

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

IN RE TYLER JOSEPH DIEHL, Minor

Supreme Court No.: 160457
COA No.: 345672
Lower Court No.: 2017-855342-DL

HUGH R. MARSHALL (P48269)
ATTORNEY FOR TYLER DIEHL
Respondent-Appellee
11843 E. 13 Mile Rd
Warren, MI 48093
(313)268-6288

JEFFREY M. KAELIN (P51249)
ASS'T PROSECUTING ATTORNEY
Petitioner-Appellant
1200 N. Telegraph Rd.
Pontiac, MI 48341
(248)858-0656

RESPONDENT-APPELLEE'S ANSWER TO APPLICATION FOR LEAVE TO APPEAL

BY: **HUGH R. MARSHALL** (P48269)
ATTORNEY FOR RESPONDENT-APPELLEE
11843 E. THIRTEEN MILE RD
WARREN, MI 48093
(313)268-6288

TABLE OF CONTENTS

	<u>PAGE NO</u>
INDEX OF AUTHORITIES	3
COUNTER-STATEMENT REGARDING JURISDICTION	4
COUNTER-STATEMENT REGARDING MCR 7.305(B)	5
COUNTER-STATEMENT OF QUESTIONS PRESENTED	9
COUNTER-STATEMENT OF MATERIAL PROCEEDINGS AND FACTS	10
STANDARD OF REVIEW	15
COUNTER-ARGUMENT:	19
1. The People’s Application for Leave to Appeal lacks merit.	19
2. The Court of Appeals did not clearly err in affirming the trial court’s dismissal of the two authorized delinquency petition cases.	23
3. The court of appeals did not err in affirming the trial court’s sua sponte dismissal of the petitions.	25
4. The Court of Appeals did not clearly err when ruling that the Lee case recognized that the family court’s inherent authority empowered the family court to transfer an authorized juvenile delinquency case off the formal family court docket and then dismiss it, over the prosecutor’s objections.	27
5. The Court of Appeals did not clearly err when it ruled that the separation of powers doctrine did not prevent the family court from dismissing two authorized juvenile delinquency cases over the prosecutor’s objection.	28
6. The Court of Appeals did not use the wrong standard of review when it affirmed the trial court’s ruling	30
II. Relief Requested	31

INDEX OF AUTHORITIES

<i>People v. Smith</i> , 496 Mich 133; 852 NW2d 127 (2014)	6
<i>People v Brown</i> , 205 Mich App 503, 504-505; 517 NW2d 806 (1994)	15, 31
<i>In re Scruggs</i> , 134 Mich App 617 (1984)	15, 19, 31
<i>In re Kerr</i> , 323 Mich App 407; 917 NW2d 408 (2018)	15, 29, 31
<i>In re Tiemann</i> , 297 Mich App 250; 823 NW2d 440 (2012)	16, 31
<i>People v. Kimble</i> , 470 Mich 305; 684 NW2d 669 (2004)	16, 31
<i>People v Pinkney</i> , _ Mich _; _NW3d_; MSC docket 154374 (May 1, 2018)	16, 31
<i>In re Lee</i> , 282 Mich App 90, 93; 761 NW2d 432 (2009)	17, 28
<i>Patal v Patal</i> , 324 Mich App 631,639-640; 922 NW2d 647 (2018)	17
<i>Frost-Pack Distrib Co v Grand Rapids</i> , 399 Mich 664, 683; 252 NW2d 747 (1977)	18
<i>In re Ricks</i> , 167 Mich App 285 (1988)	19
<i>Grubb Creed Action Comm. v Shiawassee E. Drain Commissioner</i> , 218 Mich. App, 665, 668, 554 N.W. 2 nd 612 (1996)	19
<i>In re Hatcher</i> , 443 Mich. 426, 505 NW2d 834 (1993).	19
<i>In Re Wilson</i> , 113 Mich. App. 113m 121m 317 NW2d 309 (1982)	19
<i>In Re Gault</i> , 387 U.S. 1, 30-31, 87 S. Ct 1428.	19
<i>People v Torres</i> , 452 Mich 43 (1996)	20
<i>People v Cooke</i> , 419 Mich 420 (1984)	20
<i>Band v Livonia Assocs</i> , 176 Mich App 95, 103-104; 439 NW2d 285 (1989)	21
<i>Breed v. Jones</i> , 421 US 519 (1975)	22
<i>People v. Thomas</i> , 678 NW 2d 631, 260 Mich. App. 450 (2004)	25
<i>Koontz v. Ameritech Services, Inc.</i> , 466 Mich. 304, 645 N.W.2d 34 (2002)	25
<i>Carlisle v. United States</i> , 517 US 416 (1996)	26
<i>Trest v. Cain</i> , 522 US 87 (1997)	26
<i>People v Conat</i> , 238 Mich App 134, 146; 605 NW2d 49 (1999)	29
<i>In re Macomber</i> , 436 Mich 386, 393 (1990)	30

STATUTES

MCR 7.305(A)(1)(a)	4
MCR 7.303(B)(1)	4
MCR 7.305(C)(2)	4
MCR 7.305(B)	4, 8
Const. 1963, art 3, § 2	6

MCL 780.786b	6,
MCR 7.305(B)(5)	17
MCL 712A.1(2)	19
MCL 770.12(2)	22
MCL 712A.1(2)	22
MCL 712A.1(3)	24
MCR 3.932(B)	28
MCR 3.902(A)(21)	28

COUNTER-STATEMENT OF BASIS OF JURISDICTION

The People cite MCR 7.305(A)(1)(a) as the basis for jurisdiction and in support also cite MCR 7.303(B)(1) and MCR 7.305(C)(2). MCR 7.305(A)(1)(a) merely codifies the format that an Application for Leave must follow.

Next the People cite MCR 7.303(B)(1). This Application is not one as of right but is one of discretion. MCR 7.303(B)(1) states that the Supreme Court may (1) review by appeal a case pending in the Court of Appeals or after decision by the Court of Appeals.

The People lastly cite MCR 7.305(C)(2) which deals merely with the time frame within which the Petitioner-Appellant must file the Application. The court rules provides four grounds upon which an Appellant may rely in filing an Application for Leave. However, the people do not specifically state upon which subsection they rely.

The People appear to be relying upon MCR 7.305(C)(2)(a) “the Court of Appeals order or opinion resolving an appeal or original action, including an order denying an application for leave to appeal” The Opinion resolving this appeal was published on September 19, 2019 and an Applicant has 42 days within which to file its Application. The Application was filed on October 30, 2019.

