

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NATHANIEL JAMAR ABRAHAM,

Defendant-Appellant.

FOR PUBLICATION

April 10, 2003

9:00 a.m.

No. 227938

Oakland Circuit Court

Family Division

LC No. 97-063787-FC

Updated Copy

May 23, 2003

Before: O'Connell, P.J., and Fitzgerald and Murray, JJ.

FITZGERALD, J. (*concurring*).

I concur in the result reached by the majority. However, I write separately to address defendant's argument that MCL 712A.2d(1) is unconstitutional because it does not specify a minimum age under which a juvenile may *not* be tried as an adult.

MCL 712A.2d(1) provides:

In a petition or amended petition alleging that a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter for a specified juvenile violation, the prosecuting attorney may designate the case as a case in which the juvenile is to be tried in the same manner as an adult. An amended petition making a designation under this subsection shall be filed only by leave of the court.

"Specified juvenile violation" is defined in MCL 712A.2d(9).¹

Although I agree with the majority that the statute is not unconstitutional, I am disturbed by the fact that the statute does not specify any minimum age under which the prosecutor does

¹ If the offense committed by the juvenile is "other than a specified juvenile violation," the prosecutor may request that the court designate the case as a case in which the juvenile is to be tried in the same manner as an adult. MCL 712A.19d(2). The court may designate the case following a hearing if it determines that the best interests of the juvenile and the public would be served by the juvenile being tried in the same manner as an adult. *Id.*

not have unrestricted discretion to try a juvenile as an adult. A juvenile tried and convicted as an adult under subsection 2d(1) may be subject to "any sentence . . . that could be imposed upon an adult convicted of the offense for which the juvenile was convicted." MCL 712A.18(n).² Thus, a juvenile of any age, no matter how young, who is tried and convicted as an adult of a specified juvenile violation can face up to life imprisonment without the possibility of parole.³ While it may be unlikely for a prosecutor to try a very young child as an adult, under subsection 2d(1) a prosecutor would nonetheless have unrestricted discretion to try a child of any age as an adult. I urge the Legislature to revisit subsection 2d(1) and impose a minimum age under which a juvenile cannot be tried as an adult for a specified juvenile violation.⁴

/s/ E. Thomas Fitzgerald

² In the present case, however, defendant was not sentenced as an adult.

³ Indeed, under the plain language of the statute, a child as young as three, or four, or five years of age could be tried, convicted, and sentenced as an adult.

⁴ Although this case does not involve an "offense other than a specified juvenile violation," I would also urge the Legislature to impose a minimum age for purposes of subsection 2d(2).