

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
KAREN R. BAKER, JUDGE

DIVISION III

CA07-1142

APRIL 16, 2008

JOEL DAVID "LUKE" HOLLAND

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE ASHLEY COUNTY  
CIRCUIT COURT  
[NO. CR-06-208-1]

HONORABLE SAMUEL B. POPE, JUDGE

AFFIRMED

Appellant Joel Holland was charged in the criminal division of the Ashley County Circuit Court with Class Y felonies of causing a catastrophe and arson, and the Class C felony of unlawful burning. Because Holland was sixteen years old at the time the crimes were committed and was charged in Ashley County Circuit Court, he filed a motion to transfer his case to the juvenile division of circuit court. The trial court denied his motion. Holland appeals that decision. On appeal, Holland asserts that the trial court erred in denying his motion to transfer to juvenile court. We affirm.

Three fires were started on January 8, 2006, along Berlin Road. The largest fire, Fire 18, burned approximately 3,663 acres and caused approximately \$10 million in timber damage, the loss of a home, outbuildings, farm equipment, and a deer camp. The second largest fire, Fire 19, burned

approximately 295 acres. The smallest fire was extinguished quickly and burned only a six-foot area. The three fires were approximately one and one-half miles apart. The investigators concluded that the fires were set minutes apart. While the investigators concluded that they were intentionally set, there was no evidence of any accelerant or torch. Moreover, there was no physical evidence connecting any one person to the fires.

Almost a year after the fires, an inmate at the Ashley County jail told officials that he overheard Holland making statements about starting the fires. Holland was arrested and charged as an adult for the offenses. When officers questioned Holland, he indicated that he was involved in starting the fires.

At a bond hearing, Holland's mother described her son as "well-behaved," "honest," and not having any criminal history with the exception of traffic violations. She explained that when Holland was in the sixth grade, he was in "resource classes." When she decided that Holland was still not progressing, she decided to take him out of public school and home school him. She stated that Holland has trouble reading, writing, and understanding things. However, she also testified that Holland knew right from wrong and had passed his driver's license exam on the first attempt.

Cynthia Slayden testified at the bond hearing that she and Holland had a child together and that they lived with Holland's mother. She described Holland as an honest person who knew right from wrong. She explained that Holland had difficulty with reading, writing, math, and "understanding things." However, Holland loved to hunt both with a gun and a bow and was able to understand hunting and fishing regulations.

At the hearing on the motion to transfer, Holland's mother was the only witness that testified. She stated that after taking Holland out of public school, he began working with her late husband in the commercial fishing business. Although she testified that Holland is "mentally challenged,"

he was able to learn computer skills, how to work a cash register, how to count money, and how to make change. She testified that Holland hunted with his father when he was between the ages of twelve and fourteen; however, his father would have to show him how to load his gun. Holland currently has trouble with reading and vocabulary. She stated, “He can get through life, but when it comes to book learning and large words and things like that, he has problems . . . .”

Also at the hearing on the motion to transfer, two comprehensive mental evaluations and an evaluation of his ability to stand trial were offered into evidence. The evaluations indicated that Holland functioned at a low-average range of intelligence. The forensic evaluation determined that Holland had no intellectual impairment and was rational, logical, coherent, and articulate.

In the trial court’s order denying Holland’s motion to transfer to juvenile court, the court found that arson was a serious offense. The trial court noted the extensive damage done to the timberland, a hunting camp, a residence, and the risk posed to firefighters in controlling and extinguishing the fires. The trial court found that the offense was committed in a premeditated and willful manner. The court noted that although the offense was against property, the nature and extent of the fires placed people at risk of harm. The court considered that while evidence showed that Holland functioned at a below-average range of intelligence, he had assumed adult responsibilities in his parents’ commercial fishing business. The court further found that Holland had no criminal history, and the evidence presented to the court indicated that he committed the offenses on his own. The court determined that it was unlikely that Holland could be rehabilitated prior to his twenty-first birthday. Finding no justification for transfer, the trial court denied the motion.

Juvenile and circuit courts have concurrent jurisdiction over juveniles who, at the age of at least sixteen years, engage in conduct that if committed by an adult would constitute a felony.

*Jongewaard v. State*, 71 Ark. App. 269, 29 S.W.3d 758 (2000) (citing Ark. Code Ann. § 9-27-318(c)(1) (Repl. 2008)). Upon a motion by any party, the court where the charges are filed must conduct a hearing to decide if the court should retain jurisdiction or transfer jurisdiction to another court having jurisdiction. *Jongewaard, supra*, (citing Ark. Code Ann. § 9-27-318(e) (Repl. 2008)).

Arkansas Code Annotated section 9-27-318(g) (Repl. 2008) sets forth the factors the trial court must consider and make written findings on at a transfer hearing. Those factors are: (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. *Id.*

A circuit court does not have to give equal weight to each factor. *Landrum v. State*, 63 Ark. App. 12, 971 S.W.2d 278 (1998). A circuit court's decision to retain jurisdiction of criminal charges

against a juvenile must be supported by clear and convincing evidence. Ark. Code Ann. § 9-27-318(h)(2). Clear and convincing evidence is that degree of proof that will produce in the trier of fact a firm conviction as to the allegation sought to be established. *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997). On review, we do not reverse the trial court's denial of a transfer unless the decision is clearly erroneous. *Beulah v. State*, 344 Ark. 528, 42 S.W.3d 461 (2001). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a firm conviction that a mistake has been committed. *Johnson v. State*, 356 Ark. 534, 157 S.W.3d 151 (2004).

On appeal, Holland asserts that the offenses were not violent and “although tragic, in perspective, [were] not different from many other fires that have been shown to have occurred by youth.” Holland further asserts that his mental evaluations demonstrated his “long-standing difficulties of a mental nature.” He also noted that he had no prior criminal history outside the offense of driving without a license.

In this case, the trial court's ultimate conclusion to deny the transfer was supported by evidence of Holland's daily adult activity (living on his own with his girlfriend and their infant child as well as working at the family's commercial fishing business), despite his below average intelligence. In addition, the evidence showed that the fires were intentionally set, one of which caused extensive damage to timberland, a residence, a hunting club, and farm equipment. The court concluded that based on Holland's age, it was unlikely that he would be rehabilitated, and based on the nature of the arson, protection of society required prosecution in the criminal division of the circuit court. Given this evidence, we hold the trial court did not err in retaining jurisdiction. Accordingly, we affirm.

Affirmed.

GLADWIN and GRIFFEN, JJ., agree.