STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0521

In the Matter of the Welfare of:
T. J. C., Child.

Filed November 4, 2019
Affirmed
Bratvold, Judge

Sibley County District Court
File No. 72-JV-18-132

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

David E. Schauer, Sibley County Attorney, Donald E. Lannoye, Assistant County Attorney, Gaylord, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Jesson, Judge.

U N P U B L I S H E D O P I N I O N

BRATVOLD, Judge

Appellant challenges the district court's order certifying proceedings for adult criminal prosecution on the charge of third-degree criminal sexual conduct. Appellant argues that the district court abused its discretion when it applied "the wrong legal standard" based on the "belief that the longer supervision time in the adult system is always better for public safety." Because the district court did not abuse its discretion when it

applied the presumption of certification and considered the six public-safety factors required by statute, we affirm.

FACTS

We presume that the facts alleged in the state's juvenile-delinquency petition are true.[1] In June 2018, a 17-year-old female (victim) reported to police that she had been sexually assaulted. She was camping with friends at a park in Sibley County, got heavily intoxicated, and went to bed. The victim "woke up during the middle of the night and [T.J.C.] was having sex with her (penetrating her with his penis)." The victim tried to push T.J.C. off her, but she "passed out." When she woke up later, T.J.C. was gone. The victim later "texted [T.J.C.] and asked if he ejaculated inside her." He replied that he "never finished." The victim denied having sex with T.J.C. at any other time. Later, when law enforcement interviewed T.J.C., he "denied ever having sex with [the victim]."

The victim reported that she became pregnant and terminated the pregnancy. DNA results of the aborted fetus excluded 99.999999996% of the population from being the father, but could not exclude T.J.C. During a follow-up interview where police gave T.J.C. the DNA evidence, he denied assaulting the victim or having sex with her at any time. T.J.C. acknowledged that he was with the victim on the night she was camping.

The state filed a delinquency petition against T.J.C. and alleged one count of third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(d) (2016).

[1] *See In re Welfare of N.J.S.*, 753 N.W.2d 704, 708 (Minn. 2008) ("For purposes of the certification hearing, the charges against the child are presumed to be true.").

On the day it filed the petition, the state also moved for adult certification; T.J.C. opposed the motion. Neither party nor the court requested a certification study.

After T.J.C. waived a formal probable-cause hearing, the district court found that probable cause supported the state's charge against T.J.C. At the certification hearing, T.J.C. called a probation officer, who testified to various inpatient and outpatient treatment programs for sex offenders. T.J.C. also called Maria Hipkins, a social worker and disposition advisor for the public defender's office, who testified about brain development in juveniles, the research on effective programming for juvenile offenders, and available treatment options for sex offenders. The district court also received one exhibit, a report by Hipkins on adolescent brain development, and took judicial notice of T.J.C.'s prior delinquency files.

The district court issued its findings of fact, conclusions of law, and order in March 2019, granting the state's motion for adult certification. T.J.C. appeals.

D E C I S I O N

T.J.C. argues that the district court abused its discretion because it certified him to adult court when extended-jurisdiction juvenile prosecution (EJJ) would not risk public safety and would provide better treatment options. The state argues that T.J.C. did not rebut the presumption of certification that applies to his case.

"A district court has considerable latitude in deciding whether to certify a case for adult prosecution. Its decision will not be reversed unless [the district court's] findings are clearly erroneous so as to constitute an abuse of discretion." *In re Welfare of P.C.T.*, 823 N.W.2d 676, 681 (Minn. App. 2012), *review denied* (Minn. Feb. 19, 2013). When

determining whether a district court's factual findings are clearly erroneous, we view the record evidence in the light most favorable to the findings. *See In re Custody of N.A.K.*, 649 N.W.2d 166, 174 (Minn. 2002).

Two presumptions apply to our analysis. "For purposes of certification, the juvenile is presumed guilty of the alleged offenses." *P.C.T.*, 823 N.W.2d at 679. Second, we presume that proceedings against a juvenile are appropriate for adult certification if the state can prove the juvenile was 16 or 17 years old at the time of the alleged offense and a conviction "would result in a presumptive commitment to prison" under the Minnesota Sentencing Guidelines. Minn. Stat. § 260B.125, subd. 3 (2018).

