

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

APR 12 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE VICENTE V.

) 2 CA-JV 2010-0142
) DEPARTMENT A
)
) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure
)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J17733601

Honorable Javier Chon-Lopez, Judge

AFFIRMED

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E S P I N O S A, Judge.

¶1 In this appeal, Vicente V. argues the juvenile court abused its discretion by finding that transferring him to adult court for criminal prosecution pursuant to A.R.S. § 8-327 served public safety. We have jurisdiction pursuant to A.R.S. § 8-235. We affirm.

¶2 In May 2010, the state filed a delinquency petition charging Vicente with five counts of armed robbery, six counts of kidnapping, one count of first-degree burglary, one count of aggravated assault with a deadly weapon or dangerous instrument, and one count of aggravated assault causing serious physical injury. Vicente was thirteen years old at the time the offenses allegedly occurred. The charges stemmed from an April 2010 home invasion in which Vicente and several other individuals forced their way into the victims' residence and held them at gunpoint. The six victims—one of whom was a fourteen-month-old child—were taken to a bedroom and ordered to lie facedown on the bed. Their hands and feet were bound with cord. Vicente, armed with a shotgun and a handgun, stood beside one of the victims. He stayed in the bedroom for about forty minutes while his accomplices ransacked the house. During this time, Vicente struck the victim in the head, neck, and back approximately forty to sixty times with the butt of the shotgun. The victim suffered a serious head injury requiring eleven staples to close and his pinky finger was shattered. He also suffered a "blood contusion" and was diagnosed with post-concussive syndrome. Vicente threatened to kill the victim

if he moved and, at one point, shoved the barrel of his handgun into the victim’s mouth, ordering the victim to “cry.” Minutes later, Vicente fired his shotgun into the ceiling.

¶3 The state filed a petition requesting the juvenile court transfer Vicente to adult court for criminal prosecution pursuant to § 8-327(A) and Rule 34, Ariz. R. P. Juv. Ct. After a hearing, the court granted the petition, finding public safety “best served by transferring Vicente V[.] to Adult Court.” We will not disturb this ruling absent a clear abuse of the court’s discretion. *In re Edgar V.*, 215 Ariz. 77, ¶ 5, 158 P.3d 206, 207 (App. 2007).

¶4 To transfer a juvenile to adult court, a juvenile court must determine there is probable cause to believe an offense had been committed, the juvenile committed it,¹ and “public safety would best be served by the transfer of the juvenile for criminal prosecution.” § 8-327(C). In evaluating whether transfer would serve public safety, the court must consider:

1. The seriousness of the offense involved.
2. The record and previous history of the juvenile, including previous contacts with the courts and law enforcement, previous periods of any court ordered probation and the results of that probation.
3. Any previous commitments of the juvenile to juvenile residential placements and secure institutions.
4. If the juvenile was previously committed to the department of juvenile corrections for a felony offense.

¹Vicente waived the probable cause determination.

5. If the juvenile committed another felony offense while the juvenile was a ward of the department of juvenile corrections.
 6. If the juvenile committed the alleged offense while participating in, assisting, promoting or furthering the interests of a criminal street gang, a criminal syndicate or a racketeering enterprise.
 - .
 7. The views of the victim of the offense.
 8. If the degree of the juvenile's participation in the offense was relatively minor but not so minor as to constitute a defense to prosecution.
 9. The juvenile's mental and emotional condition.
 10. The likelihood of the juvenile's reasonable rehabilitation through the use of services and facilities that are currently available to the juvenile court.
- § 8-327(D). The court must “state on the record the reasons for transferring or not transferring the juvenile for criminal prosecution.” § 8-327(C). In reviewing a transfer order, “[w]e will not substitute our own judgment for that of the court, and will sustain the court’s order if reasonable evidence in the record supports it.” *Edgar V.*, 215 Ariz. 77, ¶ 5, 158 P.3d at 207.

¶5 A psychologist who testified at the transfer hearing stated that, although Vicente “has not been a positive pro-social part of the community,” he believed Vicente could succeed in structured programs available through the juvenile system and that he did not believe adult prison would be appropriate due to Vicente’s age and limited mental

capacity.² He acknowledged that both the juvenile and adult justice systems would protect both Vicente and public safety, stating problems could arise when Vicente is not in either system. He opined that Vicente might “be more of a threat to the public after having gone through [the prison] system.” Vicente’s probation officer agreed Vicente would receive treatment in the juvenile system that he would not receive in prison. But he also opined that available treatment would not be sufficient to rehabilitate Vicente and that adult prison was more appropriate to protect public safety.

¶6 As we understand his argument, Vicente asserts the juvenile court erred in concluding he was not a good candidate for rehabilitation under § 8-327(D)(10) because the court instead could order him to be in custody until he turned eighteen, where he could receive rehabilitative treatment unavailable in the adult system and, according to the psychologist, he would benefit from that treatment. But the court expressly rejected that opinion, concluding Vicente likely would return to criminal activity upon release.

See In re Coconino County Juv. Action No. J-9896, 154 Ariz. 240, 243, 741 P.2d 1218, 1221 (1987) (juvenile court not bound by psychologists’ recommendations). Not only

²The psychologist testified that, although Vicente was not “mentally retarded,” his intellectual capacity was that of a nine- or ten-year-old child. Vicente suggests the juvenile court improperly “glossed over the issue of Vicente’s marginal intellectual functioning” by deeming that factor to be neutral. But he does not explain this argument and we do not address it further. *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (claims waived for insufficient argument). We additionally observe the psychologist’s opinion that prison would be a particularly poor environment for Vicente appeared to have been based, at least in part, on his mistaken belief Vicente could be placed in an adult prison population before his eighteenth birthday. *See A.R.S. § 8-305(C)(2).*

was the court's finding consistent with the probation officer's testimony, there was evidence Vicente had failed to benefit from other rehabilitation programs. Thus, the court's conclusion that rehabilitation was unlikely was supported by reasonable evidence.

¶7 We also reject Vicente's argument that the juvenile court gave too much weight to the seriousness of his offenses. He cites no authority, and we find none, suggesting that factor must be given less weight than the other factors enumerated in § 8-327(D). Indeed, our statutory scheme emphasizes the importance of that factor; given the seriousness of his offenses and their violent nature, had Vicente been only two months older at the time of his offenses, the state would have had discretion to charge him as an adult and would not have been required to request transfer pursuant to § 8-327. *See* A.R.S. § 13-501(B).

¶8 Vicente additionally suggests the evidence showed incarceration would not protect public safety adequately because he would have less opportunity for rehabilitation in prison and therefore would present a greater threat to public safety when released. But we already have determined the juvenile court's finding that Vicente was not amenable to rehabilitation was supported by reasonable evidence. In any event, a minor's potential for rehabilitation is only one factor a juvenile court must consider in determining whether transfer would serve public safety. *See* § 8-327(D). Vicente ignores the numerous other factors weighing in favor of transfer: Vicente previously had been adjudicated delinquent, had frequent contact with law enforcement, and had been in residential placements without any apparent success at rehabilitation. § 8-327(D)(2), (3).

Additionally, the offenses were extremely serious and involved gang activity. § 8-327(D)(1), (6). His participation in the offenses plainly was significant. § 8-327(D)(8). And the victims unanimously believed Vicente should be tried as an adult. § 8-327(D)(7).

¶9 For the reasons stated, the juvenile court's order transferring Vicente to adult court for criminal prosecution is affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge