

*This opinion is nonprecedential except as provided by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
A24-0411**

In the Matter of the Welfare of: D. K. B., Child.

**Filed September 9, 2024
Affirmed
Worke, Judge**

Anoka County District Court
File No. 02-JV-23-614

Cathryn Middlebrook, Chief Appellate Public Defender, Laura G. Heinrich, Assistant Public Defender, St. Paul, Minnesota (for appellant D.K.B.)

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

Brad Johnson, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent State of Minnesota)

Considered and decided by Worke, Presiding Judge; Bjorkman, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant-juvenile argues that the district court abused its discretion by granting the state's motion for nonpresumptive adult certification. We affirm.

FACTS

In July 2023, respondent State of Minnesota filed a delinquency petition, alleging that 15-year-old appellant D.K.B. (DOB: 03/05/2008) committed two counts of attempted second-degree murder. The probable-cause statement in the petition provides:

On July 8, 2023, three teenagers in a car approached D.K.B. as he walked along the street. One of the teenagers asked D.K.B. a few times: “Did you jump [my friend]?” D.K.B. pulled out a gun, fired at least two shots into the car, and ran.

Around 2:30 p.m., officers were dispatched to a parking lot and found the three teenagers in a parked car. The driver, D.B., had a grazing gunshot wound on his arm and a gunshot wound on his leg. The front passenger, Z.A., had a gunshot wound that entered his right chest area and exited the upper left abdominal area. Z.A. had a cloth on his chest to stop the bleeding. He said that he did not want to die. D.B. and Z.A. were transported to the hospital where they were stabilized.

The rear passenger, L.R., appeared uninjured. L.R. explained that, about a month or two earlier, he and his friend had been “jumped” by D.K.B. and some of his friends. L.R. recorded the July 8 shooting on his phone. The video showed that nobody in the car did or said anything threatening to D.K.B. Officers went to D.K.B.’s residence, detained D.K.B., and found firearms, ammunition, and a magazine in the residence.

The state filed a motion for nonpresumptive adult certification, and the district court ordered a certification study. The examiner evaluated the six public-safety factors, *see* Minn. Stat. § 260B.125, subd. 4 (2022), and recommended that D.K.B. be designated extended juvenile jurisdiction (EJJ).

In August 2023, after interviewing D.K.B. and D.K.B.’s mother and reviewing several documents, a probation agent filed a certification study. The agent recommended adult certification mainly because of the seriousness of the offense and D.K.B.’s culpability. In November 2023, a psychologist evaluated D.K.B. and recommended EJJ.

The district court held a certification hearing. The probation agent testified that when she interviewed D.K.B., he talked about his pets and how much he loves his family and follows his mother's rules, which was in "very stark" contrast to the offense he committed. Regarding the six public-safety factors, the agent stated that the first and second factors—seriousness of the offense and D.K.B.'s culpability—favored certification because D.K.B. shot two individuals and acted alone. Because D.K.B. has no delinquency record and was not offered programming, the agent concluded that the third and fourth factors favored juvenile jurisdiction.

Regarding the fifth factor—the adequacy of punishment available in the juvenile system—the agent determined that the only option was placement in a long-term correctional program. The agent concluded that this factor favored EJJ. Finally, regarding the sixth factor—dispositional options—the agent stated that the presumptive adult sentence was 153 months in prison, which would best serve public safety.

The psychologist testified that the first two factors favored certification and the third and fourth factors favored retention in the juvenile system. Regarding the adequacy of punishment available in the juvenile system, the psychologist determined that long-term programs could meet D.K.B.'s needs and this factor favored retention in the juvenile system. Regarding dispositional options, the psychologist recommended EJJ because of the benefits from D.K.B.'s extended time on probation.

Following the certification hearing, on February 20, 2024, the district court granted the state's motion for adult certification. The district court found that D.K.B. "concedes" that the first factor weighed in favor of certification. The district court also found that

D.K.B.'s culpability weighed in favor of certification. The district court found that D.K.B. has no delinquency history, which favored EJJ. The district court also found that, although D.K.B. had "escalating behavioral incidents at school and while in custody," he has not received programming to assist with these behaviors. This factor favored EJJ.

Regarding the adequacy of punishment or programming in the juvenile system, the district court found that D.K.B. would need a long-term correctional program. The district court noted that the probation agent and the psychologist opined that this factor favored juvenile retention or EJJ but determined that the evidence did not support this conclusion. The district court stated that if designated EJJ, D.K.B. could complete the program in a short period of time and that it was "speculative" that the structure of the program would be successful. The district court expressed concern that D.K.B.'s failure at rehabilitation would be a risk to public safety. The district court concluded that EJJ "is not an adequate punishment for the seriousness of these charges" and found that this factor favored certification.

Finally, in considering the dispositional options, the district court determined that it would retain jurisdiction with a juvenile disposition for approximately 36 months. If designated EJJ, the district court would have jurisdiction for approximately 60 months. The district court found that the psychologist opined that D.K.B. would benefit from supervision until he is 21 years old because D.K.B. "would have the opportunity for some stability before turning 21 . . . [because a juvenile's] . . . development and maturation that occurs between 16-21 is significant." The psychologist stated that if D.K.B. went to prison, however, he would be "easily susceptible to developing a greater delinquent orientation

[and that] [w]hile he has engaged in some serious delinquent behavior, [D.K.B.] does not currently have a delinquent attitude, but prison puts him at a much greater risk of developing one.” The district court concluded:

The [c]ourt is troubled by the severity of the charges in this matter The [s]tate has demonstrated that jurisdiction over [D.K.B.] until his 21st birthday for treatment and supervision is not sufficient time to ensure public safety is protected . . . [and] that retaining the proceeding in juvenile court and providing interventions does not serve public safety and will not address the significant risk of [D.K.B.] engaging in further criminal behavior, especially when compared to the assured benefit to public safety that accompanies the 153 months in prison [D.K.B.] faces on each count if he is certified as an adult. Accordingly, this [c]ourt finds that a lengthy prison commitment will best serve public safety.

