

*This opinion is nonprecedential except as provided by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
A21-1684**

In the Matter of the Welfare of:
R. K. W., Child.

**Filed July 5, 2022
Affirmed
Wheelock, Judge**

Hennepin County District Court
File Nos. 27-JV-21-1035, 27-JV-20-3522

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant R.K.W.)

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent State of Minnesota)

Considered and decided by Jesson, Presiding Judge; Reyes, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant, a juvenile, asserts that the district court erred when it certified him for prosecution as an adult in two criminal cases. He argues that the district court erred by combining its evaluation of the second public-safety factor and making a single certification determination for the two separate proceedings and by failing to find that his remorse diminished his culpability in the second case. Although the district court erred in

its analysis of the second public-safety factor, we conclude the district court did not abuse its discretion in considering appellant's remorse or in certifying appellant for prosecution as an adult in both cases. Thus, we affirm.

FACTS

Appellant R.K.W. challenges the district court's determination that he should be certified for prosecution as an adult in two criminal cases. R.K.W. was born in December 2003, and he was 16 years old at the time of the first offense and 17 years old at the time of the second offense.

The first offense occurred on September 27, 2020, when R.K.W. and two accomplices arrived at F.T.'s apartment after communicating with F.T. on Facebook and agreeing to sell him a cell phone.¹ When the three young men arrived at F.T.'s apartment, they threatened F.T. and demanded his property, two of them displayed guns, and one shot him in the foot. F.T. identified R.K.W. as one of the individuals holding a gun and standing at F.T.'s apartment door but said R.K.W. was not the individual who shot him. During a traffic stop on October 6, 2020, law enforcement took R.K.W. into custody after finding a firearm's magazine and two cell phones in the vehicle. A lay person found a handgun at the scene of the stop and turned it over to law enforcement. When questioned about the September 27 incident, R.K.W. admitted to law enforcement that he was at F.T.'s apartment for the cell-phone sale, and he said that the sale went badly and there was a struggle.

¹ For the purpose of this appeal, we presume the allegations in the complaint are true.

Respondent State of Minnesota charged R.K.W. with one count of first-degree aggravated robbery and one count of second-degree aiding or abetting assault while possessing a dangerous weapon. In January 2021, R.K.W. pleaded guilty to count two and was placed on extended-juvenile-jurisdiction (EJJ) probation. The court ordered R.K.W. to complete residential programming at Minnesota Correctional Facility (MCF)-Red Wing and to report to the juvenile detention center within two days, but he did not turn himself in as directed and did not report to MCF-Red Wing.

The second offense occurred on February 18, 2021, when R.K.W. messaged D.H. on Facebook Marketplace and agreed to buy three pairs of shoes from him. The two met and talked, then R.K.W. displayed a black handgun and told D.H., “[E]ither your life or your shoes.” D.H. gave R.K.W. the shoes, and R.K.W. left. D.H. reported the incident to law enforcement and identified R.K.W. as the person who robbed him. R.K.W. contacted D.H., “expressed remorse for his actions,” and offered to return D.H.’s shoes by dropping the shoes off near where they initially met. The state charged R.K.W. with first-degree aggravated robbery.

In May 2021, the state filed motions to certify R.K.W. for adult prosecution in the second case and to revoke R.K.W.’s EJJ probation and execute his adult sentence in the first case. R.K.W. moved to withdraw his guilty plea in the first case, and the district court granted his request based on its finding of a manifest injustice.

The parties appeared for R.K.W.’s adult-certification hearing in both cases, which took place over three days in October and November 2021. The district court reviewed R.K.W.’s probation agent’s November 25, 2020 certification study for the first case

recommending that the case proceed as an EJJ prosecution, her June 11, 2021 certification study for the second case recommending that the court certify R.K.W. for adult prosecution, and psychological-evaluation reports from 2020 and 2021 prepared for each of the two cases. The district court heard testimony from R.K.W.'s witnesses: the clinical forensic psychologist who prepared R.K.W.'s 2021 psychological evaluation and a program lieutenant from MCF-Red Wing. The court also heard testimony from the state's witnesses, including the psychologist who conducted the 2020 psychological evaluation, R.K.W.'s investigating probation officer, a program director from MCF-Lino Lakes, and three additional probation officers. The district court credited all the witnesses, issued detailed findings, determined that R.K.W. failed to overcome the presumption of certification to adult court, and granted the state's motions for certification in both cases.

R.K.W. appeals.

DECISION

Appellate courts “review the juvenile court’s decision to certify a child to adult court for an abuse of discretion.” *In re Welfare of J.H.*, 844 N.W.2d 28, 34 (Minn. 2014). We review questions of law de novo and findings of fact under the clearly erroneous standard. *Id.* at 34-35. “A district court has considerable latitude in deciding whether to certify a case for adult prosecution.” *In re Welfare of D.T.H.*, 572 N.W.2d 742, 744 (Minn. App. 1997) (quotation omitted), *rev. denied* (Minn. Feb. 19, 1998). “In determining whether the juvenile court’s findings are clearly erroneous, we view the record in the light most favorable to the juvenile court’s findings.” *J.H.*, 844 N.W.2d at 35. A district court’s “finding is clearly erroneous only if there is no reasonable evidence to support the finding

or when an appellate court is left with the definite and firm conviction that a mistake occurred.” *Id.* (quotation omitted).

