

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of DEEVON CORNEA BROWN,  
Minor.

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PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

DEEVON CORNEA BROWN,

Respondent-Appellant.

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UNPUBLISHED

March 25, 2008

No. 274976

Oakland Circuit Court

Family Division

LC No. 04-701179-DL

Before: White, P.J., and Hoekstra and Schuette, JJ.

PER CURIAM.

Respondent, a juvenile, appeals as of right from an order of disposition entered after he was adjudicated guilty of fourth-degree criminal sexual conduct, MCL 750.520e(1)(a). We affirm.

**I. FACTS**

A petition alleged that respondent rubbed the minor complainant's vaginal area on two occurrences without her permission. These touches occurred when respondent and the complainant were seated across from one another in a classroom while working as a team on a school project. Although other students and the teacher were situated nearby, no one else witnessed the incident. At the jury trial, respondent's attorney attempted to cast doubt on, and to emphasize the inconsistencies in, the complainant's claims. But the jury returned a guilty verdict. At the October 10, 2006 disposition, respondent's attorney revealed his misunderstanding of the process in juvenile law where a case can be transferred from the formal calendar to a consent calendar. Defendant made a hasty request for such a transfer. The trial court denied defendant's request on the ground that respondent had not entered a plea of guilty and, instead, had already proceeded to a jury trial.

**II. REQUEST FOR TRANSFER TO CONSENT CALENDAR**

Respondent first argues that the trial court committed prejudicial error when it denied his motion to transfer his case to the consent calendar. We disagree.

### A. Standard of Review

MCR 3.932 provides the trial court with discretion<sup>1</sup> to rule on transfer requests. Therefore, we review the trial court's denial of respondent's petition to transfer the case from the formal calendar to the consent calendar for an abuse of that discretion. An abuse of discretion occurs when the result is outside the principled range of outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

### B. Analysis

Respondent refers this Court to MCR 3.932(C) and (D), which gives the trial court discretionary power to order a transfer from the formal calendar to the consent calendar “[a]t any time before disposition.” Respondent contends that the trial court's denial of his motion to transfer his case to the consent calendar on the ground that he had not entered a guilty plea was prejudicial error. However, a review of the record shows that respondent had a history of charges against him that dated back to November of 2004, and he was on probation at the time of this incident, which was both serious and brazen. Given this history, it is clear that had the trial court considered respondent's motion on the merits, the court would have denied the transfer to the consent calendar as contrary to “the best interests of the juvenile and the public” under MCR 3.932(C).<sup>2</sup> Thus, even if the trial court did abuse its discretion, its error is harmless because respondent has failed to show any resulting prejudice. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

## III. EFFECTIVE ASSISTANCE OF COUNSEL

We also reject respondent's claims that he received ineffective assistance of counsel when his attorney failed to call any rebuttal witnesses, failed to request a transfer to the consent calendar before the jury trial, and failed to seek out a plea bargain with the prosecution.

### A. Standard of Review

“Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law.” *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). The trial court's factual findings are reviewed for clear error, while its constitutional determinations are reviewed de novo. *Id.*

### B. Analysis

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<sup>1</sup> MCR 3.932(C) states that the trial court “may transfer a case from the formal calendar to the consent calendar at any time before disposition.” The term “may” designates discretion. *People v Brown*, 249 Mich App 382, 386; 642 NW2d 382 (2002).

<sup>2</sup> In light of our decision on this issue, we do not need to reach petitioner's argument attempting to invalidate MCR 3.932(C) and (D) to the extent that they allow a transfer in the middle of delinquency proceedings to the informal consent calendar.

Respondent does not identify what other witnesses should have been called, or what would have been their expected testimonies. Therefore, he failed to establish how he was denied a substantial defense. *People v Hyland*, 212 Mich App 701, 710; 538 NW2d 465 (1995), vacated in part on other grounds 453 Mich 902 (1996). Further, as discussed above, the outcome in this delinquency proceeding would not have been any different even had respondent's attorney made an earlier request that the case be transferred to the consent calendar since such a request would have been properly denied. Lastly, there was no evidence in the existing record that the prosecution was interested in offering a plea bargain or that respondent's counsel failed to pursue that option.

Affirmed.

/s/ Helene N. White  
/s/ Joel P. Hoekstra  
/s/ Bill Schuette