A juvenile may rebut the second presumption by "clear and convincing evidence that retaining the proceeding in the juvenile court serves public safety." *Id.* If the juvenile rebuts the presumption, the district court may designate the proceeding as an EJJ prosecution under the hearing process set out in Minn. Stat. § 260B.130, subd. 2; *see also* Minn. Stat. § 260B.125, subd. 8(b). If the juvenile does not rebut the presumption, then the district court "shall certify the proceeding" for adult court. *Id.*, subd. 3.

Here, the parties do not dispute that the presumption of certification applies to T.J.C.'s prosecution. He was 17 years old at the time of the alleged offense, and the pending charge of third-degree criminal sexual conduct carries a presumptive prison sentence. *See* Minn. Sent. Guidelines 4.B (2018) (providing that a conviction for third-degree sexual conduct has a presumptive prison sentence). Thus, in response to the state's motion to certify, T.J.C. had the burden to rebut the presumption by clear and convincing evidence

that keeping the proceeding in juvenile court would serve public safety. *See* Minn. Stat. § 260B.125, subd. 3.

In determining whether retaining juvenile jurisdiction will serve public safety, the district court must consider six factors:

> (1) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Sentencing Guidelines, the use of a firearm, and the impact on any victim;
> (2) the culpability of the child in committing the alleged offense, including the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Sentencing Guidelines;
> (3) the child's prior record of delinquency;
> (4) the child's programming history, including the child's past willingness to participate meaningfully in available programming;
> (5) the adequacy of the punishment or programming available in the juvenile justice system; and
> (6) the dispositional options available for the child.

Minn. Stat. § 260B.125, subd. 4 (2018). In considering these factors, the district court must "give greater weight to the seriousness of the alleged offense and the child's prior record of delinquency than to the other factors listed." *Id.*

T.J.C. argues that he "showed by clear and convincing evidence . . . that public safety would not be at risk if EJJ was ordered" and that the district court abused its discretion because it "wrongly assess[ed] the six public safety factors." In its findings of fact, conclusions of law, and order, the district court assessed all six of the public safety factors, which we review in light of the arguments T.J.C. raises on appeal.

A. Severity of the crime (*greater-weight factor*)

The district court found that the state charged T.J.C. with "having sex with a physically helpless juvenile female," which is a "very serious offense" favoring certification. The district court found that T.J.C. had acknowledged that the victim "was heavily intoxicated and would have been incapable of giving consent to have sex." On appeal, T.J.C. does not dispute the district court's finding, but argues that "only serious offenses . . . are even eligible for a certification motion." This argument is unpersuasive. The first factor recognizes that some offenses are more serious than others based on risk to the community. *See* Minn. Stat. § 260B.125, subd. 4(1). The district court's determination that the first factor favors certification was not an abuse of discretion.

B. Culpability of the juvenile

The district court found that T.J.C. "acted alone," "was not influenced or encouraged by others," and therefore was "solely responsible for his behavior." T.J.C. does not challenge this finding. Instead, T.J.C. argues that the district court abused its discretion because it did not consider Hipkins's report on adolescent brain development, which suggests that juveniles are immature and impulsive; T.J.C. appears to argue that juveniles are less culpable than adults. Although this may raise a policy-based reason to favor EJJ proceedings over adult certification, we agree with the district court that Hipkins's report does not "address the public safety factors" required by section 260B.125, subd. 4. When the legislature has provided mandatory considerations, this court does not modify those considerations based on public policy arguments. *See LaChapelle v. Mitten*, 607 N.W.2d 151, 159 (Minn. App. 2000) (stating that "[b]ecause this court is limited in its

function to correcting errors it cannot create public policy"), *review denied* (Minn. May 16, 2000).

T.J.C. also argues that the district court abused its discretion because it failed to consider that he "was intoxicated during the offense." The district court stated that T.J.C. is "alleged to have been using chemicals at the time of the alleged offense." But T.J.C. cites no caselaw establishing that intoxication is relevant to culpability. *See Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (declining to decide an argument that contained no legal analysis or citation). We also observe that voluntary intoxication is not a defense for general intent crimes, such as criminal sexual conduct. *See State v. Lindahl*, 309 N.W.2d 763, 766-67 (Minn. 1981) (stating that criminal-sexual-conduct offenses require proof of general intent and voluntary intoxication is not a defense to general-intent crimes).