The district court presumes that a child will be certified for adult prosecution if (1) the child was 16 or 17 years old at the time of the offense, (2) the delinquency petition alleges that the child committed an offense that would result in a presumptive commitment to prison under the sentencing guidelines or that the child committed any felony offense while using a firearm, and (3) the district court determined that probable cause exists to believe the child committed the alleged offense. Minn. R. Juv. Delinq. P. 18.06, subd. 1 (citing Minn. Stat. § 260B.125, subd. 3). To rebut the presumption, the child bears the burden to demonstrate by clear and convincing evidence that retaining the proceeding in the juvenile court serves public safety. *Id.* R.K.W. was 16 at the time of the first offense and 17 at the time of the second. He employed a firearm in both felony offenses. Neither party argues that the district court erred by determining that R.K.W. was presumed to be certified for prosecution as an adult in both cases. Because R.K.W. was presumed to be certified, he bore the burden of rebutting that presumption.

After the district court determines that a presumption exists, it must review the following public-safety factors to determine whether to certify the child for adult prosecution:

Subd. 4. Public safety. In determining whether the public safety is served by certifying the matter, the court shall consider the following 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.

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 factors listed in this subdivision.

Minn. Stat. § 260B.125, subd. 4 (2020); *accord* Minn. R. Juv. Delinq. P. 18.06, subd. 3 (repeating the public-safety factors). “Though each factor must be considered, the district court is to give ‘greater weight’ to the first and third factors.” *In re Welfare of H.B.*, 956 N.W.2d 7, 12 (Minn. App. 2021) (quoting Minn. R. Juv. P. 18.06, subd. 3), *rev. granted* (Minn. May 26, 2021). If the district court finds the child failed to rebut the presumption, “the court shall certify the proceeding.” Minn. Stat. § 260B.125, subd. 3 (2020).

After determining that the presumption of certification applied, the district court conducted the public-safety analysis for both cases in a single order. It determined that the first and third factors weighed in favor of certification in both cases; the second factor weighed in favor of EJJ designation in the first case and in favor of certification in the second case and was therefore a neutral factor for both cases; the fourth factor was neutral and did not weigh in favor of certification or EJJ designation in both cases; and the fifth

and sixth factors weighed in favor of EJJ designation in both cases. Thus, the district court determined whether each factor weighed in favor of or against certification for each of the cases; however, the court combined its findings for the second factor when it conducted its analysis of the public-safety factors.

R.K.W. argues on appeal that the district court erred by (1) determining that the second factor weighed in favor of EJJ designation in the first case and in favor of certification in the second case and that, therefore, the second factor was neutral for certification of both cases, and (2) failing to consider R.K.W.’s remorse as a mitigating factor.²

I. The district court erred by determining that the second public-safety factor was neutral, but that error did not result in an abuse of discretion in the first case.

R.K.W. argues, and the state concedes, that the district court erred by failing to consider the second public-safety factor separately for each case and instead combining its analyses of the second factor to find the factor “neutral” for the certification analysis in both cases. The district court determined that because the second factor weighed in favor of EJJ designation in the first case and in favor of adult certification in the second case, the factor was neutral. We agree with the parties that the district court erred by determining that the second factor was neutral in both cases.

² The state argues that the district court erred in its factual findings supporting the fourth, fifth, and sixth factors and that those factors should have been found in favor of certification or neutral. Because we affirm the district court’s certification of R.K.W. on other grounds, we need not reach the state’s arguments.

Both the statute and the rule refer only to a singular “matter,” “offense,” and “proceeding” when describing the public-safety analysis. Minn. Stat. § 260B.125, subd. 4; Minn. R. Juv. Delinq. P. 18.06, subd. 3. The plain language of the statute and the rule supports a conclusion that the analysis of the public-safety factors should be applied independently to each case. It does not support a conclusion that the district court could apply the analysis to multiple cases together when the child is facing certification in separate cases. Having concluded that this was an error, we must consider whether the error requires reversal of the district court’s certification order.

In *In re Welfare of N.J.S.*, the district court determined that all six factors weighed in favor of adult certification for prosecution of a juvenile. 753 N.W.2d 704, 710 (Minn. 2008). The Minnesota Supreme Court determined that the district court erred in its analysis of the third factor by considering school discipline records in its analysis of the juvenile’s prior record of delinquency. *Id.* The supreme court then turned to whether the error required reversal because appellate courts do “not disturb a finding that public safety would be served by certification unless it is clearly erroneous.” *Id.* The supreme court stated that “[a]s the prior record of delinquency is one of six factors, whether the error requires reversal depends on the weight given to the inadmissible records and the weight given the five other factors.” *Id.* Based on these principles, the supreme court concluded that the district court’s determination that the five other factors weighed in favor of adult certification was not clearly erroneous and that it was not an abuse of discretion to certify N.J.S. for adult prosecution even though the district court erred in its analysis of the third factor. *Id.* at 711.

