STATE OF MICHIGAN

COURT OF APPEALS

In re TRAVIS PAUL SLOBODA, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

TRAVIS PAUL SLOBODA,

Respondent-Appellant.

UNPUBLISHED
June 16, 2009

No. 286148
Family Division
Cheboygan Circuit Court
LC No. 08-004319-DL

Before: O'Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Respondent, a juvenile, was charged in a delinquency petition with breaking and entering, MCL 750.110, larceny in a building, MCL 750.360, and four counts of malicious destruction of personal property, $200 - $1,000, MCL 750.377a(1)(c)(*i*). He appeals as of right from the decision of the family division of the circuit court to waive jurisdiction of him so that he can be tried as an adult in a court of general jurisdiction. Because petitioner has met its burden of establishing by a preponderance of the evidence that waiver would serve the best interests of the juvenile and the public, we affirm. This case has been decided without oral argument pursuant to MCR 7.214(E).

Respondent argues the lower court clearly erred when it was improperly impressed with how he would have scored under the adult sentencing guideline factors.

Generally, the family division of the circuit court has exclusive jurisdiction over proceedings concerning any child less than 17 years old who is accused of violating a law or a municipal ordinance. MCL 712A.2(a)(1); *People v Conat*, 238 Mich App 134, 139; 605 NW2d 49 (1999). The family division of the circuit court may waive its jurisdiction over a child who is at least 14, on motion of the prosecutor, if the alleged offense is a felony. MCL 712A.4(1); *People v Thenghkam*, 240 Mich App 29, 37; 610 NW2d 443 (2003), overruled in part on other grds in *People v Petty*, 469 Mich 108; 665 NW2d 443 (2003).

The waiver hearing is conducted in two phases. MCL 712A.4(3) and (4); MCR 3.950(D); *People v Williams*, 245 Mich App 427, 432; 628 NW2d 80 (2001). Phase one requires

a determination of probable cause. MCL 712A.4(10); *People v Hana*, 443 Mich 202, 222; 504 NW2d 166 (1993); *People v Burdin*, 171 Mich App 520, 522; 430 NW2d 772. The phase one hearing takes the place of a preliminary examination, and waiver of the hearing also waives the preliminary examination. MCL 712A.4(3) and (10); MCR 3.950(D)(1)(c)(ii). Respondent waived the phase one hearing so it is not at issue on appeal.

Phase two requires a determination of the best interests of the juvenile and the public. MCL 712A.4(4); MCR 3.950(D)(2); *Hana*, *supra* at 223; *Williams*, *supra* at 432. In deciding whether these interests merit waiver of jurisdiction, the lower court must consider:

> (a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.
>
> (b) The culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.
>
> (c) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.
>
> (d) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.
>
> (e) The adequacy of punishment or programming in the juvenile justice system.
>
> (f) The dispositional options available for the juvenile. [MCL 712A.4(4). See also MCR 3.950(D)(2)(d).]

The court must give greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency than to the other criteria. MCL 712A.4(4); *People v Whitfield (After Remand)*, 228 Mich App 659, 662; 579 NW2d 465 (1998). The petitioner has the burden of establishing by a preponderance of the evidence that waiver would serve the best interests of the juvenile and the public. MCR 3.950(D)(2)(c).

This Court must affirm an order waiving jurisdiction whenever the lower court's findings, based on substantial evidence and a thorough investigation, show that the juvenile is not amenable to treatment or is likely to be dangerous if released at age 19 or 21 or is likely to disrupt the rehabilitation of others. *People v Dunbar*, 423 Mich 380, 387; 377 NW2d 262 (1985); *Whitfield*, *supra* at 662. There must also be on the record, to which the lower court must refer, findings regarding the relative suitability of programs and facilities available in the juvenile and adult correctional systems. *Dunbar*, *supra* at 388. The lower court's findings of fact are reviewed under the clearly erroneous standard. MCR 3.902(A) and MCR 2.613(A).

Having reviewed the record, we conclude that the lower court's findings on the six enumerated factors in MCL 712A.4(4) were not clearly erroneous. MCR 3.902(A) and MCR 2.613(A). Contrary to respondent's argument, the lower court did not give undue weight to how respondent would have scored under the adult sentencing guidelines. Seriousness of the offense is one of two factors to which the trial court must give greater weight. MCL 712A.4(4); *Whitfield*, *supra* at 662 n 1. Also, contrary to respondent's claim, the lower court was not limited to consideration of whether a firearm was used in the offense or the affect of the offense on a victim. See MCL 712A.4(4)(a). Here, respondent was charged with breaking and entering, MCL 750.110, larceny in a building, MCL 750.360, and four counts of malicious destruction of personal property, $200 - $1,000, MCL 750.377a(1)(c)(i). The malicious destruction of property charges arose out of damage to four different cars/trucks/vans from bricks being thrown at them and tires being slashed. The breaking and entering charge arose out of respondent and co-defendants breaking into a market on March 4, 2008, and stealing four bags of returnable cans. Total restitution was greater than $5,000, which is a significant monetary amount of damage. The trial court did not clearly err by finding that respondent was involved in a serious offense.

The lower court was aware that co-defendants were involved in the instant offenses. However, it correctly noted that respondent is not a novice. He has a lengthy history of delinquency and problems with the legal system. The court's finding that respondent knew his co-defendants were destroying property, and yet chose to remain with them, is not clearly erroneous.

A prior record of delinquency is the second of two factors to which the lower court must give greater weight. MCL 712A.4(4); *Whitfield*, *supra* at 662 n 1. Respondent claims his prior record only consisted of misdemeanors, he did well in Russell House, he only had 56 days of prior detentions, he was discharged from probation in Otsego County, and his initial probation in Cheboygan County was short with no warnings or visits from his probation officer. The lower court properly noted that respondent had five periods of detention from November 2005 to September 2007, with placement at Russell House from 3/30/06 through 6/19/07. Respondent had numerous probation violations, and had prior adjudications for assault and battery on 5/18/04, retail fraud on 12/3/07, and another retail fraud on 1/9/08. Additional charges for illegal entry and two charges of driving while license suspended were also pending at the time of the instant hearing. Finally, respondent's attendance and performance at school were poor. The only time he had partial success was at Russell House, a residential facility from which he was unsuccessfully terminated before completion. The lower court did not clearly err by finding respondent's record of delinquency was poor.

With regard to respondent's programming history and the adequacy of punishment or programming available, the court correctly noted that respondent was not invested in the programs offered to him over a 3-1/2 year period and that he had not even attended school (as ordered) since October 2007. Respondent was provided with services from 2004 through the time of the instant proceeding. He has had no lasting success at any of the options and was even terminated from Russell House without completing it. The lower court did not clearly err in determining that respondent's programming history was poor and that the juvenile system options were inadequate.

Finally, as noted by the lower court, respondent has already received almost every treatment option available to the court to use. He has consistently failed to benefit from the

juvenile treatment options offered over the prior 3-1/2 years. The court did not clearly err when it determined a juvenile facility would be an ineffective programming option and that it had few dispositional options in light of respondent's failure to benefit from various treatment efforts over the prior year.

Following a thorough review of the record as applied to the enumerated factors, substantial evidence demonstrates that respondent is not amenable to treatment in the juvenile system. Accordingly, the lower court properly waived jurisdiction of respondent to the circuit court to be tried as an adult. *Dunbar*, *supra* at 387; *Whitfield*, *supra* at 662.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio