

*This opinion is nonprecedential except as provided by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
A22-1312**

In the Matter of the Welfare of: N. P. G., Child.

**Filed June 5, 2023
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-JV-21-2707

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant N.P.G.)

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

Mary F. Moriarty, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent state)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

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

FACTS

In late November 2021, 17-year-old appellant N.P.G. had an altercation with R.R., an adult. As R.R. ran toward a nearby laundromat, N.P.G. pursued and stabbed him seven

times in the back. R.R. sustained life-threatening injuries and was taken to the hospital for emergency surgery. When police questioned N.P.G., he said that R.R. had followed him from a bus stop and “what he did [to R.R.] was in self-defense.” Police also learned that N.P.G. had recently run away from his home in Wisconsin, where he was under juvenile probationary supervision.

The state charged N.P.G. with first-degree assault and moved for presumptive adult certification. The district court conducted a ten-day hearing between February and July 2022, during which it considered evidence of N.P.G.’s chaotic and abusive childhood; his diagnoses of autism spectrum disorder, attention deficit hyperactivity disorder, and chemical-use disorders (marijuana and alcohol); his prior delinquent behavior and largely unsuccessful programming history; and dispositional options if N.P.G. were tried as a juvenile or as an adult. The district court found that N.P.G. did not demonstrate that retaining his case in juvenile court would serve public safety and certified him for adult prosecution.

N.P.G. appeals.

DECISION

A district court has “considerable latitude” in deciding whether to certify a juvenile for adult prosecution. *In re Welfare of P.C.T.*, 823 N.W.2d 676, 681 (Minn. App. 2012). We will not reverse a certification unless the district court’s findings “are clearly erroneous so as to constitute an abuse of discretion.” *Id.* (quotation omitted). We “will not disturb the district court’s findings of fact regarding public safety unless they are clearly erroneous.” *In re Welfare of H.B.*, 986 N.W.2d 158, 166 (Minn. 2022). In applying the

clear-error standard, we do not reweigh evidence or engage in fact-finding. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021). Rather, we view the evidence in a light favorable to the district court’s findings, *id.* at 221, and will not reverse unless that review leaves us “with a definite and firm conviction that a mistake occurred,” *H.B.*, 986 N.W.2d at 166.

Minnesota law presumes that a child will be certified to stand trial as an adult if they were 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. Minn. Stat. § 260B.125, subd. 3 (2022). 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.*

To determine whether certifying a child for adult prosecution 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 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 (2022); *see* Minn. R. Juv. Delinq. 18.06, subd. 3 (listing same as A-F). In considering these factors, courts must “give greater weight to the

seriousness of the alleged offense and the child’s prior record of delinquency.” Minn. Stat. § 260B.125, subd. 4; *see* Minn. R. Juv. Delinq. 18.06, subd. 3. They must also take the allegations against the child as true. *In re Welfare of J.H.*, 844 N.W.2d 28, 38 (Minn. 2014).

Because N.P.G. was 17 years old at the time of the offense and the assault charge carries a presumptive prison sentence, adult certification is presumed in this case. The district court determined that he did not rebut that presumption based on findings that all but one factor—his lack of a “significant” delinquency history—favor certification. N.P.G. does not dispute that the first-degree assault with which he is charged is a serious offense, which weighs heavily against him. But he challenges the district court’s findings with respect to the four other public-safety factors that it found favor certification: (1) culpability, (2) programming history, (3) adequacy of juvenile punishment or programming, and (4) available dispositional options. We address each challenge in turn.

Culpability

N.P.G. argues that the district court clearly erred by finding that he is “fully culpable” for the offense. He asserts that four circumstances mitigate his culpability: (1) R.R. was the aggressor, (2) he was “under duress” at the time of the assault because R.R. had chased him, (3) his “mental illness impaired his decision-making at the time of the incident,” and (4) he is particularly amenable to treatment in a probationary setting. And he contends the district court “disregarded” these circumstances. We disagree.