However, since the People did not specifically state upon which ground may give this Honorable Court jurisdiction, its Statement Regarding Jurisdiction of the Court is defective as it

does not cite a ground upon which this Honorable Court may rely upon which to entertain Appellant's argument that the court has jurisdiction in this matter. Therefore, the People have not established that this court has jurisdiction to consider its Application for Leave.

COUNTER STATEMENT REGARDING MCR 7.305(B) GROUNDS FOR APPEAL

As stated above Appellee's position is that by not citing MCR 7.305(C)(2)(a), the Appellant does not provide authority upon which this Honorable Court may assert jurisdiction.

MCR 7.305(B) sets out the grounds for Appeal. It states as follows:

(B) Grounds. The application must show that

- (1) the issue involves a substantial question about the validity of a legislative act;
- (2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's official capacity;
- (3) the issue involves a legal principle of major significance to the state's jurisprudence;
- (4) in an appeal before a decision of the Court of Appeals,
 - (a) delay in final adjudication is likely to cause substantial harm, or
 - (b) the appeal is from a ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branches of state government is invalid;
- (5) in an appeal of a decision of the Court of Appeals,
 - (a) the decision is clearly erroneous and will cause material injustice, or
 - (b) the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals; or
- (6) in an appeal from the Attorney Discipline Board, the decision is clearly erroneous and will cause material injustice.

It is submitted that Appellant has failed to establish any ground upon which can sustain its Application for Leave to Appeal.

A. The Court of Appeals’ published opinion did not overturn this Court’s decisions interpreting the separation of powers doctrine, and did not eviscerate Const 1963, art 3, § 2.

The People use the word “eviscerate” to describe what it interprets as the implication of the Court of Appeals Opinion on the separation of powers doctrine.

“Eviscerate” finds its etymological genesis from the Latin *ēviscerātus*, past participle of *ēviscerāre* to deprive of entrails, tear to pieces. The more modern definition states that it is to deprive something of its vital or essential parts. Merriam-Webster Dictionary est. 1828.

The Court of Appeals decision in this Application for Leave before the court, does no such thing. The Court of Appeals not only did not “eviscerate” Const. 1963, art 3, § 2 but left it entirely intact and did not abuse its discretion in its interpretation of any statute, court rule, case law or the like. The Court of Appeals also did not “eviscerate” but conversely properly interpreted the provisions of the William Van Regenmorter Crime Victim’s Rights Act MCL 780.786b (“CVRA”) and correctly applied the provisions of this act to the actions of the lower court trial judge in this matter.

The People also appear to be arguing that the Court of Appeals decision in this case conflicts with a decision of this Honorable Court or another decision of the Court of Appeals. The People have cited no such decision. The People appear also to be arguing that the Court of Appeals Opinion involves a substantial question about the validity of a legislative act. They cite Const. 1963, art 3, § 2 as authority for what they refer to as the “separation of powers doctrine” but provide no case law or binding precedent to support its argument that the Court of Appeals Opinion raises a substantial question about the validity of a legislative act in this case Const. 1963, art 3, § 2.

Nowhere in either Const. 1963, art 3, § 2 or the decision in *People v. Smith*, 496 Mich 133; 852 NW2d 127 (2014) is there authority that the Court of Appeals Opinion was clearly erroneous and will cause material injustice, conflicts with binding case law or violates the

validity of a legislative act. Further, the People cite no authority that this Application (2) has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's official capacity; or (3) the issue involves a legal principle of major significance to the state's jurisprudence.

B. The Court of Appeals' published opinion did not improperly interpret a notice provision of the CVRA nor was the trial judge's opinion clearly erroneous nor was the Court of Appeals Opinion clearly erroneous and will cause material injustice.

As stated above, it is submitted that the Court of Appeals properly interpreted the provisions of the William Van Regenmorter Crime Victim's Rights Act MCL 780.786b ("CVRA") and correctly applied the provisions of this act to the actions of the lower court trial judge in this matter.

The People argue that the CVRA does not expressly empower a court to dismiss authorized juvenile delinquency cases that involve crime victims. However, neither does it expressly prohibit it. A clear reading of the CVRA provides a court with a procedure to dismiss such petitions and the trial court in this case properly followed this procedure. As such, the trial court did not abuse its discretion nor did it violate any statute, court rule, case law or the like in doing so. In following, the Court of Appeals was not clearly erroneous or caused material injustice by affirming the lower court's Opinion.

780.786b Removal of case from adjudicative process; notice required; hearing; consultation of victim with prosecuting attorney.

Sec. 36b.

- (1) Except for a dismissal based upon a judicial finding on the record that the petition and the facts supporting it are insufficient to support a claim of jurisdiction under section 2(a)(1) of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, a case involving the alleged commission of an offense, as defined in section 31, by a juvenile shall not be diverted, placed on the consent calendar, or made subject to any other prepetition or

preadjudication procedure that removes the case from the adjudicative process *unless the court gives written notice to the prosecuting attorney of the court's intent to remove the case from the adjudicative process and allows the prosecuting attorney the opportunity to address the court on that issue before the case is removed from the adjudicative process.* Before any formal or informal action is taken, the prosecutor shall give the victim notice of the time and place of the hearing on the proposed removal of the case from the adjudicative process. The victim has the right to attend the hearing and to address the court at the hearing. As part of any other order removing any case from the adjudicative process, the court shall order the juvenile or the juvenile's parents to provide full restitution as provided in section 44. (emphasis added)

A clear reading of Section 36b explicitly provides authority and the procedure by which a court may remove a juvenile case from the adjudicative process. The trial judge in the instant case followed this procedure; in that there is no dispute. It is submitted that the statute could not be clearer – it permits the court to remove juvenile cases from the adjudicative process if it follows the proper procedure – which was done in this case. The People incorrectly claim that MCL 780.786b contains no language to dismiss authorized juvenile delinquency cases that involve crime victims. This is simply not the case. Section 36b specifically empowers a court to dismiss or “remove” a case from the adjudicative process.

The People attempt by themselves, without any authority, to interpret the intentions of the Michigan Legislature when enacting the CVRA. Nowhere do the People cite any authority that the Court of Appeals subverted the provisions of the CVRA and its Opinion provided the “opposite effect that was intended by the Michigan Legislature” The People do not cite any Legislative history to support its position or provide any insight into the intentions of the Legislature when enacting the CVRA.

