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ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-17-883

ADRIAN TYLER LEE EALY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: May 30, 2018

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT
[NO. 17CR-17-747]

HONORABLE MICHAEL MEDLOCK,
JUDGE

AFFIRMED

MIKE MURPHY, Judge

Appellant Adrian Ealy appeals the September 26, 2017 order from the Crawford County Circuit Court denying his motion to transfer to juvenile court. He argues that the circuit court's denial of his motion to transfer the case to juvenile court is clearly erroneous. We affirm.

On July 24, 2017, Ealy was charged as an adult in the Crawford County Circuit Court with one count of delivery of less than 2 grams of methamphetamine, a Class C felony pursuant to Arkansas Code Annotated section 5-64-422(b)(1) (Repl. 2016), with an enhanced penalty sought for distribution near certain facilities pursuant to Arkansas Code Annotated section 5-64-411. Ealy, who was seventeen years old at the time of the criminal

act alleged, filed a motion to transfer the case to the juvenile division of the circuit court. A brief hearing was held. Ealy did not call any witnesses in support of his motion.

One witness was called by the state, Eric Flute, Ealy's probation officer. Flute testified about Ealy's prior charges: harassment at age 13, residential burglary at age 15, and a subsequent revocation of the juvenile probation and a finding of contempt for continued infractions and violations of his probations. Flute testified that, while in the juvenile system, Ealy had been sent through a variety of programs, including community service; various residential and out-patient drug, alcohol, and behavioral counseling programs; and C-Step boot camp. He said that none of the services were effective and that Ealy had "exhausted all services" that could be provided within the juvenile system. Flute testified that Ealy had multiple opportunities to obtain his GED but failed to do so, and that Ealy had to be removed from a boys' home for fighting and because he was discovered with a homemade shank. Flute said the only other thing they could do for Ealy within the juvenile system would be to commit him to the Division of Youth Services (DYS).

After the hearing, the circuit court issued a four-page order denying Ealy's motion. Within the order, the court fulfilled its obligation to consider and make written findings of fact on all ten factors set out in Arkansas Code Annotated section 9-27-318(g)-(h) (Repl. 2016). Ealy now files this interlocutory appeal, arguing that it was error to deny his motion for transfer where the court's decision was substantially based on findings unsupported by any evidence.

Arkansas Code Annotated section 9-27-318 governs the transfer of criminal cases to juvenile court. Subsection (g) of the provision sets forth the ten factors a circuit court is required to consider in a transfer hearing:

- (1) The seriousness of the alleged offense and whether the protection of society requires prosecution in the criminal division of circuit court;
- (2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
- (3) Whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted;
- (4) The culpability of the juvenile, including the level of planning and participation in the alleged offense;
- (5) The previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence;
- (6) The sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living, or desire to be treated as an adult;
- (7) Whether there are facilities or programs available to the judge of the juvenile division of circuit court that are likely to rehabilitate the juvenile before the expiration of the juvenile's twenty-first birthday;
- (8) Whether the juvenile acted alone or was part of a group in the commission of the alleged offense;
- (9) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and
- (10) Any other factors deemed relevant by the judge.

The circuit court shall make written findings on all the factors set forth in subsection (g) of this section. Ark. Code Ann. § 9-27-318(h)(1). Our case law further explains its application. The State is not required to introduce proof of each factor, and the circuit court does not have to give equal weight to each factor. *Flowers v. State*, 2017 Ark. App. 468, 528 S.W.3d 851. On appeal, we will not reverse a circuit court's decision denying a motion to transfer unless it is clearly erroneous; a finding is clearly erroneous when, after reviewing the evidence, our appellate courts are left with a firm and definite conviction that a mistake was made. *Id.* Appellate courts will not reweigh the evidence presented to the circuit court. *Flowers, supra.*

The movant bears the burden of proving by clear and convincing evidence that his case should be transferred from the criminal division to the juvenile division of circuit court. *Drexler v. State*, 2018 Ark. App. 95, 538 S.W.3d 888. Here, Ealy offered no evidence to prove that the motion to transfer was warranted.

Ealy argues that, even still, the circuit court's findings were clearly erroneous. Despite Ealy's lack of evidence, the court was able to make some findings based on Flute's testimony and the felony information. Specifically, the court found that the alleged offense was serious under factor (1) due to the proximity enhancement given to it. Per factor (4), the court found that there was culpability as Ealy was found to be the sole participant. Regarding factor (5), it found that Ealy was a prior juvenile offender with crimes against property, but not violence. Likewise, in factor (7) the court found that Ealy had exhausted all services available to him in juvenile court except for commitment to DYS. For factor (8),

the court found that Ealy acted alone. Finally, in regard to other relevant factors, factor (10), it found Ealy acted solely in participation and execution of the offense.

Ealy contends that there was no evidence presented that he acted as a part of a group or alone. However, the felony information was made part of this record, and it did not list any co-defendants.

Ealy cites *Thompson v. State* for the proposition that a court may not rely solely on the charging information to support its findings regarding denial of a juvenile transfer. 330 Ark. 746, 958 S.W.2d 1 (1998). This is a correct recitation of the holding from *Thompson*; however, it is readily distinguishable from Ealy's case. That is to say that, in *Thompson*, our supreme court was concerned that in the absence of any meaningful hearing on the issue of the serious and violent nature of an alleged crime, a prosecutor might manipulate and prevent a transfer to juvenile court based *solely* on the allegations contained in the charging information. 330 Ark. at 751, 958 S.W.2d at 3. Here, Ealy was provided a hearing on his motion where, had he chosen to, he could have presented evidence relevant to his motion to transfer, including evidence to rebut any allegations within the charging information. A court may rely on alleged facts contained within the charging information when an accused is also provided with a meaningful hearing to present evidence relevant to a motion to transfer. *See, e.g., Miller v. State*, 2015 Ark. App. 117, at 8, 456 S.W.3d 761, 766. The findings the court made regarding whether Ealy acted as a part of a group or alone are not clearly erroneous.

In the same vein, Ealy next argues that, because the witness did not testify about the underlying crime, it was error for the court to make any findings regarding the serious nature of the crime. Again, Ealy cites *Thompson*. Again, the court did not base its decision to deny the motion to transfer to the juvenile court on the information alone, as Ealy was provided with a meaningful hearing to present evidence relevant to his motion to transfer.

Lastly, Ealy argues that because there was clear error on factors (1), (4), (8), and (10), the only remaining two factors the judge made findings on, (5) and (7), do not support a denial of a motion to transfer to juvenile division. However, a circuit court is not obligated to give equal weight to each of these factors in determining whether a case should be transferred, *Drexler*, 2018 Ark. App. 95, at 7, 538 S.W.3d at 892, and it is not this court's job to reweigh the evidence. *See, e.g., Flowers, supra*.

Affirmed.

KLAPPENBACH and VAUGHT, JJ., agree.

Lisa-Marie Norris, for appellant.

Leslie Rutledge, Att'y Gen., by: *David L. Eanes Jr.*, Ass't Att'y Gen., for appellee.