based amenability under the 2000 United States Supreme Court case of *Apprendi v. New Jersey*.

*Apprendi* held that any fact that would result in a penalty beyond the statutory maximum must be heard and determined by a jury. Certainly, an amenability hearing involves facts and evidence that would lead to penalties beyond the maximum sentencing under the juvenile code. In very serious cases, such as the violent offenses involved in *Rudy B*, the defendant is looking at some very lengthy incarceration well beyond the typical jurisdiction of the juvenile courts.

The *Rudy B* opinion was pretty lengthy going into the history of amenability adjudications in New Mexico, *Apprendi* and *Oregon v. Ice*. The 2009 U.S. Supreme Court in *Oregon v. Ice* allowed an exception to *Apprendi* in a case involving concurrent sentencing. However, *Oregon v. Ice* seemed to be fact specific in that the concurrent sentencing was for completely separate and independent criminal acts.

The New Mexico Supreme Court then framed the discussion of *Oregon v. Ice* as the refusal of the Court to extend the role of the jury into concurrent v. consecutive sentencing settings where the jury had traditionally played no role. This was an interesting stretch of logic in to say the least.

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The Court in *Rudy B*, based upon its reading of *Oregon v. Ice*, then took us through the history of amenability hearings in New Mexico. In the end, after a nostalgic trip through history, the Court said judge based amenability was not a violation of *Apprendi* because it had always been done this way in New Mexico.

It is interesting and disappointing that the Court would resort to the same logic that has reinforced all manners of legal and social injustice in the past: "It's just the way it is. It has always been this way."

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