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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2053**

In the Matter of the Welfare of: A. D. K.

**Filed July 8, 2019
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-JV-18-4078

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

Michael O. Freeman, Hennepin County Attorney, Subia Beg, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

A.D.K. is charged with second-degree murder and second-degree assault with a dangerous weapon. The state has alleged that, when he was 17 years old, he shot two men, killing one and seriously injuring the other. The juvenile court granted the state's motion to certify A.D.K. for prosecution as an adult. We affirm.

FACTS

The juvenile-delinquency petition alleges the following facts, which we assume to be true for purposes of the state's motion for certification. At approximately 2:00 a.m. on January 7, 2018, A.D.K. went to a house party in southeast Minneapolis with a friend, C.O. C.O. previously had been the victim of an attempted robbery by D.D., during which D.D. shot C.O. and injured him. A.D.K. and C.O. knew that D.D. was a guest at the house party. After arriving at the party, A.D.K. went to the back of the house, where a group of people had gathered. A.D.K. confronted D.D. and argued with him about the attempted robbery of C.O. A.D.K. pulled out a handgun and fired six or seven shots at D.D. before fleeing. D.D. died at the scene. A bystander, C.S., was struck in his right thigh and survived. A.D.K. was 17 years old on the day of the incident. He became an adult 22 days later.

In September 2018, the state charged A.D.K. with second-degree murder, in violation of Minn. Stat. § 609.19, subd. 1(1) (2016), and second-degree assault with a dangerous weapon, in violation of Minn. Stat. § 609.222, subd. 1 (2016). At the same time, the state moved to certify A.D.K. for prosecution as an adult.

The juvenile court conducted a certification hearing on two days in October and November 2018. The state called two witnesses. Kimberly Johnson, a juvenile probation officer, testified about the certification report she had prepared. She recommended certification, in part because of the inadequacy of the punishment or programming available in the juvenile system and in part because of the seriousness of the offenses. Roger Baburam, a program director at MCF-Stillwater, testified about the educational, vocational, mental-health, and chemical-dependency programs generally available in

Minnesota correctional facilities for adult offenders. The state offered two exhibits, including the certification study prepared by Johnson.

A.D.K. also called two witnesses. Jessica Miles, a licensed psychologist, testified that A.D.K. had “various substance abuse disorders” and that, left untreated, “his substance use is a significant factor in his risk to commit future acts of violence.” Miles recommended a setting “where structure and supervision can be more consistent, and monitoring can be more effective.” She conceded that her treatment recommendations could take place in an adult setting. Eric Meier, a correctional lieutenant at MCF-Red Wing, testified about the chemical-dependency, mental-health, and cognitive-behavior-restructuring programs offered at MFC-Red Wing for juvenile offenders. Meier testified that MFC-Red Wing has had approximately five juveniles in the past 20 years who have been found guilty of murder or manslaughter. A.D.K. offered nine exhibits, including Miles’s psychological evaluation.

The juvenile court granted the state’s motion in an 11-page order. A.D.K. appeals.

D E C I S I O N

A.D.K. argues that the juvenile court erred by granting the state’s motion to certify him for prosecution as an adult.

As a general rule, juveniles accused of criminal conduct are tried in the juvenile division of the district courts. Minn. Stat. § 260B.101, subd. 1 (2016). But a juvenile who is 14 years old or older, who commits an offense that would be a felony if committed by an adult, may be certified for prosecution as an adult in district court. Minn. Stat. § 260B.125, subd. 1 (2016). If a juvenile is alleged to have committed an offense that

would result in a presumptive commitment to prison if the juvenile were an adult, and if the juvenile was 16 or 17 years of age at the time of the alleged offense, adult certification is presumed. *Id.*, subd. 3. “In presumptive-certification proceedings, the state bears the burden of showing that (1) the juvenile was 16 or 17 years old, and (2) the alleged offense carries a presumptive prison sentence or that it is a felony offense involving a firearm.” *In re Welfare of P.C.T.*, 823 N.W.2d 676, 681 (Minn. App. 2012), *review denied* (Minn. Feb. 19, 2013). If the state satisfies that burden and the district court determines that probable cause exists to believe the juvenile committed the alleged offense, the juvenile bears the burden of proving “by clear and convincing evidence that retaining the proceeding in the juvenile court serves public safety.” Minn. Stat. § 260B.125, subd. 3; *see also* Minn. R. Juv. Delinq. P. 18.06, subd. 1. If the juvenile does not satisfy that burden, “the court shall certify the proceeding.” Minn. Stat. § 260B.125, subd. 3. If the juvenile satisfies that burden, the juvenile court retains jurisdiction in an extended-jurisdiction juvenile (EJJ) prosecution. Minn. Stat. §§ 260B.125, subd. 8(b), 260B.130, subd. 1(1) (2016); *In re Welfare of J.H.*, 844 N.W.2d 28, 35 (Minn. 2014).

In determining whether public safety is served by certification, a juvenile court must consider the following six factors:

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

Minn. Stat. § 260B.125, subd. 4. A juvenile court must give greater weight to the first and third factors. *Id.* A juvenile court is “not required to specifically address each of the six statutory factors in its written order” but must demonstrate that it “carefully considered its decision.” *J.H.*, 844 N.W.2d at 37 (quotation omitted).

