STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0805

In the Matter of the Welfare of Q. D. T., Child.

Filed January 18, 2022
Affirmed
Smith, John, Judge[*]

Hennepin County District Court
File Nos. 27-JV-20-4253, 27-JV-20-4290, 27-JV-20-4294,
27-JV-21-38, 27-JV-21-123

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Sean P. Cahill, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Connolly, Judge; and Smith, John, Judge.

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the certification of a child for adult prosecution because the district court did not err in determining that the seriousness of the offenses, the child's culpability, the

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

child's prior noncompliance with programming, and the adequacy of the punishment available under juvenile prosecution all weigh in favor of certification.

FACTS

Appellant Q.D.T. challenges the district court's certification of him for adult prosecution.[1] In May 2020, Q.D.T.'s mother and C.D.J. were talking outside of mother's garage when 17-year-old Q.D.T. approached and started arguing with his mother. C.D.J. told Q.D.T. that he should stop speaking disrespectfully to his mother. Q.D.T. went into the garage, returned with a gun, and shot C.D.J. several times in his side. C.D.J. was in critical condition but survived and described the events to officers. Q.D.T. was charged with first-degree assault and possession of a weapon.

In November 2020, over the span of three nights, Q.D.T. robbed four different gas stations with several juvenile accomplices. After the robberies, law enforcement officers identified Q.D.T. on video footage pointing a gun at gas station clerks while he and his accomplices stole cash and tobacco products. The juveniles then drove away from the scene in a stolen van. At one gas station, Q.D.T. hit a gas station clerk in the head multiple times with his gun, and then when the clerk struggled, the gun discharged. The gunshot paralyzed the clerk who is unlikely to ever regain the ability to walk.

Appellant Q.D.T. appeared before the district court charged with four counts of first-degree aggravated robbery, two counts of first-degree assault, and one count of second-degree assault. The state submitted a motion to certify Q.D.T., who is now 18 years old,

[1] For the purposes of this appeal, we presume the following allegations to be true.

as an adult. The district court held a hearing on the matter in May 2021. The court received a presumptive certification study from the investigating probation officer and a forensic psychological evaluation from a psychologist. The district court heard testimony from the investigating probation officer, the psychologist, a juvenile correction officer who had observed Q.D.T.'s behavior in detention, and three representatives from Minnesota juvenile detention centers.

The district court issued detailed findings following the hearing and granted adult certification.

DECISION

Appellate courts review Extended Juvenile Jurisdiction (EJJ) determinations for an abuse of discretion. *In re Welfare of J.H.*, 844 N.W.2d 28, 34 (Minn. 2014). "A district court has considerable latitude in deciding whether to certify a case for adult prosecution. Its decision will not be reversed unless the court's findings are clearly erroneous so as to constitute an abuse of discretion." *In re Welfare of D.T.H.*, 572 N.W.2d 742, 744 (Minn. App. 1997) (citation and quotations omitted), *rev. denied* (Minn. Feb. 19, 1998). "In determining whether the juvenile court's findings are clearly erroneous, we view the record in the light most favorable to the juvenile court's findings." *J.H.*, 844 N.W.2d at 35 (citations omitted). A district court's "finding is clearly erroneous only if there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred." *Id.* at 35 (quotation omitted).

In presumptive-certification proceedings, the state bears the burden of showing that (1) the juvenile was 16 or 17 years old, and (2) the alleged offense carries a presumptive

prison sentence or is a felony offense involving a firearm. Minn. Stat. § 260B.125, subd. 3 (2020); *see also In re Welfare of P.C.T.,* 823 N.W.2d 676, 681 (Minn. App. 2012), *rev. denied* (Minn. Feb. 19, 2013). If the district court finds that probable cause exists to believe the child committed the alleged offense, the child shoulders the burden of rebutting the "presumption [of certification] by demonstrating by clear and convincing evidence that retaining the proceeding in the juvenile court serves public safety." Minn. Stat. § 260B.125, subd. 3. If the district court finds the child failed to rebut the presumption, "the court shall certify the proceeding." *Id.*

After the district court determines that a presumption exists, it must review the following factors to determine whether to certify the child as an adult:

> Subd. 4. Public safety. In determining whether the public safety is served by certifying the matter, the court shall consider the following 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.
>
> In considering these factors, the court shall give greater weight to the seriousness of the alleged offense and the child's prior record of delinquency than to the other factors listed in this subdivision.

Minn. Stat. § 260B.125 (2020). "Though each factor must be considered, the district court is to give 'greater weight' to the first and third factors." *Matter of Welfare of H.B.*, 956 N.W.2d 7, 12 (Minn. App. 2021) (quoting Minn. R. Juv. P. 18.06, subd. 3), *rev. granted* (May 26, 2021).