Finally, T.J.C. contends that the district court inappropriately "penalize[d]" him for denying the criminal sexual conduct. We reject this description of the district court's analysis. Although the district court was required to assume the truth of the facts alleged in the juvenile delinquency petition, the district court's order stated T.J.C.'s denial in the findings of fact and placed no emphasis on the denial in its analysis. Based upon this record, we conclude that the district court did not abuse its discretion in determining that the second factor favors certification.

C. The child's history of delinquency (*greater-weight factor*)

The district court found that T.J.C.'s delinquency record favored certification because T.J.C. has "a history of involvement in the Juvenile Justice System," including

"six prior files," and that T.J.C. "was on probation at the time of the alleged offense." T.J.C. argues that this finding was clear error because he had "no prior felony offenses and much of his priors were not, in fact, delinquencies but, instead, were juvenile petty offenses."

We agree with T.J.C. that the district court clearly erred in some of its factual findings on this factor. The definition of "[d]elinquent child" includes a child "who has violated any state or local law," and the definition explicitly excludes juvenile petty offenders. Minn. Stat. § 260B.007, subd. 6 (2016) (providing that the definition excludes "juvenile offenders as described in subdivisions 16 to 18," which includes petty offenders).

T.J.C.'s "six prior files" included two adjudications as a petty offender for consuming liquor under the age of 21, one adjudication as a petty offender for violating a curfew, one adjudication as a petty offender for using tobacco under the age of 18, one delinquency adjudication for gross misdemeanor theft, and one delinquency adjudication for disorderly conduct. The district court clearly erred in considering T.J.C.'s four petty offenses, which are not delinquencies. *See id.*

T.J.C. cites *In re Welfare of N.J.S.* as support. 753 N.W.2d at 710 (Minn. 2008). In *N.J.S.*, the district court determined that the six public-safety factors supported certification of a juvenile for adult prosecution. *Id.* at 706. The district court weighed the "prior record of delinquency" factor in favor of certification although the juvenile "had no prior delinquency petitions or adjudications"; the district court considered the juvenile's behavioral incidents at school. *Id.* On appeal, we affirmed adult certification because the

six public-safety factors were not an "exclusive list" of factors the district court could consider in certification. *Id.* at 710 n.3.

The supreme court granted review and rejected our comment about the factors as error because "[t]here is no indication that other factors may be considered" under the statute. *Id.* The supreme court reasoned that the district court could not consider the juvenile's school record under the third factor because the behavioral incidents were "not the subject of any petition to the juvenile court, nor [were they] the subject of any juvenile court adjudication." *Id.* at 710. Still, the supreme court affirmed adult certification, holding that the district court did not abuse its discretion "[b]ecause only one factor, the 'prior record of delinquency,' weighed against certification." *Id.* at 711.

N.J.S. is instructive, but must be distinguished. Unlike the juvenile in *N.J.S.*, who had no prior delinquency adjudications, T.J.C. had two prior delinquency adjudications. T.J.C. contends that these prior delinquency adjudications were not felonies, but a district court may consider prior misdemeanor-level offenses on the third factor. *See In re Welfare of K.M.*, 544 N.W.2d 781, 785 (Minn. App. 1996) (determining that one prior misdemeanor was sufficient to support findings under the third factor). We conclude that the district court's error in considering T.J.C.'s four prior petty offenses does not change the outcome of the third factor, which favors T.J.C.'s certification as an adult based on his prior delinquency record.

D. The child's programming history

The district court found that T.J.C. had "participated in chemical dependency programming" but "is alleged to have been using chemicals at the time of the alleged

offense." T.J.C. does not challenge these factual findings, but argues that "[t]he district court failed to properly assess that the juvenile has had no prior sexual offender programming nor has he shown an inability or unwillingness to participate in treatment."

T.J.C. cites no caselaw to support his claim that the fourth factor requires the previous programming to have been related to the pending charge. To the contrary, on the fourth factor, a district court may review diverse programming history, including "attendance at programming events, completion of the events, and demonstrated behavioral changes correlated with the programming," and "behavioral problems in school." *P.C.T.*, 823 N.W.2d at 683. The fourth factor specifically provides that a court should consider "the child's past willingness to participate meaningfully in available programming." Minn. Stat. § 260B.125, subd. 4(4). "Rejection of prior treatment efforts indicates a juvenile's unwillingness to submit to programming in a meaningful way." *In re Welfare of U.S.*, 612 N.W.2d 192, 196 (Minn. App. 2000).

