

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1363**

In the Matter of the Welfare of:
A. A. A., Child.

**Filed April 26, 2021
Affirmed
Jesson, Judge**

Scott County District Court
File No. 70-JV-19-17604

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender (for appellant)

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

Ronald Hocesvar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Reyes, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

JESSON, Judge

After charging 15-year-old appellant A.A.A. with three counts of aiding and abetting first-degree aggravated robbery in juvenile court, the state moved to certify these charges to adult court. At the subsequent hearing, a forensic psychologist and a juvenile probation officer both testified that certification would best serve public safety. Relying

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

on that testimony, studies that each of those witnesses conducted, and other evidence, the district court found that public safety was best served by certifying the charges to adult court. A.A.A. appeals. Because the record supports the district court's findings and its ultimate decision to certify the case was not an abuse of discretion, we affirm.

FACTS

In October 2019, the state filed a delinquency petition charging A.A.A. with three counts of aiding and abetting first-degree aggravated robbery.¹ At the time of the incident, A.A.A. was 15 years old.

According to the petition, A.A.A. and his older juvenile brother stole three juvenile victims' phones. A.A.A. approached the victims and started talking with them at a bus stop. Then, A.A.A.'s brother entered the bus stop, pulled out a pistol, and demanded the victims' phones. When the victims refused to comply, A.A.A.'s brother hit them. A.A.A. patted down the victims and took their phones while his brother held the gun. A.A.A. and his brother then fled the scene.

Days after the bus stop incident, officers arrested A.A.A. for another, subsequent armed robbery. Police executed a search warrant at A.A.A. and his brother's house and found two of the phones that were stolen in the bus stop incident. In a police interview, A.A.A. admitted that he was at the bus stop but claimed that he did not know the other person who showed up and took the victims' phones.

¹ Minn. Stat. § 609.245, subd. 1 (2018).

Shortly after the state filed the petition, the district court ordered a competency evaluation under Minn. R. Juv. Delinq. P. 20.01. The evaluator, forensic psychologist Dr. Smith, opined that A.A.A. was competent to proceed but identified several potential mental health diagnoses. A.A.A. did not dispute the evaluator's competency opinion, and the district court found A.A.A. to be competent.

The state filed a motion to certify the proceedings so that it could prosecute A.A.A. as an adult. The central focus of certification proceedings is whether retaining the proceeding in juvenile court serves public safety. Minn. R. Juv. Delinq. P. 18.06, subd. 2. The state argued that retaining the matter in juvenile court would not serve public safety. A.A.A. contended that an extended juvenile jurisdiction disposition, which would allow the juvenile court to retain jurisdiction until A.A.A. turned 21, was the best option to ensure public safety.

At the certification hearing, the state called Dr. Smith and a juvenile probation officer. Dr. Smith had, in addition to conducting the competency evaluation, completed a study opining that certification was appropriate. The probation officer completed her own study, also concluding that certification was appropriate. Broadly put, both witnesses testified that A.A.A. had a long and escalating record of delinquency adjudications that posed a threat to public safety, that he had not responded well to previous programming designed to curb his behavior, that despite various mental health diagnoses he was not amenable to future programming, that he continued to accumulate delinquency charges as

he was detained while this case was pending,² and that certification would best protect public safety.

To demonstrate that extended juvenile jurisdiction was appropriate, A.A.A. called a corrections program lieutenant who oversees a juvenile program at the Red Wing correctional facility. The lieutenant testified about the types of services and classes available to participants. The Red Wing program serves serious and chronic juvenile offenders aged 10 to 21. Juveniles who have committed multiple felonies, serious felonies, or felonies involving a firearm are eligible for the program, so A.A.A. met the eligibility criteria. Although the lieutenant testified that most of the Red Wing residents, like A.A.A., had been diagnosed with a conduct disorder, the lieutenant (who had not reviewed A.A.A.'s records) could not testify that the program would be effective for A.A.A.

A.A.A.'s mother also testified. She stated that A.A.A. had been behaving better since returning to her house on home monitoring and taking medication to address his mental health concerns.