Here, the district court found that certification was presumed and neither party disputes that the state met its burden to establish that presumption. The district court determined that factors (1), (2), (4), and (5) weighed in favor of certifying Q.D.T.'s charges for adult prosecution, and although factors (3) and (6) weighed in favor of EJJ, when weighed together the factors established that public safety could only be served by certifying Q.D.T. for adult prosecution. Q.D.T. challenges the district court's determination regarding factors (2), (4), and (5).

I. Culpability of the child

The district court found Q.D.T. fully culpable in the alleged offenses because the facts supported that he "voluntarily, intentionally, and willingly carried out the alleged offenses." The district court pointed to evidence that Q.D.T. pointed a handgun at victims, struck them with the handgun and shot one of the gas stations clerks, and shot his mother's friend. The district court noted that there were no mitigating factors recognized by the Minnesota Sentencing Guidelines in the commission of any of the offenses. Q.D.T. claims the court erred in this finding because evidence of Q.D.T.'s mental impairment, lack of impulse control, and "temporally clustered nature of the offenses" reduced Q.D.T.'s culpability.

The Minnesota Sentencing Guidelines include mental impairment as a mitigating factor: "The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed." Minn. Sent. Guidelines 2.D.3.a.(3) (2020). Q.D.T. acknowledges that "only 'extreme' mental impairment that deprives a juvenile of control over his actions justifies sentence mitigation," but argues that his struggles with trauma and his behavioral diagnoses "heavily impaired his decision-making." *See State v. McLaughlin*, 725 N.W.2d 703, 716 (Minn. 2007).

Q.D.T. argues that because he suffered from traumatic loss, is susceptible to impulsivity, and has learning challenges, the district court erred by failing to find that he was mentally impaired and therefore a mitigating factor existed. School records do reflect that Q.D.T. had an ADHD diagnosis, was "easily angered" and "very impulsive," and was susceptible to peer pressure. There is also evidence that Q.D.T. struggled with grief following the sudden death of his uncle and after witnessing the fatal shooting of his best friend. But the behavioral challenges and personal difficulties set forth by Q.D.T. do not establish extreme mental impairment such that a mitigating factor existed. Q.D.T. does not point to any caselaw in which having an ADHD diagnosis or depressive symptomology alone have supported the finding of "extreme" mental impairment as required to establish a mitigating factor. The district court therefore did not clearly err.

Q.D.T. also argues that the court clearly erred by failing to find there were mitigating factors based on "other substantial grounds . . . that tend to excuse or mitigate the offender's culpability." Minn. Sent. Guidelines 2.D.3.a.(5). He argues that because the gas station robberies occurred over the span of three days, they are not as serious as if

they had occurred over a longer span of time or after intervention. Q.D.T. claims *State v. Huston* supports this argument, but in that case, we were reviewing the requirements for sentencing under the career-offender statute, Minn. Stat. § 609.1095, subd. 4 (1998), and we did not discuss mitigating factors under the Minnesota Sentencing Guidelines. 616 N.W.2d 282, 283-84 (Minn. App. 2000). Q.D.T. does not present any caselaw where a series of crimes over several days established a mitigating factor under the sentencing guidelines. Thus, Q.D.T. failed to establish that the district court abused its discretion by determining that there were no mitigating factors. We conclude that the district court did not abuse its discretion in its determination that this factor weighed in favor of adult certification.

II. Programming history

In general, "programming" refers to "a specialized system of services, opportunities, or projects designed to meet a relevant behavioral or social need of the child." *J.H.*, 844 N.W.2d at 38. Programming may either be through the juvenile justice system or through a non-juvenile justice system setting that is designed to address a relevant behavioral or social need of the child. *Id.* at 39.

Here, the district court found that Q.D.T. had a limited history of court-ordered programming but failed to comply with court orders and conditions of probation after being placed on probation in July 2020. The district court noted that he was terminated "due to a demonstrable and expressed lack of willingness to engage in programming" despite having an "excellent" probation officer who the court knew would often give second

chances and work with the strengths of her clients. The district court therefore weighed this factor in favor of adult certification.

Q.D.T. argues that the district court erred because his limited programming history cannot be used to establish that he is unwilling to engage with and succeed in future programming under juvenile jurisdiction. Q.D.T. does not contest that he failed to complete programming. Q.D.T. does not submit any caselaw that supports the argument that there must be a threshold amount of programming history in order to establish that he was unwilling to engage with programming.[2] Instead, prior opinions have held that failing a program *does* favor certification. *See In re Welfare of N.J.S.*, 753 N.W.2d 704, 707, 711 (Minn. 2008)) (appellant's "defiant and uncooperative behavior during his detention and civil commitment, as well as during pre-offense voluntary programming" supported weighing the fourth factor in favor of certification). Q.D.T. argues that the pandemic created a novel problem for probation programming that prevented his success, but he did not submit evidence that COVID-19 interfered with his ability to comply with probation.