C. The grounds in MCR 7.305(B) have been met.

It is submitted that contrary to the People’s assertions, the grounds in MCR 7.305(B) have not been met. The Opinion of the Court of Appeals was not clearly erroneous and will not cause a material injustice, nor does it conflict with any binding case law. The People’s bare

assertion that the Court of Appeals Opinion “bypassed the safeguards put in place by the Legislature to ensure that offenses committed by juveniles are only handled informally with the consent of the prosecuting attorney and ignored public policy” is just that – a bare assertion. The People provide no legal basis in support of this argument.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

I. Did the Court of Appeals commit reversible error when it misconstrued a section of the CVRA imposing notification obligations on the family courts as affirmative authority empowering family courts to divert and dismiss juvenile delinquency cases that involve crime victims, while conversely shielding delinquency cases that did not victimize individuals from this arbitrary dismissal power?

Appellant contends the answer is: “Yes.”

Appellee contends the answer is: “No.”

II. Did the Court of Appeals commit reversible error when it ruled that the *Lee* case and the family court’s inherent authority empowered the family court to transfer an authorized juvenile delinquency case off of the formal family court docket and then dismiss it, over the prosecutor’s objection?

Appellant contends the answer is: “Yes.”

Appellee contends the answer is: “No.”

III. Did the Court of Appeals commit reversible error when it ruled that the separation of powers doctrine did not prevent the family court from dismissing two authorized juvenile delinquency cases over the prosecutor’s objection?

Appellant contends the answer is: “Yes.”

Appellee contends the answer is: “No.”

IV. Did the Court of Appeals commit reversible error when it used the wrong standard of review when it affirmed the trial court’s erroneous ruling?

Appellant contends the answer is: “Yes.”

Appellee contends the answer is: “No.”, that the Court of Appeals did not apply the wrong standard of review.

COUNTER-STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

This Application for Leave to Appeal filed by the People centers around three separate petitions, three separate alleged violations and three different alleged dates of offense(s). The trial court dismissed two of the petitions – sua sponte – after the People refused to dismiss them, reduce the charges and/or transfer the petitions to the consent calendar.

The first petition dated 7/24/18 charged the respondent with one count of domestic violence. The complainant in the matter was the juvenile’s mother. Although the juvenile waived his right to a probable cause hearing on the allegations contained in the petition, the People chose to call the Mother as a witness. The reason stated by the People was to preserve her testimony for trial. (TR-7-24-17 pg 4).

Despite the waiver, the mother testified at length about the incident and photographs were introduced as evidence. Also, a detective Simsack provided testimony that he observed fresh marks and open bloody wounds on the mother’s legs and arms and that mother stated that the juvenile caused these injuries by throwing various items at her. (TR-7-24-17 pg 36).

The Referee found that probable cause existed – either by waiver or by evidence presented – and the petition was authorized.

On 8/8/17 the juvenile pled no contest to this petition and the court accepted the plea as to one count of domestic violence (TR 8-8-17) The police report was used as the factual basis and the juvenile was remanded pending a psychological examination. On this same date a pre-trial was conducted on a second petition which also alleged domestic violence against the Mother. The Juvenile stood mute as to this charge.

The second petition contained allegations that a neighbor called the police after witnessing the juvenile assault his mother. A preliminary hearing was conducted on 7/26/17. The

date of the incident was the prior day and one day subsequent to the juvenile being released to the care of his mother after the hearing on the first petition. (TR 7-26-17) This second petition was authorized and the child was removed from the home.

Disposition on the first petition was held on 9/1/17 and the juvenile was placed on standard probation in the home of the mother (TR 9-1-17),

A third petition charging the juvenile with Larceny in a Building was filed and accepted on 1/18/18. A preliminary inquiry where there was no request for detention/removal from the home was conducted on 11/28/17. That petition was authorized.

At this point in the proceedings, the juvenile had pled no contest to the first petition and disposition was concluded. The second and third petitions were still outstanding. These petitions were addressed at a pre-trial on 1/30/18. At this hearing the juvenile pled no contest to both petitions. (TR 1-30-18 pg 3). The police reports were used as the factual basis. The pleas were accepted, however the Assistant Prosecuting Attorney (“APA”) declined the opportunity to proceed to immediate disposition (TR 1-30-18 pg 4) stating that he wished for the matter to be referred to the out-of-home screening committee for a recommendation as to disposition.

The Judge inquired of both the APA and the probation officer what their likely recommendations would be. The APA stated that the People were not asking for out of home placement (although the People wanted the matter referred to the out-of-home screening committee) and the probation officer stated that their likely recommendation would be intensive probation. (TR 1-30-18 pgs 4-6)

A six-minute side-bar with the APA and the juvenile’s attorney was then conducted with the Judge. A transcript of this conversation is either not available or was not transcribed. The People in their brief on appeal claim that this sidebar should have been recorded and cite the *Thorton* case and MCR 7.210 for the proposition that such side-bars are recorded and can be

transcribed. The *Thorton* case is not listed in the People's index of authorities or any citation provided as authority therefore. (TR 1-30-18 pg 11). Also refer to Appellant's notes eight and nine on page 11 of their brief.

Nonetheless, there is no transcript of this side-bar. The APA states that "the impact of this side-bar forms the basis of Petitioner's appeal" (People's brief page 11).

In preparation for this appeal, the writer consulted with the APA who was present at the side-bar. In note nine of page 11 of the People's brief they state as follows:

The Assistant Prosecutor who participated in the side bar indicated to the writer of this appeal that her recollection of the side bar was that Judge Valentine was advocating to the Prosecutor's Office for either the dismissal or the reduction of the two charges, or for the Prosecutor's Office to agree to allow the Respondent to be placed on the consent calendar so that the two adjudications would not appear on Respondent's record of juvenile adjudications. The Assistant Prosecutor indicated to Judge Valentine that she would not agree to reducing the charges or allowing the Respondent to be placed on the consent calendar.

It is noted here, and more appropriately will be addressed in the argument section of Respondent's reply brief, that there was no sworn Affidavit provided by this APA and attached to the People's brief. Further, the more proper remedy would have been for the People to file a motion to settle the record as provided for in Rule 7.210 Record on Appeal (B)(2) Transcript Unavailable.