Following the hearing, the district court entered an order certifying the proceeding for adult prosecution. This appeal follows.

DECISION

When a juvenile aged 14 years or older is alleged to have committed an offense that would be a felony if committed by an adult, the state may bring a motion seeking an order

² While placed in secure detention as a result of these charges, A.A.A. was charged with two misdemeanors—fifth-degree assault and disorderly conduct—based on his alleged behavior while detained.

“certifying the proceeding for action under the laws and court procedures controlling adult criminal violations.” Minn. Stat. §§ 260B.141, subd. 4, 260B.125, subds. 1, 2(1) (2020); *see also* Minn. R. Juv. Delinq. P. 18.02, subd. 1. In some cases, the district court presumes that certification is appropriate. *See* Minn. Stat. § 260B.125, subd. 3 (2020) (providing that certification is presumptive if the child is 16 or 17 years old at the time of the offense and certain circumstances exist). But in this case, certification was non-presumptive because A.A.A. was 15 years old at the time of the offense. *See id.*

In non-presumptive certification proceedings, the district court may only order certification if the state proves by clear and convincing evidence that retaining the proceeding in juvenile court does not serve public safety. Minn. Stat. § 260B.125, subd. 2(6)(ii) (2020); Minn. R. Juv. Delinq. P. 18.05, subd. 4(E), 18.06, subd. 2. To determine whether public safety is served by certifying the matter, the district court must consider:

- (1) the *seriousness of the alleged offense* in terms of community protection, including the existence of any aggravating factors recognized by the Minnesota 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 Minnesota 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 (2020) (emphasis added); *see also* Minn. R. Juv. Delinq. P. 18.06, subd. 3. In considering these factors, the court shall give greater weight to the seriousness of the alleged offense and the child’s prior record of delinquency than to the other listed factors. Minn. Stat. § 260B.125, subd. 4.³

Here, the district court found that each public-safety factor weighed in favor of certification and that, consequently, retaining the matter in juvenile court did not serve public safety. We evaluate the district court’s decision to order certification for an abuse of discretion, and review the district court’s public-safety finding for clear error. *In re Welfare of J.H.*, 844 N.W.2d 28, 34-35 (Minn. 2014); *cf. In re Welfare of D.M.D.*, 607 N.W.2d 432, 437 (Minn. 2000) (pertaining to district court’s EJJ designation decision). We must consider the record in the light “most favorable” to the district court’s public-safety finding. *J.H.*, 844 N.W.2d at 35. And only when there is “no reasonable evidence” that supports the district court’s finding or if we are “left with the definite and firm conviction that a mistake has occurred” will we reverse. *Id.* (quotation omitted). With these standards in mind, we address each public safety factor in turn.

The Seriousness of the Offense in Terms of Community Protection

The district court concluded that the first factor, the seriousness of the offense in terms of community protection, weighed in favor of certification. *See* Minn. Stat. § 260B.125, subd. 4(1). A.A.A. concedes that this factor weighs in favor of

³ The district court may also, after a certification hearing, designate the proceedings as an extended juvenile prosecution. *See* Minn. Stat. § 260B.130, subd. 1(1) (2020).

certification. We agree—first-degree aggravated robbery, involving a firearm and three victims, is a serious offense. The district court did not err in its analysis of this factor.

The Child's Culpability in Committing the Alleged Offense

The second factor requires the district court to examine the child's culpability in committing the alleged offense. Minn. Stat. § 260B.125, subd. 4(2). In considering the child's culpability, the court should "examine the alleged offenses." *J.H.*, 844 N.W.2d at 38. Mitigating factors recognized by the Minnesota Sentencing Guidelines can reduce the child's culpability. Minn. Stat. § 260B.125, subd. 4(2); *see also In re Welfare of H.B.*, 956 N.W.2d 7, 9 (Minn. App. 2021) (holding that only mitigating factors recognized by the Minnesota Sentencing Guidelines reduce the offender's culpability). After considering both A.A.A.'s participation and role in the offense, and the potential mitigating factor of A.A.A.'s mental health conditions, the district court concluded that this factor weighed "slightly" in favor of certification.

