

*This opinion is nonprecedential except as provided by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
A23-0741**

In the Matter of the Welfare of:
D. L. W., Jr., Child.

**Filed November 6, 2023
Affirmed
Ross, Judge**

Benton County District Court
File No. 05-JV-23-215

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant D.L.W. Jr.)

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

Karl Schmidt, Benton County Attorney, Kathleen L. Reuter, Assistant County Attorney, Foley, Minnesota (for respondent State of Minnesota)

Considered and decided by Worke, Presiding Judge; Ross, Judge; and Halbrooks, Judge.*

NONPRECEDENTIAL OPINION

ROSS, Judge

The state charged fifteen-year-old D.L.W. with second-degree intentional murder for entering the apartment of a man who refused to sell him marijuana and fatally shooting him. The district court certified the proceeding for adult prosecution after concluding that

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

the statutory factors supported certification and that the state proved by clear and convincing evidence that retaining the proceeding in juvenile court would not serve public safety. In this appeal from that decision, we hold that the district court acted within its discretion by certifying the proceeding for adult prosecution.

FACTS

According to a Benton County delinquency petition, fifteen-year-old D.L.W. and three other males entered a Saint Cloud apartment building to buy marijuana from a resident. D.L.W. went into the apartment alone while his companions waited in the hallway. The resident refused to sell marijuana to D.L.W., and D.L.W. left the apartment and so informed the others. The four males left the building, but D.L.W. and one of his companions reentered while the other two remained outside in an SUV. D.L.W. alone returned to the resident's apartment while the other male waited in the hallway. D.L.W. fired at least seven gunshots. His bullets entered the resident's chest, abdomen, and arms, killing him.

D.L.W. and the male who had reentered the building with him left the building. Only D.L.W. got into the SUV to rejoin the two awaiting companions. The remaining male went into an adjacent apartment building, where his mother resided, and he told her to call for an ambulance. Inside the SUV, D.L.W. held a handgun and said that he had been "standing over [the resident's] body." The male driving the SUV ordered D.L.W. to get out. D.L.W. then exited the SUV, stripped down to a white t-shirt by removing his jacket and sweatshirt, and ran away into a townhome.

The state charged D.L.W. with second-degree intentional murder and moved to certify the proceeding for adult prosecution. The district court held a certification hearing where it received evidence of D.L.W.'s prior delinquency history, attempts at rehabilitative programming, and the options for future treatment in the adult and juvenile justice systems.

The evidence revealed that D.L.W. had developed an extensive delinquency record over a very short period. His record included ten delinquency adjudications for very serious offenses he committed on six occasions in just ten months, between August 2021 and April 2022. He had committed four felony offenses: motor vehicle theft; fleeing a police officer in a motor vehicle; felony receipt of stolen property; and aiding and abetting simple robbery. And he committed five misdemeanor offenses: misdemeanor receipt of stolen property; misdemeanor driving while intoxicated; criminal damage to property; tampering with a motor vehicle; and obstructing the legal process (a gross misdemeanor). The conduct underlying these adjudications included violent behavior toward police and staff at his school, as well as dangerous driving behavior.

The district court learned of D.L.W.'s substantial, unsuccessful programming history. One of his delinquency adjudications had led the district court to order D.L.W. to complete 90 to 120 days of secure correctional programming at Prairie Lakes Youth Program, to comply with electronic monitoring, and to complete diagnostic and chemical-dependency assessments. D.L.W. spent much of his time in the disciplinary room during his stay in the Prairie Lakes Youth Program because he threatened or attempted to strike staff and peers. Staff summoned police to the program because of D.L.W.'s threatening behavior. D.L.W. bit one officer on the knee and punched another in the nose. Discharged

from Prairie Lakes, D.L.W. was placed at the East Central Regional Juvenile Center and required to participate in its 15-to-30-day secure program. He was twice restricted to a detention area for misconduct, and he responded to request denials rudely and disrespectfully. He allegedly shot the victim in this case less than four months after he was discharged from that program.