What is clear is that after the side-bar, Judge Valentine decided to strike the Juvenile's pleas to Petitions two and three, that she would take those pleas under advisement and the parties would come back for a review in 90-days.(TR 1-30-18 pg 13)

The APA, without any evidence infers an impropriety of abuse of power by Judge Valentine in proceeding in this fashion. This claim is without merit. It is pure speculation on the People's part to infer and read the Judge's mind on the basis of her decision. Further it is submitted that it is unfounded and not supported by any evidence to make such a serious allegation of abuse of discretion upon Judge Valentine.

The inference seems to come from what the courtroom APA read into the Judge's comments when the Judge stated – regarding Petitions two and three – that “I can't give you more probation or more services to you than you have right now even if I sentence you in a disposition (TR 1-30-18 pg 14).

Disposition on Petitions two and three was conducted on 4/24/18. The probation officer recommended that the juvenile attend the mid-course corrections and that he be placed on standard probation. As indicated above, Judge Valentine had held Petitions two and three in abeyance. The pleas were accepted but disposition was held in abeyance.

The APA asked the Judge to accept the pleas on Petitions two and three; the Judge declined to do so. (TR 4-24-18 pg 6). Judge Valentine disagreed with the APA's position to “giving him two additional charges” which was in her opinion “just stacking the juvenile's record (TR 4-24-18 pg 7) and then went on to say that was the reason “I am holding everything in abeyance” (TR 4-24-18 pg 7). The Judge did not accept the juvenile's pleas to Petitions two and three. (TR 4-24-18 pg 7). Judge Valentine did not believe that giving the juvenile a “huge criminal record was in the best interests of justice or this child's future” (TR 4-24-18 pgs 7-8).

The People then filed a Notice of Objection to the Juvenile being placed on the consent calendar on 5/30/18. At a hearing on 7/16/18 the APA argued that the Judge had already accepted the pleas to Petitions two and three and then decided to hold them in abeyance. Judge Valentine responded that she did not accept the pleas therefore she could not proceed to disposition. (TR 7-16-18 pg 5)

Once having made her position clear that she was not going to accept the pleas, Judge Valentine turned to the Juvenile's attorney to inquire as to his intentions going forward. She asked the Juvenile's counsel if he was intending on proceeding to trial on the two outstanding positions as she was not accepting the pleas" (TR-7-16-18 pg 15). He indicated that he was not intending to proceed to trial on Petitions two and three. (TR-7-16-18 pg 15) The Juvenile's attorney stated he agreed with the APA "based on the law and the statute governing consent" (TR 4-24-18 pg 18) and left the matter to the discretion on the court.

On 8/9/18 Judge Valentine issued 'Notice to the Prosecutor of removal of the case from the adjudicative process". She relied in part on MCR 3.902(B) and MCL 780.786b as authority to unauthorize and, thereby removing the Petitions from the adjudicative process"

A final order dismissing Petitions two and three dated 9/10/18 was filed and entered. The People appeal the issuance of this final order.

As stated in the People's Application, the Michigan Court of Appeals affirmed the family court's dismissal of the two authorized juvenile delinquency petitions on two grounds, being (1) that section 36b of the CVRA, which imposes notification obligations on the family court, gave the family court the power to dismiss those juvenile delinquency petitions that involve crime victims, and (2) that the absence of caselaw specifically prohibiting a family court from "unauthorizing" and then dismissing juvenile delinquency cases on the formal family court

docket meant that the family court had the inherent authority to take these actions. *In re Diehl*, at 9-12.

As further stated in the People's Application, the Court of Appeals then rejected Appellant's challenge to the dismissals on the grounds that they constituted a violation of the separation of powers doctrine, ruling that the separation of powers doctrine, as discussed recently by this Court in *Smith*, 496 Mich at 140-141, did not apply to the dismissal of the cases challenged in this appeal because the charges were dismissed before a plea or verdict had been accepted by the court, i.e. before an adjudication had occurred on these charges.

1. STANDARD OF REVIEW

As the Court of Appeals correctly states in its Opinion, the trial court's entry of an order of disposition in a juvenile delinquency proceeding is reviewed for an abuse of discretion, while its factual findings are reviewed for clear error. *People v Brown*, 205 Mich App 503, 504-505; 517 NW2d 806 (1994); *In re Scruggs*, 134 Mich App 617, 621-622; 617; 350 NW2d 916 (1984). "A trial court abuses its discretion when it chooses an outcome falling outside the range of principled outcomes." *In re Kerr*, 323 Mich App 407, 411; 917 NW2d 408 (2018) (quotation marks and citation omitted). This Court will reverse a trial court's finding of fact only if "this Court is left with a definite and firm conviction that a mistake has been made." *Brown*, 205 Mich App at 505. In addition, this Court reviews de novo the interpretation of statutes and court rules. *Kerr*, 323 Mich App at 411.

Contrary to the People's assertion in its appeal, this Application for Leave to Appeal does not raise questions of law that are reviewed de novo on appeal. The People incorrectly rely upon *In re Tiemann*, 297 Mich App 250, 257; 823 NW2d 440 (2012); *People v Kimble*, 470 Mich 305;

684 NW2d 669 (2004); *People v Pinkney*, _ Mich _; _NW3d_; MSC docket 154374 (May 1, 2018) as authority for this proposition.

The CVRA provides a structure and procedure that permits a trial court to unauthorize and remove petitions from the adjudicative process and thereby dismiss petitions that come before the court in Juvenile Delinquency matters. The trial court followed these procedures. The People in their Application do not dispute that the trial court followed such procedures. That being the case, there is already established precedent for the trial court to unauthorize and remove petitions and as such this is not an instance that raises de novo questions of law.

That precedent is laid out in MCL 780.786b Removal of case from adjudicative process; notice required; hearing; consultation of victim with prosecuting attorney.

Sec. 36b.