[2] Q.D.T. submits one nonprecedential opinion of this court holding that a district court did not err in finding that a 16-year-old should be subject to EJJ. *In re Welfare of M.K.T.*, No. A13-0513, 2013 WL 4779078, at *3 (Minn. App. Sept. 9, 2013). Nonprecedential opinions are of limited value in deciding an appeal. Minn. R. Civ. App. P. 136.01, subd. 1(c) ("Nonprecedential opinions and order opinions are not binding authority . . . but nonprecedential opinions may be cited as persuasive authority."). In *M.K.T.*, the state moved for the child to be prosecuted as EJJ under Minn. Stat. § 260B.130, subd. 2 (2012), which the district court granted, and the child appealed arguing that he should not be subject to EJJ. *M.K.T.*, 2013 WL 4779078, at *1. Thus, by determining that the failure to engage in programming favored EJJ, the district court in that case was determining that the programming had failed and so too did the child's argument. *Id.* at *3.

Q.D.T. also argues that he did not receive the most effective form of programming because the psychologist recommended that he receive programming in a structured placement but the probation programming the district court considered here only involved community-based interventions. But this court has stated that "[j]uvenile delinquency programming does not function like a flow chart, where each alternative must be tried before moving onto the next one." *P.C.T.*, 823 N.W.2d at 683. Q.D.T. does not present any caselaw supporting the argument that a child must receive any and all potentially appropriate programming before the district court can find that his history of programming weighs in favor of adult certification. And the record supports the district court's finding that Q.D.T. failed to comply with his probation programming. Thus, the district court did not abuse its discretion by finding that this factor weighed in favor of adult certification.

III. Adequacy of punishment or programming available

Q.D.T. next challenges the district court's determination that the adequacy of available juvenile punishment and programming available to serve public safety weighed in favor of certification. In *J.H.* the supreme court affirmed the district court's determination that "42 months of EJJ supervision would not sufficiently address the seriousness of the offense or ensure public safety." 844 N.W.2d at 39. The supreme court noted that witnesses who testified that there was available programming also testified that they did not know whether the available treatment could address the child's needs and that he might not embrace treatment in the juvenile system. *Id.*

Here, the district court noted that if he were found guilty of all of the charges in adult criminal court, Q.D.T. would be facing two counts of first-degree assault, each

carrying a presumptive prison commitment of 86 months, five counts of first-degree aggravated robbery, each carrying a presumptive prison commitment of 48 months, a second-degree assault count carrying a presumptive prison commitment of 36 months, and a charged offense of possession of a weapon carrying a presumptive stayed prison commitment of 21 months. The district court compared those presumptive sentences with the length of time that 18-year-old Q.D.T. could participate in EJJ programming, which would only amount to approximately 35 months. The district court therefore determined that this factor weighed in favor of certification.

Q.D.T. argues that the district court erred by failing to review other factors in addition to the presumptive sentences in its analysis of the fifth factor, but only supports this argument with a single nonprecedential case: *In re Matter of Welfare of B.C.L.*, No. A21-0045, 2021 WL 3478400, at *4 (Minn. App. Aug. 9, 2021), *rev. denied* (Nov. 16, 2021). In *B.C.L.*, the district court weighed the fifth factor in favor of EJJ, and the state appealed, arguing that the district court did not sufficiently consider that the punishment under EJJ was woefully inadequate compared to the presumptive sentence if the child were certified. *Id.* This court held that although the district court *may* consider the presumptive adult sentence, that *need not* be the only consideration. *Id.* Thus, even if *B.C.L.* were binding on this court, it does not establish that a district court has abused its discretion by determining that programming under EJJ is inadequate when compared to a presumptive adult sentence.

Q.D.T. failed to establish that the district court abused its discretion by determining that the EJJ punishment or programming was inadequate.

IV. Dispositional options available for the child

The district court found that there are residential programs and interventions available to Q.D.T., and this factor therefore weighed in favor of EJJ. Q.D.T. argues that this availability should be considered together with factor five, and that the availability of such programs should support a finding that these programs are sufficiently adequate. Although these factors may often be considered together, there is no caselaw suggesting that it is error to consider and decide these factors individually. Thus, the district court did not clearly err by finding that these programs would be available and did not abuse its discretion by determining that this factor weighed in favor of Q.D.T. being adjudicated EJJ.

In sum, the district court did not abuse its discretion in its determination that the factors weighed in favor of certifying Q.D.T. as an adult. The district court's determinations were supported by facts in the record, and it did not make any errors of law.

Affirmed.