The district court considered the three primary programming and dispositional options available to D.L.W. in the juvenile justice system. Retaining D.L.W. in the traditional juvenile justice system would allow for supervision until he reached age nineteen, 38 months after the certification order. Exercising extended juvenile jurisdiction would allow for supervision until he reached age twenty-one, 62 months after the certification order. By contrast, allowing prosecution for second-degree murder as an adult could result in a presumptive 326-month sentence, including participation in the department of correction's Youthful Offender Program, behavioral therapy and counseling, and secondary educational classes.

The district court certified the proceeding for adult prosecution, finding that all public-safety factors favored certification. D.L.W. appeals.

DECISION

D.L.W. contests the district court's order certifying the proceeding for his prosecution as an adult. The district court's decision whether to certify a proceeding for adult prosecution is entitled to "considerable latitude," *In re Welfare of D.T.H.*, 572 N.W.2d 742, 744 (Minn. App. 1997) (quotation omitted), *rev. denied* (Minn. Feb. 19, 1998), and we will not reverse its decision unless we conclude that the decision reflects an

abuse of discretion, *In re Welfare of J.H.*, 844 N.W.2d 28, 34 (Minn. 2014). The district court's discretion is framed by statute. *See* Minn. Stat. § 260B.125 (2022). When a child older than fourteen commits an offense that would be a felony if committed by an adult, the controlling statute allows the district court to enter an order certifying the proceeding for adult prosecution. Minn. Stat. § 260B.125, subd. 1. When the child is younger than sixteen, the state can secure adult prosecution only if it proves by clear and convincing evidence that continuing in juvenile court disserves public safety. *Id.*, subds. 2(6)(ii), 3. To determine whether the public safety is served by certification, the 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.

Id., subd. 4. In honoring the district court's wide discretion in its application of these factors, we will accept its findings unless they are clearly erroneous. *In re Welfare of*

P.C.T., 823 N.W.2d 676, 681 (Minn. App. 2012), *rev. denied* (Minn. Feb. 19, 2013). We are satisfied that the district court's findings are not clearly erroneous and that it acted within its discretion by certifying the proceeding for adult prosecution.

D.L.W. concedes that the first three factors favor certification for adult prosecution, but he appears to suggest that the district court gave too much weight to factors two and three. He implies that “the apparent impulsivity of this offense” supports the conclusion that the district court weighted the culpability factor too heavily, and he says that the district court's order “exaggerate[s] the seriousness of his prior record” which should have been deemed only “neutral” or as slightly favoring certification. We construe D.L.W.'s argument as asking us to reweigh the evidence. That we will not do. *See State v. Johnson*, 568 N.W.2d 426, 435 (Minn. 1997). We instead consider the evidence in the light most favorable to the district court's certification order. *J.H.*, 844 N.W.2d at 35. And the record evidence of the contested second and third factors (D.L.W.'s culpability in the alleged murder and his delinquency record) obviously supports the district court's conclusions.

D.L.W. maintains that the district court abused its discretion by concluding that the final three factors support certification. He is wrong as to each factor.

As for D.L.W.'s efforts in prior programming, the record supports the district court's finding that, for the most part, D.L.W. refused to participate in treatment and had “not benefitted from the tools offered to him through the programming and counseling process.” Among other things, D.L.W.'s alleged shooting of the victim in this case within four months of his programming makes the district court's finding incontrovertible.

As to the final two factors, the district court's findings that the punishment and programming available in the juvenile system would be inadequate for D.L.W.'s alleged offense and that the dispositional options available favor adult prosecution are similarly well supported by the evidence. The district court recognized that the options available in the juvenile justice system had already been shown insufficient to curb D.L.W.'s criminal conduct, that the risk that D.L.W. would reoffend was high if he were merely placed on probation in the juvenile system, that D.L.W.'s misconduct was clearly escalating, and that the present offense was extremely dangerous. It determined that committing D.L.W. to the department of corrections along with placement in the Youthful Offender Program would constitute the best combination of programming and education while also protecting the public from D.L.W.'s violent behavior. These findings are unassailable.

Affirmed.