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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1738**

In the Matter of the Welfare of: D. L. L., Jr.

**Filed April 15, 2019
Affirmed
Bjorkman, Judge**

Anoka County District Court
File No. 02-JV-17-1370

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Anthony C. Palumbo, Anoka County Attorney, Robert I. Yount, Assistant County Attorney, Anoka, Minnesota (for respondent state)

Considered and decided by Florey, Presiding Judge; Connolly, Judge; and
Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellant challenges his certification for prosecution as an adult on charges of first-degree assault and first-degree aggravated robbery, arguing that the district court abused its discretion by concluding that retaining his case in the juvenile system would not serve public safety. We affirm.

FACTS

Shortly before midnight on July 23, 2017, nearly 17-year-old appellant D.L.L., Jr. and two companions approached 18-year-old A.A.Y. outside a gas station and asked him to buy them a tobacco product. A.A.Y. agreed and purchased the product with money they provided. He then met D.L.L. and his companions in the alley behind the gas station building. They exchanged a few words, then D.L.L. and his companions attacked A.A.Y. They kicked and stomped on his head and torso. One of them rummaged through A.A.Y.'s pockets and took his cell phone. They also took his shoes.

Shortly thereafter, police officers were called to the gas station, where they discovered A.A.Y. confused and injured. He was bleeding from significant facial injuries. A.A.Y. was transported to the hospital and diagnosed with extensive facial fractures, a fractured clavicle, a fractured vertebra, and a brain bleed.

Police retrieved surveillance video from the gas station. The video shows D.L.L. and his companions all kicking, stomping, and jumping on A.A.Y.'s head and torso, continuing even after he lay motionless on the ground. Police also obtained bus video of D.L.L. and his companions riding from Minneapolis to the area of the assault and used the images to identify all three.

The state charged D.L.L. with first-degree assault and first-degree aggravated robbery and filed a motion for presumptive adult certification under Minn. Stat. § 260B.125, subd. 3 (2016). After considering the circumstances of the charged offenses and evidence of D.L.L.'s abusive home environment, mental-health struggles, prior

instances of similar and escalating delinquent behavior,¹ programming history, and dispositional options, the district court certified D.L.L. for adult prosecution. D.L.L. appeals.

D E C I S I O N

“A district court has considerable latitude in deciding whether to certify, and this court will not upset its decision unless its findings are clearly erroneous so as to constitute an abuse of discretion.” *In re Welfare of S.J.T.*, 736 N.W.2d 341, 346 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Oct. 24, 2007). We review questions of law de novo and findings of fact for clear error. *In re Welfare of J.H.*, 844 N.W.2d 28, 34-35 (Minn. 2014). “We will not disturb a finding about whether public safety would be served by retaining the proceeding in juvenile court unless it is clearly erroneous.” *Id.* at 35.

Under Minnesota law, if a child was at least 16 years old at the time of the alleged offense and the offense is one that would result in a presumptive commitment to prison, it is presumed that the child will be certified to stand trial as an adult. Minn. Stat. § 260B.125, subd. 3. The child bears the burden of rebutting this presumption by “clear and convincing evidence that retaining the proceeding in the juvenile court serves public safety.” *Id.*

When assessing whether retaining a proceeding in the juvenile system serves public safety, the district court must consider six factors:

- (1) the seriousness of the alleged offense in terms of community protection, including the existence of any

¹ In September 2015, D.L.L. and some other teenagers accosted a woman on a light rail platform; he used a Taser on her and stole her cell phone. In May 2017, D.L.L. committed another theft and assault, “beating” the victim and causing “serious facial injuries.”

aggravating factors recognized by the Sentencing Guidelines, the use of a firearm, and the impact on any victim;

(2) the culpability of the child in committing the alleged offense, including the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Sentencing Guidelines;

(3) the child's prior record of delinquency;

(4) the child's programming history, including the child's past willingness to participate meaningfully in available programming;

(5) the adequacy of the punishment or programming available in the juvenile justice system; and

(6) the dispositional options available for the child.

