

# MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



---

## ATTORNEY FOR APPELLANT

Kay A. Beehler  
Terre Haute, Indiana

## ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
  
Ellen H. Meilaender  
Deputy Attorney General  
Indianapolis, Indiana

---

# IN THE COURT OF APPEALS OF INDIANA

---

Montez Ellington, Jr.,

*Appellant-Defendant,*

v.

State of Indiana,

*Appellee-Plaintiff.*

July 25, 2023

Court of Appeals Case No.  
22A-CR-2247

Appeal from the Vigo Superior  
Court

The Honorable Michael Lewis,  
Judge

Trial Court Cause No.  
84D06-2207-MR-2487

**Memorandum Decision by Judge Kenworthy**  
Judge Crone and Senior Judge Robb concur.

**Kenworthy, Judge.**

## Case Summary

- [1] After a juvenile court waived its jurisdiction over sixteen-year-old Montez Ellington for alleged delinquent conduct when Ellington was fifteen years old, the State brought criminal charges against Ellington as an adult. Ellington moved to dismiss, alleging the superior court lacked subject-matter jurisdiction after the juvenile court waived its jurisdiction because of our Supreme Court’s decision in *State v. Neukam*, 189 N.E.3d 152 (Ind. 2022). The superior court denied the motion to dismiss. Ellington brings this interlocutory appeal, which focuses on the scope of *Neukam* and presents substantially the same arguments this Court recently rejected in *Kedrowitz v. State*, 199 N.E.3d 386 (Ind. Ct. App. 2022), *trans. denied*. Ellington contends *Kedrowitz* “misinterpreted the intent and meaning of the plain language of the Supreme Court’s opinion in *Neukam*[.]” *Appellant’s Br.* at 6. We disagree. Drawing on our colleagues’ discussion of jurisdictional waiver in *Kedrowitz*, we affirm the denial of the motion to dismiss.

## Facts and Procedural History

- [2] In August 2021, the State alleged Ellington (born in November 2005) was a delinquent child for committing acts in July 2021—when Ellington was fifteen years old—that would be the following crimes if committed by an adult: (1) murder, a felony;<sup>1</sup> (2) attempted murder, a Level 1 felony;<sup>2</sup> and criminal

---

<sup>1</sup> Ind. Code § 35-42-1-1(1) (2018).

<sup>2</sup> I.C. §§ 35-41-5-1(a) (2014) & 35-42-1-1(1) (2018).

recklessness, a Level 5 felony.<sup>3</sup> The State initiated the delinquency proceedings in the juvenile division of the Vigo Circuit Court, then filed a motion asking the juvenile court to waive its jurisdiction, so Ellington could be tried as an adult in a criminal court. Following a hearing, the juvenile court entered findings and issued an order waiving its jurisdiction on July 8, 2022. The next week—at which point Ellington was sixteen years old—the State filed criminal charges against Ellington in the Vigo Superior Court. Ellington moved to dismiss, alleging the superior court lacked subject-matter jurisdiction. The superior court denied the motion. Ellington then perfected this interlocutory appeal.

## Discussion and Decision

[3] Ellington appeals the denial of his motion to dismiss for lack of subject-matter jurisdiction, which focused on *Neukam* and the interplay between our juvenile and criminal statutes. As to jurisdiction, where—as here—the pertinent facts are not in dispute, we review *de novo* whether a court has subject-matter jurisdiction. *D.P. v. State*, 151 N.E.3d 1210, 1213 (Ind. 2020). Moreover, the proper interpretation of a statute is a question of law we review *de novo*. *Id.*

[4] With few exceptions, the juvenile court has “exclusive original” jurisdiction when the State alleges a person is a delinquent child. I.C. § 31-30-1-1(a). For the juvenile court to attain its jurisdiction, the accused must be a “child”—*i.e.*, a person under the age of twenty-one. I.C. § 31-9-2-13(d); *D.P.*, 151 N.E.3d at

---

<sup>3</sup> I.C. § 35-42-2-2(a), (b)(2) (2019).

1216. Our legislature conferred the power to waive this jurisdiction in certain scenarios. *See generally* I.C. §§ 31-30-3-2–6. For example, where—as here—the State alleged the child (1) committed a delinquent act when the child was at least twelve years old and (2) the act would constitute murder if committed by an adult, the juvenile court “shall waive jurisdiction” if there is probable cause to believe the child committed the alleged conduct, unless waiving jurisdiction is inconsistent with the best interests of the child and safety and welfare of the community. I.C. § 31-30-3-4. In other instances—including where, as here, the State alleged the child (1) committed a delinquent act when the child was at least fourteen years old and (2) the act would be a felony if committed by an adult—the court may (but is not obligated to) waive its jurisdiction upon making certain findings. *See* I.C. § 31-30-3-2. Whenever the juvenile court waives its jurisdiction, the court “waives the case to a court that would have jurisdiction had the act been committed by an adult.” I.C. § 31-30-3-1. Moreover, “[w]aiver is for the offense charged and all included offenses.” *Id.*

[5] Here, Ellington does not dispute the juvenile court (1) had the statutory authority to waive its jurisdiction and (2) entered the statutorily required findings to support waiver.<sup>4</sup> Put differently, Ellington is not arguing the juvenile court failed to effectively waive its jurisdiction; rather, he argues the superior court lacks jurisdiction to hear the criminal allegations against him.

