

*This opinion is nonprecedential except as provided by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
A21-1449**

In the Matter of the Welfare of: X. L. H.

**Filed May 23, 2022
Affirmed
Johnson, Judge**

Washington County District Court
File No. 82-JV-21-266

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant X.L.H.)

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

Pete Orput, Washington County Attorney, Tricia A. Loehr, Assistant County Attorney, Stillwater, Minnesota (for respondent State of Minnesota)

Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Smith, John, Judge.*

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Two months before his 18th birthday, X.L.H. participated in a shoot-out that resulted in the death of a 14-year-old boy. He is charged with aiding and abetting second-degree murder, aiding and abetting second-degree assault with a dangerous weapon, and being an ineligible person in possession of a firearm. The juvenile court granted the state's

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

motion to certify X.L.H. for prosecution as an adult. We conclude that the juvenile court did not clearly err in its findings of fact and did not abuse its discretion by granting the certification motion. Therefore, we affirm.

FACTS

The juvenile-delinquency petition alleges the following facts, which we assume to be true for purposes of the state's certification motion.

On the evening of June 5, 2021, X.L.H. attended a graduation party at a home in the city of Woodbury. At approximately 10:30 p.m., he and two others (23-year-old E.D. and 19-year-old J.T.) confronted another group of young people, which included 14-year-old D.E. D.E. and his friends left the party. D.E. told his stepfather, K.D., about the confrontation. K.D. encouraged D.E. and his friends to return to the party so that X.L.H. and J.T. "would stop messing with them."

K.D. drove his vehicle to the party, while D.E. and his friends followed closely behind in a different vehicle. When they arrived at the party, E.D., J.T., and X.L.H. were standing outside, near a car that was parked on the street. K.D. fired three or four rounds at them through the front passenger-side window of his vehicle. X.L.H. responded by firing five shots at K.D.'s and D.E.'s vehicles and 14 "wild" shots to demonstrate superior firepower. Other persons also fired shots. Investigating officers later found approximately 40 bullet casings at the scene as well as bullet holes in several homes and vehicles near the scene. D.E. was struck by a bullet that passed through his right lung and his heart. He was pronounced dead at a nearby hospital at 11:12 p.m.

The state charged X.L.H. with one count of aiding and abetting second-degree murder, in violation of Minn. Stat. § 609.19, subd. 2(1) (2020); four counts of aiding and abetting second-degree assault with a dangerous weapon, in violation of Minn. Stat. § 609.222, subd. 1 (2020); and one count of being an ineligible person in possession of a firearm, in violation of Minn. Stat. § 624.713, subd. 1(2) (2020).

The state moved to certify X.L.H. for prosecution as an adult. In September 2021, the juvenile court held an evidentiary hearing on the certification motion. At the outset of the hearing, the juvenile court found that the charges were supported by probable cause. The state called three witnesses. Daniel Johnson, Psy.D., L.P., testified along the lines of his court-ordered psychological-evaluation report, which was admitted into evidence as an exhibit. Johnson testified that X.L.H. had one of the “most significant trauma histories [he had] seen.” Johnson testified that X.L.H. exhibited “a high risk” for committing future violence, and he recommended that X.L.H. be certified as an adult. Fred Bernard, a juvenile probation officer, testified along the lines of his court-ordered certification-study report, which was admitted into evidence as an exhibit. Bernard recommended that X.L.H. be certified as an adult. Paul Kroshus, a police detective testified generally about his investigation of the incident underlying the charges.

X.L.H. called two witnesses. Gerald Henkel-Johnson, Psy.D., L.P., testified along the lines of his psychological-evaluation report, which was admitted into evidence as an exhibit. In his written report, Henkel-Johnson stated that, without treatment, X.L.H. has a high likelihood of offending again and that his “incarceration may provide for public safety during the time he is in a secure setting.” But Henkel-Johnson testified that X.L.H. should

be tried as a juvenile because of his susceptibility to the negative influence of adults and significant need for trauma-specific programming, which Henkel-Johnson believed might not be available to X.L.H. at an adult prison. Lieutenant Adam Blaschko, program director at the Minnesota Correctional Facility at Red Wing (MCF-RW), testified that MCF-RW previously has accepted persons with extended-jurisdiction-jvenile (EJJ) designations based on loss-of-life offenses and that those persons generally were admitted to MCF-RW for 24 months or more and completed at least 21 months of programming. Lieutenant Blaschko also testified that MCF-RW has a voluntary evidence-based trauma-and-grief program designed “to reduce post-traumatic emotional behavior activity.”