- (1) Except for a dismissal based upon a judicial finding on the record that the petition and the facts supporting it are insufficient to support a claim of jurisdiction under section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, a case involving the alleged commission of an offense, as defined in section 31, by a juvenile shall not be diverted, placed on the consent calendar, or made subject to any other prepetition or preadjudication procedure that removes the case from the adjudicative process ***unless the court gives written notice to the prosecuting attorney of the court's intent to remove the case from the adjudicative process and allows the prosecuting attorney the opportunity to address the court on that issue before the case is removed from the adjudicative process.*** Before any formal or informal action is taken, the prosecutor shall give the victim notice of the time and place of the hearing on the proposed removal of the case from the adjudicative process. The victim has the right to attend the hearing and to address the court at the hearing. As part of any other order removing any case from the adjudicative process, the court shall order the juvenile or the juvenile's parents to provide full restitution as provided in section 44. (emphasis added)

It is Subchapter MCR 7.300 that establishes the procedure and grounds for filing an Application for Leave to Appeal in the Supreme Court. MCR 7.305(B)(5) sets out the grounds that an Application must show:

- (5) in an appeal of a decision of the Court of Appeals,
- (a) the decision is clearly erroneous and will cause material injustice, or
- (b) the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals

The People fail to meet either of these thresholds and as stated above there is precedent and procedures in place pursuant to the CVRA that provide authority for the trial court to remove a case from the adjudicative process.

Again, as the Court of Appeals correctly states in its Opinion “The rules of statutory construction apply equally to court rules.” *In re Lee*, 282 Mich App 90, 93; 761 NW2d 432 (2009). “Construction begins by considering the plain language of the statute or court rule in order to ascertain its meaning.” *Patal v Patal*, 324 Mich App 631,639-640; 922 NW2d 647 (2018). “[U]nambiguous language is given its plain meaning and enforced as written.” *Id.* at 640 (quotation marks and citation omitted). “A provision in a statute is ambiguous only if it irreconcilably conflicts with another provision or it is equally susceptible to more than a single meaning.” *Lee*, 282 Mich App at 93.

“In construing a legislative enactment, we are not at liberty to choose a construction that implements any rational purpose but, rather, must choose the construction which implements the legislative purpose perceived from the language and the context in which it is used.” *Frost-Pack Distrib Co v Grand Rapids*, 399 Mich 664, 683; 252 NW2d 747 (1977). The legislative chapter governing juveniles plainly states it:

shall be liberally construed so that each juvenile coming within the court’s jurisdiction receives the care, guidance, and control, preferably in his or her own home, conducive to the juvenile’s welfare and the best interest of the state. If a juvenile is removed from the control of his or her parents, the juvenile shall be placed in care as nearly as possible equivalent to the care that should have been given to the juvenile by his or her parents. [MCL 712A.1(3); see also MCR 3.902(B).]

It is submitted that the plain language of the CVRA is unambiguous and the plain meaning leaves no other interpretation than a court has the authority to remove a case from the adjudicative process. Remember that Petitions two and three were authorized but were pre-adjudication. As such, Judge Valentine was not removing the petitions from the adjudicative process – as there was no adjudication. She was removing the petitions post-authorization and pre-adjudication which is clearly permitted under the CVRA by a clear construction of the statute and the legislative intent by specifically inserting the “unless” phrase whereby the court can exercise its discretion and provide the People with its intent to remove the petitions.

Judge Valentine followed this procedure, and by statutory construction was perfectly within her discretion to act as she did.

Respondent-Appellee relies upon his analysis as laid out in his Brief on Appeal filed in the Court of Appeals, that being that the central question was whether or not Judge Valentine abused her discretion by issuing notice to the People, pursuant to the CVRA, that she was unauthorizing and removing the two petitions from the adjudicative process and thereby dismissing the petitions above the objections by the People?

It is true that the CVRA does prohibit a trial court from removing a case from the adjudicative process *unless* the court gives written notice to the prosecuting attorney of the court's intent to remove the case from the adjudicative process and allows the prosecuting attorney the opportunity to address the court on that issue before the case is removed from the adjudicative process. (emphasis added). The word *unless*, which the Legislature inserted in the CVRA, simply permits the trial court to take such action which is otherwise prohibited.

Orders of disposition in delinquency proceedings are reviewed for an abuse of discretion. See *In re Ricks*, 167 Mich App 285, 295 (1988); *In re Scruggs*, 134 Mich. App. 617,621-622 (1984).

“Jurisdiction is the power of the court to act and the authority of a court to hear and determine a case” *Grubb Creed Action Comm. v Shiawassee E. Drain Commissioner*, 218 Mich. App, 665, 668, 554 N.W. 2nd 612 (1996)

It is well established that a family court’s subject matter jurisdiction “is established when the action is of a class that the court is authorized to adjudicate, and the claim stated in the complaint is not clearly frivolous” *In re Hatcher*, 443 Mich. 426, 505 NW2d 834 (1993).

Although juvenile proceedings are not considered adversarial in nature, they are closely analogous to the adversary adult criminal process as it relates to due process protections but they are not criminal proceedings. *In Re Wilson*, 113 Mich. App. 113, 121; 317 NW2d 309 (1982).

Proceedings in a juvenile court need not conform with all the requirements of an adult criminal trial; however, essential requirements of due process and fair treatment must be met. *In Re Gault*, 387 U.S. 1, 30-31, 87 S. Ct 1428. As the Court of Appeals notes, juvenile matters are not criminal proceedings. MCL 712A.1(2). “Juvenile justice procedures are governed by the applicable statutes and court rules, with an emphasis on rehabilitation rather than retribution.” *Lee*, 282 Mich App at 99 (quotation marks, citation, and brackets omitted).

COUNTER-ARGUMENT

2. THE PEOPLE’S APPLICATION FOR LEAVE TO APPEAL LACKS MERIT

Respondent-Appellee relies upon his analysis as laid out in his Brief on Appeal filed in the Court of Appeals that the People’s Application for Leave to Appeal in the Michigan Supreme

Court is barred by the doctrine of double jeopardy. If this Honorable Court were to permit the People's Application to proceed this would trigger the protections of the double jeopardy clause. As it currently stands there is no adjudication. If this Honorable Court were to overturn the decision of the Court of Appeals and agree with the People that the trial court had no authority to remove a case from the adjudicative process then obviously the result would be that the case would be reinstated and the Respondent-Appellee would be adjudicated or face trial on the reinstated petitions.

It is submitted that even if the People prevail on their argument that the Judge lacked the authority to dismiss the petitions, this result would inevitably provide the Juvenile additional protections of due process – the most important being the right not to be adjudicated or tried twice for the same offenses or Petitions – that being a direct violation of the constitutional protections under the double jeopardy clause.

Appeal as of Right

The scope of the prosecuting attorney's right of appeal in criminal cases is set out in [MCL 770.12](#). A prosecutor has no right to appeal outside the express provisions of that statute. *People v Torres*, 452 Mich 43, 51 (1996); *People v Cooke*, 419 Mich 420, 426-427 (1984). [MCL 770.12](#) generally authorizes prosecutorial appeal from judgments and orders. [MCL 770.12](#) generally authorizes prosecutorial appeal from judgments and orders if the prohibition against double jeopardy would not bar further proceedings against the defendant.

