

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

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In the Matter of JOSEPH TERRELL BARNES, Minor.

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH TERRELL BARNES,

Defendant-Appellant.

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UNPUBLISHED

June 12, 2012

No. 304566

Saginaw Circuit Court

LC No. 11-033003-DL

Before: JANSEN, PJ., and CAVANAGH and HOEKSTRA, JJ.

PER CURIAM.

Respondent, a juvenile, was charged with armed robbery, MCL 750.529; conspiracy to commit armed robbery, MCL 750.157a; MCL 750.529, assault with intent to do great bodily harm less than murder, MCL 750.84, conspiracy to commit assault with intent to do great bodily harm less than murder, MCL 750.157a; MCL 750.84, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He appeals by right the decision of the family division of the circuit court to waive its jurisdiction and refer him to the criminal division of the circuit court for trial as an adult. We affirm.

We review the trial court's findings of fact for clear error;<sup>1</sup> the trial court's ultimate decision to waive jurisdiction is reviewed for an abuse of discretion.<sup>2</sup> "An abuse of discretion occurs when the trial court chooses an outcome falling outside the permissible principled range of outcomes."<sup>3</sup>

Generally, the family division of the circuit court has exclusive original jurisdiction over

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<sup>1</sup> MCR 3.902(A); MCR 2.613(C).

<sup>2</sup> See *People v Fultz*, 453 Mich 725; 554 NW2d 725 (1996).

<sup>3</sup> *People v Babcock*, 469 Mich 247, 274; 666 NW2d 231 (2003).

proceedings concerning any child less than 17 years old who is accused of violating a law or a municipal ordinance.<sup>4</sup> However, if the alleged offense is one that would be a felony if committed by an adult, then on motion from the prosecutor, the trial court may waive its jurisdiction over a child who is at least 14 years old.<sup>5</sup>

The waiver hearing is conducted in two phases. Phase one requires a determination of probable cause, and is analogous to a preliminary examination.<sup>6</sup> Phase two requires a determination regarding whether the best interests of the juvenile and the public would be served by granting a waiver.<sup>7</sup> In deciding whether it is in the best interests of the public and the respondent to waive jurisdiction, the trial court must consider criteria set forth in MCL 712A.4(4). Those criteria are:

(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 the punishment or programming available in the juvenile justice system.

(f) The dispositional options available for the juvenile.

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<sup>4</sup> MCL 712A.2(a)(1). See also *People v Conat*, 238 Mich App 134, 139; 605 NW2d 49 (1999).

<sup>5</sup> MCL 712A.4(1).

<sup>6</sup> MCL 712A.4(10); *People v Hana*, 443 Mich 202, 222 n 56; 504 NW2d 166 (1993). See also MCR 3.950(D)(1).

<sup>7</sup> MCL 712A.4(4); *Hana*, 443 Mich at 223. See also MCR 3.950(D)(2).

The trial court must give greater weight to the seriousness of the alleged offense and the respondent's prior record of delinquency than to the other criteria.<sup>8</sup> However, "all of the waiver criteria shall be considered," and a determination that a "potentially amenable juvenile will endanger the public or other children in a rehabilitation program" should not be based solely on the "seriousness of the offense."<sup>9</sup> The juvenile's "prospects for rehabilitation [must] be seriously considered."<sup>10</sup> This Court will affirm an order waiving jurisdiction if the order is based on substantial evidence and a thorough investigation and the trial court's findings show that the respondent (1) is not amenable to treatment; (2) is likely to be dangerous to the public if released at age 19 or 21; or (3) is likely to disrupt the rehabilitation of other children in the juvenile program before release.<sup>11</sup>

Respondent does not have a programming history with the court. However, respondent actively participated in available programming after being placed in detention. Both respondent and his mother indicated he might benefit from counseling, suggesting that respondent might be amenable to treatment. However, when the trial court considered the adequacy of the punishment and programming available in the juvenile system, it noted that because respondent was 17 years old the juvenile services would be available for a limited time, whereas respondent would have access to counseling and substance abuse treatment for a longer period in the adult system. In addition, in the adult system incarceration could be used as punishment for failing to comply with other conditions. Furthermore, educational opportunities would be available to respondent in the adult system. Thus, although respondent might be amenable to treatment in the juvenile system, analogous services would be available in the adult system, and for a longer period of time.

Respondent argues that "the Court relied primarily on the seriousness of the alleged offense, while minimizing [respondent's] total lack of a history of any prior delinquency." We disagree. The court acknowledged that respondent did not have a formal juvenile record. However, the court noted that the evidence presented established that respondent was not under parental control; was suspended from school for "horseplay, skipping, and fighting;" was expelled from school for assaultive behavior toward a teacher; acknowledged using marijuana every other day; acknowledged drinking vodka, gin, and occasionally beer; and engaged in assaultive and aggressive behavior while at the detention center. Thus, it is apparent that the trial court did not attempt to minimize respondent's history when making its decision to waive jurisdiction. Respondent's assault on another resident while at the detention center indicates that respondent likely would disrupt the rehabilitation of other children, and his suspensions for horseplay and fighting and his expulsion for assaulting a teacher indicate he likely would be

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<sup>8</sup> MCL 712A.4(4).

<sup>9</sup> *Id.* at 512.

<sup>10</sup> *People v Schumacher*, 75 Mich App 505; 256 NW2d 39 (1977).

<sup>11</sup> *People v Whitfield (After Remand)*, 228 Mich App 659, 662; 579 NW2d 465 (1998).

dangerous if released at age 19 or 21. Moreover, the seriousness of the offenses and respondent's level of participation also indicate likely danger to the public if respondent were to be released at age 19 or 21. Respondent is charged with using a firearm to shoot and injure the victim. In short, the trial court did not abuse its discretion by waiving jurisdiction over respondent.

Affirmed.

/s/ Kathleen Jansen  
/s/ Mark J. Cavanagh  
/s/ Joel P. Hoekstra