Id., subd. 4 (2016). The district court must give "greater weight" to the seriousness of the offense and the child's prior record. *Id.* And it must, for purposes of determining certification, presume the charges against the child and the factual allegations of the petition are true. *J.H.*, 844 N.W.2d at 38.

Because D.L.L. was 16 years old at the time of the offenses and the charges carry a presumptive prison sentence, adult certification is presumed in this case. The district court determined that D.L.L. did not rebut that presumption based on findings that all six factors favor certification. D.L.L. does not dispute that the first three factors, including the two given the greatest weight, favor certification. In particular, he does not dispute the district court's determination that the offenses were "undeniabl[y]" grave and involved three aggravating factors—D.L.L. committed the offenses as a part of a group of three, the victim was particularly vulnerable, and the victim was treated with particular cruelty. But he nonetheless contends that the district court abused its discretion because his programming history, the fourth factor, and dispositional prospects, the fifth and sixth factors, favor retention of his case in juvenile court. We are not persuaded.

First, even if the challenged findings are flawed, D.L.L. identifies no authority for the proposition that a district court abuses its discretion by ordering presumptive certification when half of the public-safety factors, including those to be weighed most heavily, undisputedly favor certification. *Cf. In re Welfare of P.C.T.*, 823 N.W.2d 676, 682 (Minn. App. 2012) (stating that “the matter must be certified” when certification is presumed and the juvenile “fails to provide sufficient evidence regarding each of the statutory factors” (quotation omitted)), *review denied* (Minn. Feb. 19, 2013).

Second, D.L.L. has not demonstrated error in the district court’s analysis of his programming history. The district court accurately noted that D.L.L. has a “significant” and largely unsuccessful programming history. Starting in 2015, D.L.L. completed six months of home-school programming and a “gang reduction program,” but “neither had any impact on his behaviors.” He was placed in detention five times and was on home electronic monitoring three times—including at the time of the current offenses.² And while D.L.L. had been in detention for more than a year at the time of the certification hearing, he had only demonstrated “meaningful participation” in the programming during the preceding “couple of months.” D.L.L. does not dispute these facts, but contends the district court inappropriately “blame[d]” him “for prior lapses in programming under different circumstances and at a different age.” We disagree. The district court’s findings address numerous lapses over a span of less than two years. It did not abuse its discretion

² He absconded from home monitoring by cutting off his ankle bracelet.

by determining that minimally positive recent programming history was insufficient to make this factor, overall, weigh against certification.

Third, the district court thoroughly considered D.L.L.’s dispositional prospects—the adequacy of the punishment or programming available in the juvenile system and the dispositional options available for him. *See In re Welfare of N.J.S.*, 753 N.W.2d 704, 711 (Minn. 2008) (considering fifth and sixth factors together). The district court found that D.L.L. has made some progress in his current juvenile placement and probably would benefit from long-term programming, which he is unlikely to receive in prison. But it noted that D.L.L.’s progress was recent and slow—D.L.L. had completed only three of six levels after one year in a program that typically takes nine months to one year. The court expressly acknowledged the “tension between rehabilitation and public safety,” but ultimately concluded that a juvenile disposition would not adequately protect public safety and would “understat[e] the seriousness of the offense[s].” Given the very serious offenses with which D.L.L. is charged, and the aggravated manner in which he committed them, combined with D.L.L.’s demonstrably poor programming prospects, we discern no clear error by the district court’s findings that factors 4, 5, and 6 favor certification.

The circumstances of this case are troubling in many respects. In addition to examining the extremely violent nature of the offenses, the district court thoughtfully considered the role D.L.L.’s chaotic and abusive home environment played in both contributing to his violent behavior and undermining his chances for successful programming. But the district court ultimately focused, as it must, on the public-safety concerns presented by D.L.L.’s increasingly violent behavior and demonstrated

recalcitrance. See *P.C.T.*, 823 N.W.2d at 685 (stating that “public safety is the touchstone of the analysis”). On this record, we conclude that the district court did not abuse its discretion by ordering D.L.L.’s presumptive certification for adult prosecution.

Affirmed.