As stated in Respondent-Appellee's brief in the Court of Appeals, the People had failed to file a Motion to Settle the Record prior to filing its Appeal in the Court of Appeals. It is once again asserted that this omission is fatally defective and limits the ability of this Honorable Court to render an Opinion without all of the necessary evidence before it. As such, the People had

abdicated and forfeited their Appeal as of Right in the Court of Appeals and therefore have no standing to file its Application for Leave to Appeal.

As stated in Page 4 footnote 6 in the Court of Appeals Opinion:

The prosecutor faults the trial court for failing to provide a transcription of this sidebar conference, citing a transcript from an unrelated criminal case before the circuit court, for the proposition that the court is responsible for eliminating sidebar discussions from the public record, but may obtain separate transcriptions of sidebar discussions. Yet, an affidavit from the court administrator or transcript services regarding the process and availability of transcripts of sidebar conversations occurring in family court was not presented. The prosecutor, as the appellant, had the duty to file with the trial court the complete transcript of testimony and other proceedings, and appellate review is limited to what is presented on appeal. *Band v Livonia Assocs*, 176 Mich App 95, 103-104; 439 NW2d 285 (1989). Curiously, although the prosecutor contends that “the impact of this sidebar forms the basis of Petitioner’s appeal,” there is no indication he took steps to order its preparation if it exists. Furthermore, a summation of the prosecutor’s recall of the sidebar discussion is contained within a footnote of the brief on appeal, yet an affidavit from the prosecutor was not submitted.

What is notable in this footnote is the precedentially binding statement that appellate review is limited to what is presented on appeal. *Band v Livonia Assocs*, 176 Mich App 95, 103-104; 439 NW2d 285 (1989). Also noteworthy is that the People in their Brief in the Court of Appeals stated that “the impact of this sidebar forms the basis of Petitioner’s appeal”. It therefore stands to reason that without a transcript, affidavit or motion to settle the record provided to the Court of Appeals, the central issue in the People’s case is not memorialized and any inferences or inuendoes or statements by the Prosecutor who participated in the side bar as to what transpired is not evidence that this or any court of appellate review can reasonably consider.

In essence, the People’s Application does not trigger this Honorable Court’s jurisdictional powers or trigger the grounds pursuant to MCR 7.305(B)(5) both because of its failure to file a Motion to Settle the Record and the protections of the double jeopardy clause which would exist if the Juvenile’s petitions were reinstated and therefore adjudicated.

Appeals by Leave

[MCL 770.12\(2\)](#) provides that, if further proceedings are not barred by the constitutional protection against double jeopardy, the prosecuting attorney may take an appeal by leave from any of the following:

(a) A judgment or order of the circuit court. . . that is not a final judgment appealable of right.

- (b) A final judgment entered by the circuit court . . . on appeal from any other court.
- (c) Any other judgment or order appealable by law or rule.
- (d) A judgment or order when an appeal of right could have been taken but was not timely filed.
- (e) A final order or judgment based upon a defendant's plea of guilty or nolo contendere.”

Delinquency Proceedings – Double Jeopardy

Once again, Respondent-Appellee's relies on his brief in the Court of Appeals to assert that the People's Application before this Honorable Court is barred by the doctrine of double jeopardy. Although delinquency proceedings are not criminal in nature, [MCL 712A.1\(2\)](#), the constitutional protection against double jeopardy nevertheless applies, and a juvenile may not be tried a second time for the same offense after an adjudication in juvenile court. *Breed v Jones*, 421 US 519, 527-532 (1975). The People in their brief in the Court of Appeals were inconsistently arguing two sides of the same coin. On the one hand they argued that Judge Valentine accepted the no contest pleas to Petitions two and three. (TR 7-16-18 pg 5). If this is so, then the case had been adjudicated and we then proceed to the dispositional phase.

If these petitions have been adjudicated then double jeopardy has attached. *Breed v. Jones, Id* 527-532. The Juvenile then cannot be retried for the same offense.

If Judge Valentine did not accept the pleas, vacated the pleas, held them in abeyance, under advisement or any other remedy short of accepting the pleas then there has been no adjudication. The People argued that the Judge does not have the authority to do this.

Among the essential elements of due process and fair treatment include the right not to be placed in Jeopardy twice, *Breed Id* at 529. If this Honorable Court vacates the Opinion of the Court of Appeals and reinstates the Petitions, then jeopardy will have been attached retroactively; a minor cannot be retried as an adult or a juvenile absent some exception to the double jeopardy prohibition. *Breed Id* at 526.

A juvenile's due process rights do not take a back seat to a dispute between the People and the Judge regardless of whose legal argument may have more merit.

I. The Court of Appeals did not clearly err in affirming the trial court's dismissal of the two authorized delinquency petition cases

DISCUSSION

As cited in Respondent-Juvenile's counter-statement of material proceedings and facts there were three separate petitions. One for domestic violence did reach the adjudicative and dispositional phase and the Juvenile was placed on probation. The other two petitions were authorized but never adjudicated. Judge Valentine repeatedly stated that she was taking those matters under advisement. She also stated numerous times that the pleas to the other two petitions were not accepted, would be held in abeyance by the court and therefore we pre-adjudication.

The following statement from the Judge perhaps best illustrates her rationale for holding the other two petitions under advisement:

The Court: I'm going to allow him on the path that he's on. My indication from Miss Strehl at the time was that he wouldn't be doing anything different as far as services, his services remain the same. He is among the youngest children that I have in front of me. Giving him two additional charges is just stacking a child's juvenile record. And so, I am holding everything in abeyance and having him get through all of his services, trying to get him on the right path. His history is - - I'm not sure if you know about it. Do you know about his history?

[The Prosecutor]: No.

The Court: Okay. His history is that he's been recently adopted. He had quite a horrific childhood for six years. And I think he's got to work through some of his problems. And I want to make sure we're getting him the best treatment. And I don't think that giving him a huge criminal record at age - - are you 12, you're 10?

[Respondent]: Thirteen, Honor.

The Court: Thirteen. You were 12 when these happened, right?

[Respondent]: Yes, Your Honor.

The Court: Is in the best interest of justice or this child's future.