The district court’s decision reflects its careful consideration of each. It found, based on surveillance footage from the laundromat and N.P.G.’s own testimony, that R.R.

was not the aggressor and did not place N.P.G. in duress because R.R. was unarmed (carrying only a traffic cone) and running away from N.P.G. at the time of the offense. N.P.G. alone engaged in a pursuit, chasing after R.R. and repeatedly stabbing him in the back. The district court also recognized N.P.G.’s mental-health challenges and traumatic childhood but found that these did not mitigate his culpability because there is no evidence—not even from N.P.G.’s psychological expert—that they rendered him unable to control his actions. *See State v. McLaughlin*, 725 N.W.2d 703, 716 (Minn. 2007) (stating that mental impairment mitigates culpability only if it is “extreme to the point that it deprives the defendant of control over his actions” (quotation omitted)). And the district court found that N.P.G. is not particularly amenable to probation because he has a history of programming failures, has shown a “significant increase in rule breaking behavior in the last few years,” and minimizes or blames others for his actions rather than taking responsibility.¹

N.P.G. does not dispute that the record contains evidence that supports these findings; he simply argues that the record supports alternative findings. Even if that is so, it is not our role to reweigh the evidence and substitute those findings. *See Kenney*, 963 N.W.2d at 221-22. N.P.G. has not demonstrated that the district court clearly erred by finding that he is fully culpable for the assault, which favors certification.

¹ In making this finding, the court effectively assumed without deciding that amenability to probation could mitigate culpability if proven. But mitigation in this context focuses specifically on the child’s culpability “in committing the alleged offense.” Minn. Stat. § 260B.125, subd. 4; *see H.B.*, 986 N.W.2d at 170-72 (holding that this public-safety factor focuses on the offense, not offender-specific considerations such as traumatic childhood or mental illness). So N.P.G.’s particular-amenability argument fails for this reason, as well.

Programming History

N.P.G. next challenges the district court's finding that his programming history favors adult certification. He acknowledges that the district court accurately recounted this history—he has been placed in four different residential programs since 2019; he was unsuccessfully discharged from all but the most recent one; and after his successful discharge, he continued to use marijuana, struggled in school, and absconded from supervision, leading to the assault of R.R. He contends the district court should have given little weight to his unsuccessful discharges because those placements were “inappropriate,” should have instead focused on his successful completion of the most recent program, and should have discounted his poor performance after that program because he received inadequate “follow through” from his mother and probation officer. This argument is unavailing.

As the district court observed, the focus of this public-safety factor is not the appropriateness of programming or aftercare or even whether the child would benefit from programming if he participated. *H.B.*, 986 N.W.2d at 175. Rather, it is on the child's “willingness to participate” in programming such that additional juvenile programming would serve public safety. *Id.* On this record, we discern no clear error in the district court's finding that N.P.G.'s multiple programming failures and poor post-programming behavior indicate an unwillingness to participate in programming that makes juvenile placement inconsistent with public safety.

Adequacy of Juvenile Punishment and Dispositional Options

N.P.G. jointly addresses the adequacy of juvenile programming or punishment and the dispositional options available to him. *See In re Welfare of N.J.S.*, 753 N.W.2d 704, 711 (Minn. 2008) (addressing these public-safety factors together). He contends that the district court clearly erred by finding that these factors weigh “heavily” in favor of certification because the juvenile system offers “suitable” options for accountability and rehabilitation. We are not persuaded.

The district court carefully evaluated the suitability of juvenile and adult dispositions. In doing so, it highlighted numerous public-safety concerns associated with a juvenile disposition: (1) N.P.G.’s juvenile programming would automatically terminate in a few years when he reaches 21, affording significantly less “accountability” than the presumptive 86-month prison sentence he would face in adult court; (2) at the appropriate juvenile facility, MCF-Red Wing, N.P.G. would have access to chemical-dependency education but not treatment; (3) behavioral-health programming at Red Wing is voluntary; and (4) N.P.G.’s success in these programs is doubtful in light of his prior programming failures. The court also noted that N.P.G. would be unable to receive juvenile programming or community supervision in Wisconsin, where he is a resident, because he is now an adult.

By contrast, the district court found that an adult criminal disposition, in addition to providing “a higher level of accountability” for a longer period of time, would assure N.P.G. a thorough assessment for an individualized case plan that could meet his treatment, therapeutic, and educational needs. N.P.G. identifies no flaw in these findings regarding

the drawbacks of a juvenile disposition and benefits of an adult disposition. Accordingly, he has not demonstrated clear error in the finding that the dispositional factors favor certification.

In sum, the district court's thorough and well-reasoned findings as to each of the public-safety factors have ample support in the record. And N.P.G.'s argument that the record could support alternative findings does not convince us that "a mistake occurred." *H.B.*, 986 N.W.2d at 166. Because five of six factors confirm the presumption that prosecuting N.P.G. as an adult best serves public safety, the district court did not abuse its discretion by ordering certification.

Affirmed.