The record supports the district court's analysis regarding this factor. The court acknowledged that A.A.A. was "somewhat less culpable" because he did not brandish the gun. Nor did he strike any of the victims. On the other hand, the district court observed that A.A.A. collected the victims' items while the other offender held the victims at gunpoint. And while the district court acknowledged that A.A.A. was diagnosed with borderline intellectual functioning, which provides context for A.A.A.'s actions, this condition did not "eliminate his culpability." Dr. Smith's testimony supports the district court's finding. She testified that, while she believed that A.A.A.'s lower functioning

impacted his decision making, it did not undermine his culpability. Thus, there is reasonable evidence in the record to support the district court's findings.

Still, A.A.A. argues that his mental conditions, his less-significant role in the offense, and the lack of "sophisticated planning" cause this factor to weigh against certification. While A.A.A.'s argument has some appeal, he essentially asks us to reweigh the evidence. That is not our role. *See State v. Johnson*, 568 N.W.2d 426, 435 (Minn. 1997) (observing that appellate courts do not reweigh evidence). Rather, we must view the record in the light most favorable to the district court's certification order. *J.H.*, 844 N.W.2d at 35 (indicating that an appellate court must view record in a light most favorable to district court's certification order). Because there is reasonable evidence supporting the district court's findings and analysis of this factor, we conclude that the district court did not err in concluding that this factor weighs slightly in favor of certification.

The Child's Prior Record of Delinquency

The third public-safety factor asks the district court to consider the child's prior record of delinquency, which includes adjudicated violations. Minn. Stat. § 260B.125, subd. 4(3); *In re Welfare of N.J.S.*, 753 N.W.2d 704, 710 (Minn. 2008). Additionally, the district court may consider pending delinquency petitions. *In re Welfare of R.D.M.*, 825 N.W.2d 394, 400 (Minn. App. 2013), *review denied* (Minn. Apr. 16, 2013).

Here, the court concluded that this factor weighed "heavily" in favor of certification due to the "length, persistence, and escalating dangerousness of [A.A.A.'s] delinquency record." There is reasonable evidence in the record to support the district court's findings

and analysis. A.A.A. accumulated five delinquency adjudications between May 2016 and the date of the current offense in October 2019. Thus, the district court reasonably found that A.A.A.’s delinquency history is long and persistent. And the record supports the district court’s finding that A.A.A.’s delinquency record is escalating. Three of A.A.A.’s prior adjudications involved violent behavior. And, in addition to the first-degree aggravated robbery charges here, A.A.A. has pending first-degree robbery, disorderly conduct, and assault charges. We conclude that the district court did not err in its findings and analysis of this factor.

A.A.A. does not dispute his delinquency history and instead asks us, again, to view his record in a light more favorable to his position. Relying on *In re Welfare of H.S.H.*, 609 N.W.2d 259 (Minn. App. 2000), he argues that his delinquency history is not significant enough to weigh in favor of certification. But A.A.A.’s reliance on *H.S.H.* is misplaced. In that case we observed that, although the district court found that the appellant had an extensive delinquency record, the court failed to explain how the appellant’s record posed a threat to public safety. *H.S.H.*, 609 N.W.2d at 262. Noting that the appellant’s only other felony offense occurred six years before the offense at issue, we concluded that the appellant’s delinquency record did not show “deeply ingrained, escalating criminal behavior that presents a threat to public safety.” *Id.* at 262-63.

Here, in contrast, the district court explained its analysis and stated that A.A.A.’s delinquency record showed a pattern of conduct and an “escalating dangerousness” that posed a threat to public safety. Dr. Smith’s testimony supports the district court’s finding—she testified that A.A.A.’s delinquent behavior in multiple communities showed

an “ingrained” attitude because A.A.A.’s criminal behavior continued even when he was removed from his peer group.