The record supports the district court's findings on T.J.C.'s participation in prior programming including his rejection of chemical-dependency treatment. We conclude that the district court did not abuse its discretion in weighing the fourth factor in favor of certification.

E. Adequacy of the punishment or programming available in the juvenile justice system

The district court found that "the same sex offender treatment programs available in the Juvenile Justice System will be available to [T.J.C.], even if this matter is certified to adult court." T.J.C. contends this finding is clearly erroneous as "unsupported and

contradicted by [the probation officer's] testimony that the juvenile would not receive the same programming in prison as he would under EJJ."

At the certification hearing, the probation officer testified: "My understanding is [T.J.C.] would be attending programming with other juveniles regardless if he was certified as an adult or not," but only if he was on probation. He also testified that "there is sex offender programming offered in prison," but that it is typically only available when an offender nears the end of a sentence.

The record supports the district court's findings under the fifth factor. If T.J.C. receives a stayed sentence, his programming options would be the same as other juveniles. Any delay in T.J.C.'s access to sex-offender treatment if he is certified and committed to prison does not make the treatment inadequate. And the fact that treatment may start earlier in the juvenile system does not provide clear and convincing evidence that juvenile proceedings promote public safety. We conclude that the district court did not abuse its discretion in weighing the fifth factor in favor of certification.

F. Dispositional options available for the child

The district court found that, under EJJ, T.J.C. "will only be supervised until his 21st birthday," that T.J.C.'s own expert testified that a juvenile's brain does not fully develop until age 25, and that "[i]f this matter is certified, [he] can be supervised and engage in programming beyond his 25th birthday." T.J.C. argues that the district court evaluated this factor "on clearly erroneous facts and faulty logic."

There is some support for the district court's reasoning. At the certification hearing, Hipkins testified that it would be better for public safety if the district court kept T.J.C. in

the juvenile system because scientific research supports that juveniles are less likely to reoffend if they remain in the juvenile system. And the district court accurately stated during the certification hearing that EJJ prosecution would allow supervision until age 21 (about three-and-one-half years). *See* Minn. Stat. § 260B.19, subd. 5(b), (c) (2018) (providing that EJJ ends when a juvenile turns 21). Hipkins agreed in her testimony that it was a "valid opinion" that in "some cases" juveniles need monitoring until age 25 based on delayed brain development.

But we conclude that the district court erred in its analysis of the sixth factor because it relied on general evidence that a juvenile's brain continues to develop until age 25 to support T.J.C.'s certification as an adult. Although Hipkins's testimony suggested that *some* juveniles may need supervision until age 25, no evidence supports that T.J.C. was more or less likely to rehabilitate than the average juvenile. The district court's reasoning about T.J.C.'s age would generally apply to all 17-year-old juveniles and suggest that longer supervision always favors adult certification. Thus, the district court did not assess T.J.C.'s "unique characteristics" in its analysis of the sixth factor. *See* Minn. Stat. § 260B.001, subd. 2 (2018).

Despite this error, we conclude that the district court did not abuse its discretion in concluding that T.J.C. failed to show by clear and convincing evidence that juvenile proceedings serve public safety. When the presumption of certification applies and the greater-weight factors favor certification, as they do here, the mere availability of dispositional options in the juvenile system does not provide clear and convincing evidence that keeping the proceeding in juvenile court serves public safety. *See* Minn. Stat.

§ 260B.125, subd. 3; *P.C.T.*, 823 N.W.2d at 685; *St. Louis County v. S.D.S.*, 610 N.W.2d 644, 650 (Minn. App. 2000) (holding that available dispositional options in juvenile court "are outweighed by the seriousness of respondent's alleged offenses and his prior delinquency record"). Even if the sixth factor weighs against certification, no reversal is required because five of six factors favor certification. *See N.J.S.*, 753 N.W.2d at 711 (holding that no reversal was required when five of six factors supported certification).

Because the record supports the district court's findings on at least five of the six public-safety factors, the district court did not abuse its discretion in determining that T.J.C. failed to rebut the presumption of certification with clear and convincing evidence.

Affirmed.