A juvenile court “has considerable latitude in deciding whether to certify a case for adult prosecution.” *P.C.T.*, 823 N.W.2d at 681 (quotation omitted). This court applies a clear-error standard of review to a juvenile court's findings of fact concerning the six statutory public-safety factors. *J.H.*, 844 N.W.2d at 34-35. We apply an abuse-of-discretion standard of review to a juvenile court's balancing of the factors and its ultimate decision on a certification motion. *In re Welfare of N.J.S.*, 753 N.W.2d 704, 710-11 (Minn. 2008); *In re Welfare of U.S.*, 612 N.W.2d 192, 195 (Minn. App. 2000).

In this case, the juvenile court reviewed the evidence submitted by the parties and made numerous findings of fact. The juvenile court also discussed each of the six statutory public-safety factors. The juvenile court determined that the first, second, fifth, and sixth

factors weighed in favor of certification and that the third and fourth factors weighed against certification. The juvenile court concluded its analysis by stating:

While the Court recognizes some mitigating factors, the overall circumstances weigh in favor of certification. The offense is serious, resulting in grave repercussions. The facts indicate an intentional shooting that resulted in [the] death of one person and injury to another. [A.D.K.] could have injured more. He had time to consider his actions, despite any potential outside influence. With an EJJ designation, the Court would retain jurisdiction for a little over two years—a grossly disproportionate time to the gravity of the offense. This amount of time would unlikely provide enough time for rehabilitation for such dangerous behavior, and thus would not ensure public safety.

The Court finds that certification is appropriate considering the six public safety factors outlined above.

On appeal, A.D.K. contends that he rebutted the presumption of certification by proving by clear and convincing evidence “that public safety would not be at risk if EJJ was ordered.” He contends further that “a suitable treatment plan could be administered and that [he] would likely be successful.” He relies on Miles’s report and testimony that A.D.K. will be less susceptible to peer pressure as he matures and that MCF-Red Wing or the Woodland Hills juvenile facility are “able to offer [him] the needed chemical dependency programming.” He also relies on Meier’s testimony about the juvenile programming available at MCF-Red Wing.

The juvenile court considered the evidence that A.D.K. highlights in his brief but determined that the fifth and sixth factors weighed in favor of certification. With respect to the fifth factor, the adequacy of the punishment or programming available in the juvenile system, the juvenile court noted the significant difference between a sentence of 306

months of imprisonment, which would be the shortest presumptive sentence if A.D.K. were certified as an adult and found guilty, and a period of approximately two years, which would be the time available for programming if A.D.K.'s case was designated an EJJ prosecution. The juvenile court then reasoned as follows:

This discrepancy is significant. [A.D.K.'s] actions resulted in the death of one person, and the serious injury of another. The juvenile justice system cannot provide an adequate punishment for the crime. The Court is also not convinced that this limited amount of time would provide adequate time for rehabilitation for such dangerous behavior.

With respect to the sixth factor, the dispositional options available for the child, the juvenile court reasoned that, if it were to designate A.D.K.'s case as an EJJ prosecution, "placement at MCF-Red Wing would be the most appropriate facility as [A.D.K.] requires a structured and secure environment considering the substantial consequences of his behavior." But the juvenile court noted the evidence that MCF-Red Wing has, in the past, provided programming to only approximately five juveniles who were convicted of murder or manslaughter, two of whom were only 14 years old, which allowed considerably more time for programming than would be possible for A.D.K. The juvenile court reasoned that two years "is inadequate time for rehabilitation considering the gravity of the offense, and as such does not ensure public safety."

The juvenile court's findings and conclusions with respect to the fifth and sixth factors are supported by the evidence in the record of the certification hearing. Johnson recommended certification based on all of the statutorily enumerated factors and A.D.K.'s history. Baburam testified that the adult correctional system had a range of chemical-

dependency treatment programs available as well as educational and vocational programs. The state elicited testimony from Meier on cross-examination that MFC-Red Wing had limited experience with juveniles found guilty of the crimes that have been alleged against A.D.K.

In addition, A.D.K.'s contentions are in tension with the certification statute, which requires a juvenile court to put greater emphasis on the first and third factors. *See* Minn. Stat. § 260B.125, subd. 4. Even if the fifth and sixth factors weigh against certification, A.D.K. still must overcome the first factor, "the seriousness of the alleged offense in terms of community protection, including . . . the use of a firearm, and the impact on any victim." *Id.*, subd. 4(1). The first factor is the dominant factor in this case, and the juvenile court found that it weighs "heavily" in favor of certification. Indeed, second-degree murder is a very serious offense with a serious impact, and A.D.K. used a firearm to commit the offense. In such a case, the risk of an unsuccessful rehabilitation necessarily plays a significant role in the determination of whether certification serves the interest of public safety. *See P.C.T.*, 823 N.W.2d at 686 (reversing denial of certification of juvenile charged with aiding and abetting attempted second-degree murder). And, as the state argues, a limited time period in which to provide rehabilitation programming is relevant to the prospects for successful rehabilitation. *See In re Welfare of L.J.S.*, 539 N.W.2d 408, 412-13 (Minn. App. 1995), *review denied* (Minn. Jan. 25, 1996); *In re Welfare of K.C.*, 513 N.W.2d 18, 23 (Minn. App. 1994), *review denied* (Minn. May 17, 1994).

In sum, the juvenile court carefully reviewed the six statutory factors concerning public safety, did not clearly err in its findings of fact, and did not abuse its discretion in

balancing the factors and making conclusions of law. Thus, the juvenile court did not err by granting the state's motion to certify A.D.K. for prosecution as an adult.

Affirmed.