

ARKANSAS COURT OF APPEALSDIVISION III
No. CV-12-1075

A. H.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 19, 2013

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FOURTH DIVISION
[NO. 60CR-12-2450]HONORABLE HERBERT WRIGHT,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

Appellant A.H. appeals from a decision of the Pulaski County Circuit Court denying his motion to transfer his criminal case to juvenile court. A.H. was charged by criminal information on August 3, 2012, with aggravated robbery, theft of property, and two counts of criminal mischief in the second degree. The crimes were allegedly committed on June 24, 2012, when A.H. was sixteen years old. The State sought increased penalties against A.H. because the offenses were committed while employing a firearm. After a hearing, the trial court denied A.H.'s motion to transfer. This appeal followed. A.H. contends that the trial court erred by denying his motion to transfer. We find no error and affirm.

On June 24, 2012, A.H. and three others car jacked Latonya Jones's 2006 Cadillac CTS from her in the parking lot of St. Vincent Doctors Hospital. A.H. was the second

gunman. The car was subsequently tracked by On-Star and located by patrol officers. The suspects abandoned the car as the police turned around, and it eventually came to rest inside a home. The officers spotted the subjects running through a yard and saw one subject on the front porch of a residence. The residence was where A.H. resided with his mother. Ruthie Hudson, A.H.'s mother, gave police permission to search her home. During the search, police found the handguns and the other suspects. As a result, the above-mentioned charges were filed against A.H.

The transfer hearing took place on September 10, 2012, and the trial court denied from the bench A.H.'s motion to transfer. An order was entered on September 11, 2012, making the following findings on the factors set forth in Ark. Code Ann. § 9-27-318(g):¹

1. The primary offenses charged, aggravated robbery and theft of property obtained by threat of serious physical injury, are very serious offenses.
2. The testimony presented indicates that the offenses were committed in an aggressive and willful manner.
3. The offenses charged are offenses committed against a person and property.
4. The evidence presented indicates the defendant's participation was at least equal to the other participants.
5. The defendant has a prior history of involvement with Juvenile Court and is currently on probation in Juvenile Court. The Court does not find those cases to be serious or involve violence.
6. The Court finds that the defendant possesses a low level of sophistication and has a very poor home environment.
7. There has been little testimony or evidence regarding the facilities available to the

¹(Repl. 2009).

judge of the juvenile division for a person of the defendant's age, but the Court finds they are not likely to rehabilitate the defendant prior to his twenty-first birthday.

8. The testimony presented at the transfer hearing indicates that the defendant acted as a part of a group in the commission of the offenses.

9. The Court has considered the written report from the defendant's school and finds the defendant's educational level to be below that of his age group, and in the lower range of people his age. The Court does not find by clear and convincing evidence that this case should be transferred to the Juvenile Division of Circuit Court.

This appeal followed.

A.H. argues that the trial court erred by denying his motion to transfer his case to juvenile court. Specifically, he contends that the court's finding that there was little testimony or evidence that A.H. could be rehabilitated is clearly erroneous. He offers the testimonies of Kelly McCabe and Dan Howard to support his contention that the trial court erred. At the hearing, McCabe, who is a teacher at Hamilton Learning Academy, testified that she taught A.H. in her first-period behavior-modification class last year, that A.H. had behavioral issues and educational deficit and is a resource student, that she considered him to be more of a follower at school, that she had problems with A.H. before developing a relationship with him, that he was a "salvageable" sixteen year old, and that this was only the second time that she had recommended that someone be transferred to juvenile court. However, she also testified that A.H. could conform to the rules and knew right from wrong. Dan Howard, A.H.'s probation officer, testified that A.H. needed structure; that A.H. completed C-Step, a seven-to-eight-week boot-camp program, at Camp Robinson; that extended juvenile jurisdiction (EJJ) would be a good alternative to the adult system; that A.H. was more of a follower; and that A.H. was "salvageable." He also stated that he did not think there was any

reason to believe if A.H. was sentenced under EJJ, that his behavior, or ability to complete any program, conditions, or settings would be better or any different than how A.H. had done so far on probation. He also stated that A.H. was no longer a candidate for juvenile probation.

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.² On the motion of the court or any party, the court in which the criminal charges have been filed shall conduct a hearing to determine whether to transfer the case to another division of circuit court.³ The court shall order the case transferred to another division of circuit court only upon a finding by clear and convincing evidence that the case should be transferred.⁴ Clear and convincing evidence is the degree of proof that will produce in the trier of fact a firm conviction as to the allegation sought to be established.⁵ The court is not required to give equal weight to each of the statutory factors, and it may use its discretion in deciding the weight to be afforded to

²Ark. Code Ann. § 9-27-318(c)(1).

³Ark. Code Ann. § 9-27-318(e).

⁴Ark. Code Ann. § 9-27-318(h)(2).

⁵*Richardson v. State*, 97 Ark. App. 52, 244 S.W.3d 736 (2006).

each factor.⁶ We will not reverse a trial court's determination of whether to transfer a case unless that decision is clearly erroneous.⁷

Here, the trial court found that even if there were rehabilitative facilities available to the juvenile division, they were not likely to rehabilitate A.H. before his twenty-first birthday. The court heard A.H.'s witnesses testify that A.H. was salvageable, but it still declined to transfer A.H. to juvenile court. The evidence in this case demonstrated that A.H. had been offered the services of the juvenile system as a result of his commission of previous offenses, but rather than comply with the juvenile court's rules, he persisted in delinquent behavior. The present allegations involve serious, aggressive conduct that raises legitimate concerns relating to the protection of society. Rehabilitation was but one factor for the court to consider when making its decision, and it is the court's discretion to assign the weight to each factor.⁸ As the moving party, A.H. had the burden of proving by clear and convincing evidence that his case should be transferred to the juvenile division of circuit court. We cannot say on this record that the court's denial of A.H.'s motion was clearly erroneous.

Therefore, we affirm.

Affirmed.

HARRISON and HIXSON, JJ., agree.

Fernando Padilla, Public Defender Conflicts, for appellant.

Dustin McDaniel, Att'y Gen., by: *Kathryn Henry*, Ass't Att'y Gen., and *Margaret Ward*, Law Student Admitted to Practice Pursuant to Rule XV of the Rules Governing Admission to the Bar of the Supreme Court under the supervision of *Darnisha Evans Johnson*, Deputy Att'y Gen., for appellee.

⁶See *D.A.S. v. State*, 2010 Ark. App. 144 (citing *Lofton v. State*, 2009 Ark. 341, 321 S.W.3d 255).

⁷*Richardson*, *supra*.

⁸*D.A.S.*, *supra*.