[The Prosecutor]: Okay. So, as far as the People's position, I need to request as these are formalized petitions alleging delinquency, I would ask the Court to accept his plea, and I would ask for a date of disposition to be set.

The Court: Thank you; denied.

The Juvenile's age, 12 at the time of the filing of the petitions and the terrible abuse that he suffered and his hesitancy and anxiety about testifying in the pending criminal case were factors that the Judge took into consideration when taking the pleas under advisement. As stated by the Court of Appeals, "the trial judge was also charged with applying the juvenile law in accordance with its expressed purpose, to ensure that the child received care, guidance, and control in the environment conducive to the child as well as the State's interest." MCL 712A.1(3)

In balancing these interests the Judge properly came to the conclusion that additional adjudications would not provide the Juvenile with any additional services, the recommendation of probation from the first adjudicated case would be the same even if the other two petitions were adjudicated and further it would have a deleterious affect on the Juvenile. First it would add unnecessary adjudications to his record which would affect his sentencing guidelines if he were ever to be sentenced as an adult and would result as to what the Judge and the Court of Appeals agreed would be a punitive "stacking" of charges that would not change the outcome of the case nor alter the probationary disposition in the adjudicated petition and would not provide any more services than what the Juvenile was already receiving. This would be contrary to the court's obligation to consider rehabilitate measures and applying the juvenile law in accordance with its expressed purpose, to ensure that the child received care, guidance, and control in the environment conducive to the child as well as the State's interest." MCL 712A.1(3)

Further the probation office indicated that the addition and adjudication of the two new petitions would not alter her recommendation of probation even if the other two petitions were adjudicated. It is also of note that the Juvenile has successfully completed the terms and conditions of his probation on the first petition. As such, the issue is now moot. If not moot, then at the very least would be a harmless error.

3. THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE TRIAL COURT'S SUA SPONTE DISMISSAL OF THE PETITIONS.

Where the language used is unambiguous, "we presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written." *Id.* at 330, 603 N.W.2d 250. *People v. Thomas*, 678 NW 2d 631, 260 Mich. App. 450 (2004) Our fundamental obligation when interpreting statutes is "to ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute." *Koontz v. Ameritech Services, Inc.*, 466 Mich. 304, 312, 645 N.W.2d 34 (2002). If the statute is unambiguous, judicial construction is neither required nor permitted. In other words, "[b]ecause the proper role of the judiciary is to interpret and not write the law, courts simply lack authority to venture beyond the unambiguous text of a statute." *Id.*

Sua Sponte is Latin for "of one's own accord; voluntarily." Used to indicate that a court has taken notice of an issue on its own motion without prompting or suggestion from either party.

As a general rule, where grounds for dismissal exist, an action is subject to dismissal on a court's own motion. *Carlisle v. United States*, 517 US 416 (1996) and *Trest v. Cain*, 522 US 87 (1997).

As discussed above the CVRA provides an explicit procedure and ground for dismissal of petitions from the adjudicative process. Judge Valentine followed the procedure as laid out in the CVRA and a sua sponte dismissal of petitions are clearly permissible pursuant to the CVRA and *Carlisle v. United States*, 517 US 416 (1996) and *Trest v. Cain*, 522 US 87 (1997).

In summary, a ground for dismissal existed and the petition is subject to dismissal sua sponte on the court's own motion. The People's argument regarding diversion, informal

treatment or the consent calendar is irrelevant as the trial court did not take any of those courses of action. The trial court initially took the petitions under advisement – there being no adjudication – and later properly exercised its discretion to sua sponte dismiss the non-adjudicated petitions.

The People’s argument that the trial court should have followed “one of the legislatively authorized procedures” and thereby “bypassed these statutes” is equally without merit. The trial court has no obligation to follow any of these other remedies. It is an affront to the trial court to imply, no - explicitly state, that there were statutes of higher authority that were “bypassed” than the CVRA that the trial judge must follow. This is simply not true. This is akin to accusing the trial court of disingenuously manipulating the process and disregarding statutes and case law that mandate that these procedures must first be exhausted before reliance can be placed on the CVRA. The People cite no authority for this outlandish argument. Judge Valentine did not “bypass” any statutes or case law of a higher authority or precedential value.

The People then attempt to provide a history of the CVRA and its legislative intent as if to imply that the trial court’s sua sponte dismissals contravened the law and spirit of the act. This is simply not so.

The People are correct, as Respondent-Appellee himself has asserted, as to the process of statutory interpretation. The People cite case law that support Respondent-Appellees position as to statutory interpretation. However, the People seem to imply that the CVRA was enacted only to “respond to the growing recognition of the concerns regarding the treatment of crime victims, including a perceived insensitivity to their plight”. While this may indeed be the spirit of the CVRA it does not override any specific statutory language contained therein.

Once again, S 36b of the CVRA provides specific statutory language permitting the trial court to dismiss authorized but not adjudicated petitions. Contrary to the People's assertions the trial court's decision was not arbitrary or capricious or on mere "whim"

A case involving the alleged commission of an offense, as defined in section 31, by a juvenile shall not be diverted, placed on the consent calendar, or made subject to any other prepetition or preadjudication procedure that removes the case from the adjudicative process *unless the court gives written notice to the prosecuting attorney of the court's intent to remove the case from the adjudicative process and allows the prosecuting attorney the opportunity to address the court on that issue before the case is removed from the adjudicative process.*

2. The Court of Appeals did not clearly err when ruling that the Lee case recognized that the family court's inherent authority empowered the family court to transfer an authorized juvenile delinquency case off the formal family court docket and then dismiss it, over the prosecutor's objections.

This argument has been exhaustively been dealt with above regarding the statutory construction of the CVRA and Section 36b authority of the trial judge to dismiss sua sponte unadjudicated petitions as long as the procedures in the act are followed, which they were. The Court of Appeals did not misinterpret or clearly err in its reliance on the *Lee* case in support of its Opinion.

As the Court of Appeals correctly points out In *Lee*, 282 Mich App at 94, this Court interpreted the phrase "adjudicative process" in MCR 3.932(B) and MCL 780.786b(1). The *Lee* Court stated that, while the phrase is not defined by statute or court rule, "it is the judicial procedure that could lead to the court's fact-finding determination that the petition's allegations are true. This would constitute an 'adjudication,' analogous to a criminal conviction, that the court has jurisdiction over the juvenile under MCL 712A.2(a)(1)." *Id.*, citing former MCR 3.903(A)(27).