Finally, A.A.A. also argues that when his delinquency record is viewed in context, this factor actually weighs against certification. He contends that his criminal behavior only escalates when he is with his older brother, who was more culpable in this incident. He also asserts that the evidence demonstrated that he does well when he is on medication for his mental-health conditions. Thus, A.A.A. argues, his criminal behavior is “situational, rather than an ingrained pattern.”

While there is some evidence in the record to support A.A.A.’s argument—his mother testified that he had been doing well on home monitoring while taking medication, and records from prior treatment programs show that A.A.A. had some periods when his behavior improved—we cannot conclude that the district court erred in finding that A.A.A.’s juvenile record supports certification. The district court considered the influence of A.A.A.’s older brother and A.A.A.’s mental-health condition in its consideration of other factors. Even despite this evidence, it was reasonable to conclude, based on the length and severity of A.A.A.’s delinquency history alone, that this factor weighed in favor of certification.

The Child’s Programming History

The fourth public-safety factor requires the district court to consider the “child’s programming history, including the child’s past willingness to participate meaningfully in available programming.” Minn. Stat. § 260B.125, subd. 4(4). “Programming” in this context refers to “a specialized system of services, opportunities, or projects designed to

meet a relevant behavioral or social need of the child.” *J.H.*, 844 N.W.2d at 38. The district court may also examine the juvenile’s behavior while in detention. *N.J.S.*, 753 N.W.2d at 711. In examining the child’s programming history, the court may consider whether the child failed to complete programming, was successful in programming, and will succeed in future programming under juvenile jurisdiction. *J.H.*, 844 N.W.2d at 39; *In re Welfare of P.C.T.*, 823 N.W.2d 676, 686 (Minn. App. 2012); *H.S.H.*, 609 N.W.2d at 263. The ultimate goal of this analysis is to determine whether public safety is served by retaining the matter in juvenile court. Thus, the district court should not place the juvenile’s potential for rehabilitation over the interest in public safety. *P.C.T.*, 823 N.W.2d at 683.

Here, the district court concluded that this programming-history factor weighed in favor of certification. It found that A.A.A. participated in two long-term residential placements—Four Oaks Group Home and Clarinda Academy—for approximately fifteen months. And the court observed that the current offense occurred only five months after leaving his most recent residential placement, Clarinda. The district court also found that, while A.A.A. was in secure detention in relation to this case, A.A.A. accumulated additional charges based on his alleged behavior while detained. Based on this history, the district court reasoned that A.A.A. had “already exhausted nearly all programming options.” The court concluded that additional programming would not be sufficient to protect the public against A.A.A.’s criminal behavior.

There is reasonable evidence in the record to support the district court’s findings and analysis. According to the certification studies and other records in evidence, A.A.A. exhibited poor behavior at both Four Oaks and Clarinda. He was “aggressive” at both

programs and had numerous behavioral incidents. Both Dr. Smith and the probation officer testified that A.A.A. was disruptive in programming, often failed to participate, and still exhibited poor behavior even after leaving the programs. Both witnesses indicated in their reports that A.A.A. had exhausted the resources available to juvenile offenders. The record also supports the district court’s findings about A.A.A.’s behavior while detained. Two pending charges against A.A.A. (misdemeanor disorderly conduct and misdemeanor fifth-degree assault) arose from his alleged behavior at Dakota County Juvenile Services Center.⁴ Considering this evidence, we conclude that the district court did not abuse its discretion by concluding that this factor weighed in favor of certification.

A.A.A. asserts that the district court erred because he has only “minimal prior treatment,” given that he was only discharged from Clarinda because his family moved to Minnesota, and that he has only recently “maintained medication critical to helping him control impulses.” But again, we must view the record in a light most favorable to the district court’s certification order. *J.H.*, 844 N.W.2d at 35. Both Dr. Smith’s report and the probation officer’s report support the district court’s finding that this factor weighs in favor of certification.

