

Cite as 2010 Ark. App. 737

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA10-350

DAVID RIOS, JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered NOVEMBER 3, 2010APPEAL FROM THE CARROLL
COUNTY CIRCUIT COURT,
EASTERN DIVISION
[CR09-212 (B) ED]HONORABLE GERALD KENT
CROW, JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Rios was charged in the Carroll County Circuit Court with five counts of delivery of a controlled substance, Class Y felonies, and an enhancement penalty for proximity to certain facilities. Rios was sixteen at the time of the alleged crimes.¹ Rios's sole point in this interlocutory appeal is that the circuit court erred in denying his motion to transfer his case to the juvenile division of circuit court. We hold that the circuit court did not clearly err and we affirm its order.

The charges stem from an investigation conducted by John Bailey, the chief of police of the Green Forest Police Department. Four months into his investigation working with a confidential informant, Officer Bailey set up several drug buys with Rios and his co-

¹Rios was seventeen at the time the transfer hearing was held.

Cite as 2010 Ark. App. 737

defendant, Eduardo Anaya-Ruiz. Officer Bailey testified at the transfer hearing that he conducted three buys in which Rios, alone and with Mr. Ruiz, sold cocaine and methamphetamine to the confidential informant. A prosecuting attorney has the discretion to charge a juvenile sixteen years of age or older in the juvenile or criminal division of circuit court if the juvenile has allegedly engaged in conduct that, if committed by an adult, would be a felony. Ark. Code Ann. § 9-27-318(c)(1) (Repl. 2009). In this case, the prosecutor charged Rios as an adult, and Rios filed a motion to transfer his case to the juvenile division. The circuit court denied his motion.

In deciding whether to grant or deny a transfer request, the circuit court must consider and make written findings on each of ten statutory factors. Ark. Code Ann. § 9-27-318(g)-(h) (Repl. 2009). But proof need not be introduced against the juvenile on each factor, and the circuit court is not required to give equal weight to each of the statutory factors in arriving at its decision. *Magana-Galdamez v. State*, 104 Ark. App. 280, 287, 291 S.W.3d 203, 208 (2009). Upon a finding by clear and convincing evidence that a case should be transferred to another division of the circuit court, the circuit court may do so. Ark. Code Ann. § 9-27-318(h)(2). We review transfer cases for clear error and will not reverse a circuit court's order denying transfer unless it was clearly erroneous. *Lofton v. State*, 2009 Ark. 341, at 4, ___S.W.3d___, ___.

Rios contends on appeal that the circuit court's decision denying his motion to transfer was clearly erroneous. The circuit court in this case discussed and made written findings on

Cite as 2010 Ark. App. 737

each of the ten statutory factors. *See* Ark. Code Ann. § 9-27-318(g). The court was not required to give equal weight to each factor but was entitled to use its discretion in deciding the weight to be afforded to each factor. *Lofton*, 2009 Ark. 341, at 4.

The court found that the seriousness of the offenses carried great weight in this case. Rios was charged with five Class Y felonies. The court noted that, with the exception of capital murder, there were no more serious charges under the laws of this State. The court also found that the testimony established that the alleged offenses were premeditated or willful. Further, in one instance, Rios acted alone. In other words, the court stated, this was not a case where Rios simply acted on impulse or in one isolated occasion. Third, the court accepted the State's argument that crimes involving controlled substances were "offenses against persons," given the great concern of the county about the health, safety, and welfare of its citizens. Regarding the culpability of Rios, including his level of planning and participation, the court noted that he acted alone in one buy and with Mr. Ruiz in others. The court found that the method and manner of the sales suggested that Rios planned and executed the sales of drugs.

While Rios had no previous criminal history, the court noted that the assistant principal at Rios's high school testified that Rios had been disciplined on several occasions for being rude and disrespectful to a teacher and grossly insubordinate. The court also noted the principal's testimony that Rios was a "wanna-be gang banger." Next, the court found that there was no evidence Rios was not mature for his age or that he suffered from an unstable

Cite as 2010 Ark. App. 737

home life. The court believed that he had not been “propelled toward illegal activities” as a result of his home environment, but that he had made his own choices regarding his activities and behaviors.

The court found that there were no programs or facilities that would benefit Rios before the expiration of the juvenile court’s jurisdiction. The court noted that Rios had been charged with serious offenses and that he did not do it once but numerous times. Rios’s assistant principal also testified that Rios had a poor attitude toward authority and did not respond well to discipline. The court noted that Rios acted both alone and with at least one other person. The court gave no great weight to written reports of other materials relating to Rios’s mental, physical, educational, and social history but found that the testimony and reports suggested that Rios’s maturity level appeared to be age appropriate and that he maintained above average grades. Finally, the court stated that there was a real problem with methamphetamine in its jurisdiction. Taking all of this evidence as a whole, the court found that transfer to the juvenile division was not supported by clear and convincing evidence. We hold that the court’s decision is not clearly erroneous.

Affirmed.

HART and ROBBINS, JJ., agree.