This appeal followed.

DECISION

D.K.B. argues that the district court abused its discretion by granting the state’s motion for adult certification. *See In re Welfare of H.B.*, 986 N.W.2d 158, 166 (Minn. 2022). “A district court has considerable latitude in deciding whether to certify a case for adult prosecution.” *In re Welfare of P.C.T.*, 823 N.W.2d 676, 681 (Minn. App. 2012) (quotation omitted), *rev. denied* (Minn. Feb. 19, 2013). A district court’s certification decision will not be reversed unless its findings are clearly erroneous, constituting an abuse of discretion. *In re Welfare of D.T.H.*, 572 N.W.2d 742, 744 (Minn. App. 1997), *rev. denied* (Minn. Feb. 19, 1998). Findings are clearly erroneous when there is no reasonable evidence supporting them or when the reviewing court is left with the firm conviction that a mistake occurred. *In re Welfare of J.H.*, 844 N.W.2d 28, 35 (Minn. 2014).

Generally, the district court’s juvenile division has “exclusive jurisdiction in proceedings” of a juvenile under 18 years old who is accused of a crime. Minn. Stat. § 260B.101, subd. 1 (2022). But a juvenile over 14 years old who is accused of committing a crime “that would be a felony if committed by an adult,” may be certified for adult prosecution. Minn. Stat. § 260B.125, subd. 1 (2022). To certify a juvenile who is under 16 years old at the time of the offense—a nonpresumptive certification—the state must establish “by clear and convincing evidence that retaining the proceeding in the juvenile court does not serve public safety.” *Id.*, subd. 2(6)(ii) (2022); *see also* Minn. R. Juv. Delinq. P. 18.06, subd. 2.

Appellate courts will “not disturb a finding that public safety would be served by certification unless it is clearly erroneous.” *In re Welfare of N.J.S.*, 753 N.W.2d 704, 710 (Minn. 2008). Under this review, an appellate court may not reweigh the evidence, reconcile conflicting evidence, or engage in fact-finding. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021). Instead, an appellate court reviews “the record to confirm that evidence exists to support the decision.” *Id.* at 222.

A district court must consider six factors in determining whether adult certification serves public safety:

- (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. A district court must “give greater weight” to the first and third factors. *Id.*

Here, the district court determined that a balance of the factors weighed in favor of certification. D.K.B. does not challenge the district court's conclusions regarding the first four factors. Indeed, the district court found that D.K.B. conceded that the seriousness of the offenses favored certification. D.K.B. does not challenge the findings on his culpability. And the district court concluded that the third and fourth factors favored EJJ. D.K.B. argues that the district court clearly erred in finding that factors five and six favor certification.

Under the fifth public-safety factor, a district court considers “the adequacy of the punishment or programming available in the juvenile justice system.” *Id.*, subd. 4(5). Here, experts ruled out several options—supervised probation, foster care, a group home, a hospital or chemical-dependency treatment, and a long-term residential program—because they would not be secure enough to protect the public. But the experts opined that a long-term correctional program, such as the juvenile correctional facility in Red Wing, would be suitable and meet D.K.B.'s needs. The district court disagreed, stating that if designated EJJ and sent to Red Wing, for example, D.K.B. could complete treatment “in as little as 6-10 months.” The district court determined that it was “speculative” that

providing D.K.B. with more structure would lead to an effective result. And the district court noted that D.K.B.'s failure to rehabilitate would create "an extreme risk to public safety." The district court also found that EJJ did not provide "adequate punishment for the seriousness of these charges."

D.K.B. argues that the record shows that Red Wing would be appropriate. He asserts that mitigating factors show that he would be successfully rehabilitated because he was only 15 years old; he has ADHD; he is depressed and anxious; he has only a few friends; he was not doing well in school; he felt "stupid"; he did not make the basketball team; and he never received therapeutic intervention although he was traumatized as a child when his mother abused him, he was removed from the home, his biological father was absent, and his mother's partner was incarcerated. But the district court considered this evidence. Additionally, this evidence, although upsetting, does not address the adequacy of punishment in the juvenile system. The record supports the district court's conclusion that factor five favored adult certification.

Under the sixth public-safety factor, a district court considers "the dispositional options available for the child." *Id.*, subd. 4(6). The district court determined that the juvenile court would retain jurisdiction for 36 months. EJJ would provide the court with jurisdiction for 60 months. The district court determined that this time was insufficient to guarantee that D.K.B. would not pose a threat to the public. The district court determined that the adult sentence—261-367 months in prison—was appropriate. Considering that "[f]or purposes of a certification determination, the charges against the child and the factual allegations of the petition are presumed true," *J.H.*, 844 N.W.2d at 38, the district court

reasonably determined that three or five years of treatment and programming may not be adequate for the offenses of attempted second-degree murder committed with a firearm.

The record shows that the district court considered the dispositional options and found that the best option to protect the public was the longer adult sentence. Because there was reasonable evidence to support the district court's findings, and we are not left with a firm conviction that a mistake occurred, we will not disturb the district court's findings. *See J.H.*, 844 N.W.2d at 35. We conclude that the district court did not clearly err in finding that the fifth and sixth public-safety factors support certification and that the district court did not abuse its discretion in granting the motion for nonpresumptive certification.

Affirmed.