---

<sup>4</sup> We commend Magistrate Daniel Kelly for the thorough order on waiver of jurisdiction, which facilitated review.

[6] In contending the superior court erred in denying his motion to dismiss, Ellington exclusively relies on our Supreme Court’s decision in *Neukam*. *See, e.g., Reply Br.* at 4 (“Until the Indiana legislative branch acts to remedy the definitional issues raised in *Neukam*, the jurisdictional impediments will remain.”). In that case, the State filed a juvenile-delinquency petition alleging the accused committed delinquent acts while a child. *Neukam*, 189 N.E.3d at 153. However, by that point, the accused was twenty-two years old and therefore no longer a “child” under the juvenile code. *See id.* The juvenile case was dismissed and the State sought to amend its charging information in a criminal case before the circuit court, adding the allegations formerly raised in the delinquency petition. *Id.* The circuit court denied the motion. *Id.*

[7] In resolving an interlocutory appeal, the Indiana Supreme Court interpreted provisions of our juvenile code and criminal code, determining whether the juvenile court, the circuit court—or neither court—had jurisdiction under the circumstances. *See id.* at 153–57. The Court determined the juvenile court lacked jurisdiction at that point because the accused was “older than twenty-one” and therefore no longer a “child” under the statutory scheme. *Id.* at 157. And because the alleged conduct did not fit a handful of jurisdictional exceptions for “direct-file offenses”—offenses over which a juvenile court lacks exclusive original jurisdiction, *id.* at 156—the Court determined the “circuit court lack[ed] jurisdiction over the criminal charges . . . for conduct occurring before [the defendant] turned eighteen,” *id.* at 157. Based on its interpretation of the statutes at issue, the Court determined “no court ha[d] jurisdiction” over

the allegations at issue. *Id.* In other words, the circumstances in *Neukam* presented a “jurisdictional gap only the legislature can close.” *Id.* at 153.

[8] Shortly after our Supreme Court issued its opinion in *Neukam*, this Court issued an opinion in *Kedrowitz*. There, this Court addressed the issue Ellington now presents, which we restate as whether, based on the logical extension of our Supreme Court’s analysis and statutory interpretation in *Neukam*, a circuit or superior court lacks jurisdiction to hear criminal charges brought against the accused when (1) the accused is still a child and (2) the juvenile court has entered a valid waiver of jurisdiction. *See Kedrowitz*, 199 N.E.3d at 401–04.

[9] The *Kedrowitz* Court rejected this proffered reading of *Neukam*, pointing out the Indiana Supreme Court specifically stated waiver of jurisdiction was not a “dispositive subject” in the *Neukam* case, *id.* at 404 (quoting *Neukam*, 189 N.E.3d at 157), and yet the proffered reading of *Neukam* would “effectively nullify almost an entire chapter of the Indiana Code” regarding waiver—“an extensive statutory framework . . . pursuant to which cases involving delinquent acts may be waived into adult court to be tried as criminal cases,” *id.* In the end, the *Kedrowitz* Court concluded the “correct approach” to statutory interpretation was to “read all of the relevant statutes as permitting our circuit and superior courts to accept jurisdiction over cases waived by juvenile courts, so as not to render that process nothing more than a waiver to nowhere.” *Id.*

[10] According to Ellington, *Kedrowitz* contains an “over-broad interpretation of the *Neukam* holding[.]” *Appellant’s Br.* at 6. But we disagree. For the same reasons

thoughtfully articulated in *Kedrowitz*, we conclude *Neukam* does not compel dismissal for lack of subject-matter jurisdiction when the juvenile court has effectively waived its jurisdiction over a child.<sup>5</sup> Otherwise discerning no defect in the waiver of jurisdiction, we affirm the denial of the motion to dismiss.

## **Conclusion**

[11] The superior court did not abuse its discretion in denying the motion to dismiss for lack of subject-matter jurisdiction over the defendant.

[12] Affirmed.

Crone, J., and Robb, Sr. J., concur.

---

<sup>5</sup> In the recent legislative session, our General Assembly addressed the jurisdictional gap identified in *Neukam* without amending the statutory provisions at issue here and in *Kedrowitz*. *See generally* P.L. 115-2023 (2023).