R.K.W. argues that if the district court had not found the second factor neutral for the public-safety analysis in both cases, the first case would have had three factors that weighed in favor of EJJ designation and only two factors that weighed in favor of certification for prosecution in adult court, which he argues would have resulted in the first case remaining in juvenile court. The state argues that the district court weighed all the considerations in the first case and determined that public safety was served by adult-court certification.

In R.K.W.'s first case, the district court found that the first and third factors weighed in favor of adult-court certification, that the fifth and sixth factors weighed in favor of EJJ designation, and that the second and fourth factors were neutral and did not weigh in favor of or against certification. If we correct the district court's error, the second factor weighs in favor of EJJ designation in the first case. While R.K.W. is correct that this would result in three factors in favor of EJJ and two factors in favor of certification in the first case, a district court's application of the six statutory factors is "not a rigid, mathematical equation." *In re Welfare of P.C.T.*, 823 N.W.2d 676, 685 (Minn. App. 2012) (quotation omitted). The supreme court has repeatedly directed us to weigh the first factor—the seriousness of the offense—and the third factor—the child's prior record of delinquency—the most heavily in the public-safety-factors analysis. *See, e.g., N.J.S.*, 753 N.W.2d at 708.

The district court issued a thorough and thoughtful order certifying R.K.W. for prosecution as an adult in both cases. The district court determined that the first and third factors weighed in favor of adult-court certification for each of R.K.W.'s two cases. In particular, in evaluating the first factor of seriousness of the alleged offense with respect to

the first case, the district court noted R.K.W.'s possession of a firearm, the harm to the victim, and the presence of at least one statutory aggravating factor due to the number of people who actively participated in the crime. In its evaluation of the third factor of the child's prior record of delinquency, the district court discussed the nature and number of adjudications for delinquency in R.K.W.'s record and the "concerning pattern of increasingly aggressive and violent conduct" in which he has engaged.

Although the district court erred by combining its analysis of the second factor for both cases to determine that it was neutral for each of the two cases, the district court's careful analysis and consideration of all six public-safety factors, including its specific findings regarding the second factor as to each of the two separate cases, convinces us that it was not an abuse of discretion for the district court to certify R.K.W. for adult prosecution in the first case. The district court considered all six public-safety factors and properly weighed the first and third factors as compared with the remaining factors, including the second factor.

We will "not disturb a finding that public safety would be served by certification unless it is clearly erroneous." *Id.* at 710. The district court's determination that the first and third factors, which receive the greatest weight when considering all six factors, weighed sufficiently in favor of adult certification to overcome its findings that the second, fifth, and sixth factors favored EJJ designation in the first case was not clear error. Because the district court's findings were not clearly erroneous, we conclude that the district court did not abuse its discretion in certifying R.K.W. for adult prosecution in the first case. Thus, the district court's error on the second factor does not require reversal.

II. The district court did not err by determining that R.K.W. was culpable in the second case notwithstanding his expression of remorse.

R.K.W. argues that the district court erred by not considering his remorse in the second case as a mitigating factor in its analysis of the second public-safety factor. We review the district court's determination for an abuse of discretion. *J.H.*, 844 N.W.2d at 34. The second factor requires that, in determining the child's culpability, the district court consider "the existence of any mitigating factors recognized by the Sentencing Guidelines." Minn. Stat. § 260B.125, subd. 4(2). The Minnesota Sentencing Guidelines state that an offender being "particularly amenable to probation" is a mitigating factor. Minn. Sent. Guidelines 2.D.3.a(7) (2020). Comment 2.D.303 adds that "[i]n determining whether a defendant is particularly suitable to individualized treatment in a probationary setting, for example, a court is permitted to consider the defendant's age, prior record, *remorse*, cooperation, attitude before the court, and social support." Minn. Sent. Guidelines cmt. 2.D.303 (2020) (emphasis added).

Here, the district court stated, "While it is true that [R.K.W.] contacted the victim afterwards and expressed remorse, this does not reduce [R.K.W.'s] culpability for committing the offense." This statement could be read to mean that the district court considered the mitigating factor of R.K.W.'s remorse and determined it did not reduce R.K.W.'s overall culpability or that the district court did not believe that remorse could be a mitigating factor. This statement does not explicitly misstate the law or establish a clear error of fact so as to constitute an abuse of discretion. Instead, the statement supports a determination that the district court sufficiently considered the potentially mitigating factor

of R.K.W.'s remorse and determined that it did not reduce his culpability. *See State v. Solberg*, 882 N.W.2d 618, 626 (Minn. 2016) (affirming the district court's determination that the defendant's demonstrated remorse did not make his conduct significantly less serious than the typical conduct).

The caselaw R.K.W. cites does not support a conclusion that the district court abused its discretion if it considered evidence of a mitigating factor and determined it did not reduce the child's culpability. Therefore, R.K.W. has not met his burden, and the district court did not err by determining that the remorse R.K.W. expressed to D.H. was insufficient to reduce his culpability. The district court therefore did not abuse its discretion in determining that the second factor weighed in favor of certification for prosecution as an adult in the second case.

Affirmed.