In October 2021, the juvenile court filed an order in which it granted the state’s certification motion. X.L.H. appeals.

DECISION

X.L.H. 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 court. Minn. Stat. § 260B.101, subd. 1 (2020). But a juvenile who is 14 years old or older and is charged with 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 (2020). If the alleged offense would result in a presumptive commitment to prison for 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), *rev. denied* (Minn. Feb. 19, 2013). If the state satisfies its initial burden, and if there is probable cause to support the allegations, the burden shifts to the juvenile to prove “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 satisfies that burden of proof, the juvenile court retains jurisdiction over the case as an EJJ case until the juvenile’s 21st birthday. Minn. Stat. §§ 260B.125, subd. 8(b), 260B.130, subd. 1(1) (2020); Minn. R. Juv. Delinq. P. 19.01, subd. 2; *In re Welfare of J.H.*, 844 N.W.2d 28, 35 (Minn. 2014). But if the juvenile does not satisfy his burden of proof, “the court shall certify the proceeding.” Minn. Stat. § 260B.125, subd. 3.

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

Id., subd. 4. A juvenile court must give greater weight to the first and third factors. *Id.* If “[a] juvenile court orders certification, it 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 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 found that X.L.H. did not rebut the presumption of certification and that each of the six statutory factors supported certification. X.L.H. challenges the juvenile court’s findings on four of the six factors—the second, fourth, fifth, and sixth—and urges the court to reverse the juvenile court’s grant of the state’s certification motion.

A. Second Factor: Culpability

The juvenile court noted that it was aware of X.L.H.’s significant traumatic history and diagnosis of post-traumatic stress disorder but nonetheless found that there were “no mitigating factors recognized by the sentencing guidelines” to consider. The juvenile court noted that Johnson, Henkel-Johnson, and Bernard testified that the second factor supports certification.

X.L.H. contends that the juvenile court erred by not finding that two mitigating factors are present: his “mental impairment” due to his history of trauma and the fact that he was not the initial aggressor. Each of these mitigating factors is mentioned in the sentencing guidelines, which are explicitly referenced in the second public-safety factor. *See* Minn. Stat. § 260B.125, subd. 4(2); Minn. Sent. Guidelines 2.D.3.a.(3), (5) (2020).

With respect to the first part of X.L.H.’s contention, the supreme court has interpreted the sentencing guidelines to provide that only an “extreme” mental impairment may justify mitigation. *State v. McLaughlin*, 725 N.W.2d 703, 716 (Minn. 2007). The evidence in this case does not indicate that X.L.H. has an extreme mental impairment. Neither Johnson nor Henkel-Johnson concluded that X.L.H.’s brain development was impaired in a way that mitigated his culpability. *See In re Welfare of H.B.*, 956 N.W.2d 7, 13-14 (Minn. App. 2021) (concluding that second factor favored certification, in part because witnesses did not testify that juvenile’s “brain development was impaired in a manner that mitigated his culpability”), *rev. granted* (Minn. May 26, 2021). To the contrary, both Johnson and Henkel-Johnson concluded that X.L.H. was fully culpable of the charged offenses and that the second factor supported certification. Johnson’s report

notes that X.L.H. himself stated during the investigation that he “should have left it alone, shouldn’t have shot.” X.L.H.’s statement indicates that he was not suffering from an extreme mental impairment.

With respect to the second part of X.L.H.’s contention, it is true that X.L.H. was not the first person to fire a handgun. But the petition alleges that the hostilities began when X.L.H. and his friends confronted D.E. and his friends, and they brandished handguns while doing so. In addition, X.L.H. escalated the confrontation by firing 19 rounds, including 14 “wild” rounds to show superior firepower.