The Adequacy of Juvenile Justice Punishment or Programming and the Dispositional Options Available

Courts often simultaneously consider the final two public-safety factors—the adequacy of juvenile justice punishment or programming and the dispositional options

⁴ A.A.A. had to be relocated from the Dakota County Juvenile Services Center. That caused the probation officer particular concern because it was not common to have to relocate juvenile offenders. Dr. Smith expressed similar concerns.

available, as the district court did here. *See, e.g., N.J.S.*, 753 N.W.2d at 711; *In re Welfare of D.T.H.*, 572 N.W.2d 742, 745 (Minn. App. 1997), *review denied* (Minn. Feb. 19, 1998). In addressing the adequacy of juvenile justice punishment, it is appropriate to consider the length of potential sentences of the dispositional options and whether those sentences “sufficiently address the seriousness of the offense or ensure public safety.” *J.H.*, 844 N.W.2d at 39.

Here, the district court concluded that the final two public-safety factors weigh in favor of certification because A.A.A. had exhausted nearly all resources in the juvenile system and was not amenable to treatment, and because certification to adult court allowed for significantly longer sentences that would protect public safety for a longer period of time. There is reasonable evidence in the record to support the district court’s findings and analysis of this factor. As discussed above, Dr. Smith’s report supports the district court’s finding that A.A.A. was not amenable to treatment based on his prior lack of progress in programming. Considering the district court’s findings regarding the other factors, we conclude that the district court did not err in finding that the inadequacy of juvenile justice punishment and the dispositional options available weighed in favor of certification.

A.A.A. raises four arguments to attack the district court’s findings on this factor. First, A.A.A. argues that it was “short-sighted” for the district court to certify the case to adult court based only on the length of time remaining under extended juvenile jurisdiction as compared to the presumptive sentence in adult court. But it is appropriate for the district court to consider the length of potential sentences. *J.H.*, 844 N.W.2d at 39. And the district court did not base its findings on this factor only on the length of sentences.

Second, A.A.A. argues that the Red Wing program was an appropriate option for rehabilitation that would protect public safety. We are also not persuaded by this argument. While there was evidence in the record that A.A.A. was eligible for the Red Wing program, there is no evidence in the record that A.A.A. would actually benefit from the program. And a district court does not err by concluding that the final two factors weigh in favor of certification, even when a specific treatment facility is identified, if there is no evidence that the program would actually be effective. *D.T.H.*, 572 N.W.2d at 745.

Third, A.A.A. contends that there is reason to believe that he would be successful if he was taking medication and engaged in appropriate programming. He asserts that even Dr. Smith and the probation officer agreed that he had been doing well in the four months before the certification hearing while on home monitoring. The district court recognized this period of success but viewed it differently, concluding that A.A.A.'s success "does not overcome the long history of failed programming." The finding is consistent with Dr. Smith's testimony that A.A.A.'s recent success on home monitoring did not alter her opinion that A.A.A. was not amenable to programming or treatment. Because we must view the record in a light most favorable to the district court's order, we conclude that the district court's finding was not erroneous. *J.H.*, 844 N.W.2d at 35.

Finally, A.A.A. asserts that the district court erred in weighing these factors because, in prison, A.A.A. will be exposed to influences that could negatively impact his behavior, and therefore endanger public safety. A.A.A. made this argument to the district court, and the district court implicitly rejected it. Thus, on appeal, A.A.A. again asks us to reweigh the evidence to come to a different conclusion than the district court. But to do so would

be inconsistent with our standard of review. *J.H.*, 844 N.W.2d at 35 (requiring appellate court to view the record in a light most favorable to the district court’s certification decision). We decline to reweigh the evidence.

Weighing the Factors

The ultimate question here is whether the district court clearly erred by finding that public safety was best served by certifying this case to adult court. *J.H.*, 844 N.W.2d at 35. The district court concluded that each of the six public-safety factors weighed in favor of a finding that public safety was best served by certification—including the seriousness of the offense and A.A.A.’s prior record, the two factors to which the district court must give the greatest weight. Minn. Stat. § 260B.125, subd. 4. As discussed above, the record supports the district court’s findings and analysis of each factor. Consequently, we conclude that the district court did not abuse its discretion in weighing the factors and determining that the state met its burden of showing—by clear and convincing evidence—that retaining the proceeding in juvenile court does not serve public safety.

Affirmed.