Again, there was no adjudication or “adjudicative process”. The trial court took the other two petitions under advisement. While they may have been authorized they were never adjudicated. This is clearly stated in the Court of Appeals decision: “However, authorization is not the equivalent of adjudication” MCR 3.902(A)(21)

Again, the trial judge provided notice to the People pursuant to the CVRA of its intent to remove the petitions from the adjudicative process. There is absolutely no authority cited by the People to support its argument that the trial court is precluded from acting as it did. This would be permissible even if there were only a single petition to consider, rather than three in the instant case. But the authority is arguably greater when the Juvenile is already adjudicated on a prior petition and is on probation pursuant to a dispositional hearing.

Also, as the Court of Appeals states, “This ruling falls within the range of reasonable, principled outcomes, and thus, it cannot be said that the trial court abused its discretion by unauthorizing respondent’s second and third petitions and removing them from the adjudicative process. *People v. Kerr*, 323 Mich App 407; 917 NW 2d 408 (2018).

3. The Court of Appeals did not clearly err when it ruled that the separation of powers doctrine did not prevent the family court from dismissing two authorized juvenile delinquency cases over the prosecutor’s objection.

The People correctly cite the separation-of powers doctrine as set out in **Const 1963, art 3, § 2.**

That being:

The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.

The Court of Appeals correctly states the law and interpretation of the separation-of-powers doctrine when it stated that:

However, the separation-of-powers doctrine does not mandate complete separation, and overlap between the functions and powers of the branches is permissible. *People v Conat*, 238 Mich App 134, 146; 605 NW2d 49 (1999). “Rather, the evil to be avoided is the accumulation in one branch of the powers belonging to another.” *Id.* In criminal cases, a trial court possesses the “power to hear and determine controversies,” while “the decision whether to bring a charge and what charge to bring lies in the discretion of the prosecutor.” *Id.* at 147, 149.

The governing statutes and court rules permit a trial court to remove a case from the adjudicative process before an adjudication is entered, which is precisely what occurred here. *Lee*, 282 Mich App at 94, citing MCL 780.786b; see also MCR 3.932(B) (“A case involving the alleged commission of an offense listed in the [CVRA] may only be removed from the adjudicative process upon compliance with the procedures set forth in [MCL 780.786b].”). Moreover, the trial court’s removal of the second and third petitions from the adjudicative process was in conformity with the ultimate goal of juvenile delinquency proceedings, which is to provide services to minor children to aid them in the rehabilitation process. *Lee*, 282 Mich App at 99. Accordingly, the trial court did not violate the separation-of-powers doctrine.

Finally, even if these two petitions at issue were in fact adjudicated the trial court’s authority to make dispositional orders extends beyond those in MCL 712A.18. *In re Macomber*, 436 Mich 386, 393 (1990).

We are persuaded that to interpret the Juvenile Code only to authorize the dispositional remedies provided in MCL 712A.18 would severely limit The court’s effectiveness in providing for the well-being of children *Id at 398*

Macomber makes it clear that the responsibility of the trial court is to couple the “supportive action of the court to serve the best interest of the juvenile and the public”. *Id at 398* and not to “stack” additional adjudications to a Juvenile’s record where it serves no legitimate purpose. Punishment is the only purpose that appears to be the motivation behind the People’s stance. As stated, additional adjudications would serve no other purpose than punishment which

is not the prime responsibility of the trial court. That prime purpose is to consider rehabilitate measures and applying the juvenile law in accordance with its expressed purpose, to ensure that the child received care, guidance, and control in the environment conducive to the child as well as the State's interest." MCL 712A.1(3)

4. The Court of Appeals did not use the wrong standard of review when it affirmed the trial court's ruling

Appellant's challenge to the dismissal of the two juvenile delinquency cases on the basis that it addressed questions of law and constitutional interpretation, and therefore the appeal should have been reviewed by the Court of Appeals under the less deferential de novo standard is misplaced.

The trial court's entry of an order of disposition in a juvenile delinquency proceeding is reviewed for an abuse of discretion, while its factual findings are reviewed for clear error. *People v Brown*, 205 Mich App 503, 504-505; 517 NW2d 806 (1994); *In re Scruggs*, 134 Mich App 617, 621-622; 617; 350 NW2d 916 (1984). "A trial court abuses its discretion when it chooses an outcome falling outside the range of principled outcomes." *In re Kerr*, 323 Mich App 407, 411; 917 NW2d 408 (2018) (quotation marks and citation omitted). This Court will reverse a trial court's finding of fact only if "this Court is left with a definite and firm conviction that a mistake has been made." *Brown*, 205 Mich App at 505. In addition, this Court reviews de novo the interpretation of statutes and court rules. *Kerr*, 323 Mich App at 411.

Contrary to the People's assertion in its appeal, this Application for Leave to Appeal does not raise questions of law that are reviewable de novo on appeal. The People incorrectly rely upon *In re Tiemann*, 297 Mich App 250, 257; 823 NW2d 440 (2012); *People v Kimble*, 470 Mich 305; 684 NW2d 669 (2004); *People v Pinkney*, _ Mich _; _NW3d_; MSC docket 154374 (May 1, 2018) as authority for this proposition.

The CVRA provides a structure and procedure that permits a trial court to unauthorize and remove petitions from the adjudicative process and thereby dismissing petitions that come before the court in Juvenile Delinquency matters. The trial court followed these procedures. The People in their Application do not dispute that the trial court followed such procedures. That being the case, there is already established precedent for the trial court to unauthorize and remove petitions and as such this is not an instance that raises de novo questions of law.

RELIEF REQUESTED

WHEREFORE, Respondent-Appellant requests that this Honorable Court deny the People's Application for Leave to Appeal and deny the People's request to reverse the trial court decision to remove the unadjudicated petitions from the adjudicative process, thereby dismissing the petitions, to deny the People's request that the trial court's sua sponte dismissal of the petitions were unlawful and a violation of the separation of powers doctrine.

It is submitted that the People have not raised sufficient cause to reverse the decision of the Court of Appeals or the trial court Opinions and therefore Respondent-Appellee prays that this court affirm the Court of Appeals Opinion affirming Judge Valentine's decision.

Respectfully submitted,

BY: *Hugh R. Marshall*

HUGH R. MARSHALL (P48269)
ATTORNEY FOR RESPONDENT
11843 E. THIRTEEN MILE RD
WARREN, MI 48093
(313)268-6288

DATED: November 27, 2019