In light of the evidence in the record, we cannot conclude that X.L.H. proved by clear and convincing evidence that there are “substantial grounds” that “tend to excuse or mitigate” his culpability. *See* Minn. Stat. § 260B.125, subd. 3; Minn. Sent. Guidelines 2.D.3.a(5). Thus, the juvenile court did not clearly err by finding that the second factor supports certification.

B. Fourth Factor: Programming History

The juvenile court found that, despite having participated in a variety of programming ranging from community-based services to long-term residential placement, X.L.H. “has continued to be involved in serious felony-level offenses.” The juvenile court stated, “It simply is not reasonable to expect, at this point, that additional programming in a juvenile setting will appreciably reduce the likelihood of re-offense or the risk to the public.”

X.L.H. contends that the juvenile court erred by not considering that his previous programming was not trauma-specific and, thus, not sufficiently targeted to his needs. It

is true that Johnson, Henkel-Johnson, and Bernard testified that X.L.H. had never received trauma-specific therapy and that he likely would benefit from it. But all three of those witnesses also acknowledged that, despite extensive prior programming, X.L.H. has continued to commit violent crimes in the community. The record includes evidence that X.L.H. also is charged with serious offenses arising from two other incidents. First, in February 2021, five days after being released from a long-term residential program, X.L.H. allegedly robbed a victim using a firearm and shot at the victim when the victim attempted to flee. Second, on the day before the shooting in this case, X.L.H. allegedly used a firearm to threaten other persons inside a restaurant. The evidence in the record does not compel the conclusion that X.L.H. proved by clear and convincing evidence that his programming history supports prosecution as a juvenile.

Thus, the juvenile court did not clearly err by finding that the fourth factor supports certification.

C. Fifth and Sixth Factors

The fifth and sixth factors—the adequacy of punishment or programming in the juvenile system and the dispositional options—often are considered together. *See In re Welfare of D.T.H.*, 572 N.W.2d 742, 745 (Minn. App. 1997), *rev. denied* (Minn. Feb. 19, 1998). The juvenile court noted that MCF-RW is the only juvenile program in which X.L.H. has not previously been placed and that the juvenile-justice system would have jurisdiction over X.L.H. for only three years, until his 21st birthday. The juvenile court stated that, in contrast, the adult-correctional system would allow “an extensive period of incarceration and/or probation.” The juvenile court found, “There is no adequate

punishment available in the juvenile justice system for a juvenile presumed guilty” of X.L.H.’s pending charges. The juvenile court also found that the dispositional options in the juvenile system are inadequate to protect public safety.

X.L.H. contends that effective rehabilitation, rather than length of incarceration, is necessary to ensure that he does not pose a continued threat to public safety. That contention does not account for the juvenile court’s reasoning that only two or three years of juvenile programming likely would not be effective in rehabilitating X.L.H. The juvenile court’s findings are supported by the record. Lieutenant Blaschko testified that, if found delinquent, X.L.H. could expect a 24-month commitment at MCF-RW, with 21 months served in the institution and three months on furlough. Lieutenant Blaschko also testified that MCF-RW’s trauma-specific programming is “voluntary.” The juvenile court relied on that testimony by finding that the trauma-specific programming at MCF-RW is voluntary and cannot be court-ordered. The evidence in the record, including his prior unsuccessful programming, the short period of time for additional programming, and the elective nature of trauma-specific programming, does not compel the conclusion that X.L.H. proved by clear and convincing evidence that punishment or programming in the juvenile system is adequate in light of the dispositional options.

Thus, the juvenile court did not clearly err by finding that the fifth and sixth factors support certification.

D. Summary

As stated above, the first and third factors receive “greater weight” than the other four factors. Minn. Stat. § 260B.125, subd. 4. In analyzing the first factor, the juvenile

court found that X.L.H.'s alleged offenses are "extremely serious" and "strongly favor" adult certification. In analyzing the third factor, the juvenile court found that X.L.H. has a criminal history that is "significant in both scope and severity" and also "strongly favors certification." We have determined that the juvenile court did not clearly err in its findings on the second, fourth, fifth, and sixth factors. *See supra* parts A, B, & C. Accordingly, all six factors favor certification.

Thus, the juvenile court did not abuse its discretion by granting the state's motion to certify X.L.H. for prosecution as an adult.

Affirmed.