This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1688

In the Matter of the Welfare of: M. W. H., Child.

Filed June 27, 2022
Affirmed
Connolly, Judge

St. Louis County District Court
File No. 69VI-JV-20-154

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

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

Kimberly M. Maki, St. Louis County Attorney, Leah A. Stauber, Assistant County Attorney, Virginia, Minnesota (for respondent State of Minnesota)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Halbrooks, Judge.*

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges the district court's order certifying him for adult prosecution. We affirm.

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

FACTS

In October 2020, respondent State of Minnesota filed a juvenile delinquency petition charging appellant M.W.H. with attempted second-degree murder.[1] The petition alleged the following facts: During the early morning hours of October 8, 2020, appellant, then 16, stabbed his then 13-year-old brother 13 times with a kitchen knife while the brothers were going on a walk in the woods. After stabbing his brother, appellant dragged him down by the lake and then went home, knowing that his brother would "probably 'bleed out.'" Approximately 12 hours later, appellant's brother was found by some hikers "curled up in the fetal position in a gully," and the brother was later airlifted to a Duluth hospital where he underwent surgery for his injuries. Police subsequently searched appellant's residence and, in appellant's bedroom, discovered a "large kitchen style knife" that appeared to have been recently washed, and "[w]et tennis shoes that appeared to have blood in the mesh."

Respondent moved to certify appellant as an adult, and the parties agreed that, under Minn. R. Juv. Delinq. P. 18.06, subd. 1, the presumption was in respondent's favor. A contested certification hearing was held at which several witnesses testified, including two psychologists, a probation officer, a corrections lieutenant at a juvenile corrections facility, a program director at a juvenile corrections and treatment center, a social worker, and appellant's father. This testimony, along with other evidence presented at the hearing,

[1] For the purposes of certification determinations, the charges and factual allegations laid out in the juvenile delinquency petition are presumed to be true. *In re Welfare of J.H.*, 844 N.W.2d 28, 38 (Minn. 2014).

established that appellant thought about calling 911 after the attack, but decided against it. Moreover, appellant's brother told law enforcement that appellant returned to the scene several hours after the attack and "said 'still alive huh,' and walked off." And according to appellant's brother, when he asked appellant what led to the attack, appellant replied that he wanted to see a dead body.

The district court determined that appellant was subject to presumptive certification because he "was 16 years old and the alleged offense carries a presumptive prison sentence." The district court then considered the factors set forth in Minn. Stat. § 260B.125, subd. 4 (2020), and, after "giving greater weight to the seriousness of the alleged offense and [appellant's] delinquency history," determined that five of the six statutory factors did not rebut the presumption of certification. The district court concluded that "[b]ased upon the totality of the circumstances . . . the record does not support a conclusion, by clear and convincing evidence, that public safety would be served by designating the proceeding as an extended juvenile jurisdiction [(EJJ)] prosecution." The district court, therefore, granted respondent's motion to certify appellant as an adult. This appeal follows.

DECISION

Appellant challenges the district court's order certifying him for adult prosecution. We review such an order for an abuse of discretion. *J.H.*, 844 N.W.2d at 34. "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 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. 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.* (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.*

If the district court determines that a presumption to certify exists, it must review the following factors to determine "whether the public safety is served" by certifying the child as an adult:

> (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;
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> (3) the child's prior record of delinquency;
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> (4) the child's programming history, including the child's past willingness to participate meaningfully in available programming;
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> (5) the adequacy of the punishment or programming available in the juvenile justice system; and
>
> (6) the dispositional options available for the child.

Id., subd. 4. Although each factor must be considered, the district court is to give "greater weight" to the first and third factors. *Id.*

The statutory factors are designed to "assess whether a juvenile presents a risk to public safety and . . . to predict whether a juvenile is likely to offend in the future." *In re H.S.H.*, 609 N.W.2d 259, 262 (Minn. App. 2000). "[P]ublic safety is the touchstone of the analysis." *P.C.T.*, 823 N.W.2d at 685. "For purposes of certification, the juvenile is presumed guilty of the alleged offenses." *In re Welfare of U.S.*, 612 N.W.2d 192, 195 (Minn. App. 2000).

Here, the district court determined that certification was presumed and that the "presumption of certification is rebutted" by the child's lack of prior delinquency. But the district court found that none of the other five factors rebutted the presumption of certification. Appellant challenges the district court's decision with respect to factors two, four, five, and six.

A. Culpability of the child

The second factor requires the district court to examine the child's culpability in committing the alleged offense. Minn. Stat. § 260B.125, subd. 4(2). In considering the child's culpability, courts should "examine the alleged offenses." *J.H.*, 844 N.W.2d at 38.

The district court here examined the alleged offense and found that appellant "acted on his own in carrying out the assault." Appellant agrees that the district court's finding that he acted alone is supported by the record. But he contends that the "district court erroneously refused to consider mitigating factors," and that upon proper consideration, his "level of culpability is reduced by his mental impairment." We disagree.

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.3.1(3) (2020). But only "extreme" mental impairment that deprives a juvenile of control over his actions justifies sentence mitigation. *State v. McLaughlin*, 725 N.W.2d 703, 716 (Minn. 2007).

Here, the district court recognized the mitigating factor under the sentencing guidelines and found that there "is information in the file that [appellant] may suffer from Schizoaffective Disorder." But the district court noted that "[t]his is not a diagnosis [appellant] had prior to the incident." And the district court found that "[e]xpert opinions differ on whether the diagnosis is appropriate, and what, if any, impact it has in reducing [appellant's] culpability." Although the district court acknowledged that appellant "experienced a significant amount of trauma throughout his life," and that "[h]e may have

a [r]ule 20.02 defense" to the alleged offense, the district court concluded that the "level of sophisticated planning before, during, and after the assault" demonstrates appellant's culpability in the commission of the alleged offense. The district court's findings are supported by the record and demonstrate that the district court appropriately weighed any potential mitigating factors. Thus, appellant is unable to show that the district court clearly erred in determining that the second factor did not rebut the presumption of certification.

B. Programming history

Under the fourth factor, the district court must consider the "[c]hild's programming history, including the child's past willingness to participate meaningfully in available programming." Minn. Stat. § 260B.125, subd. 4(4). 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 either the juvenile justice system or a non-juvenile justice system setting that is designed to address a relevant behavioral or social need of the child. *Id.* at 39.

Appellant argues that the district court clearly erred in concluding that this factor did not rebut the presumption because he "has not had the opportunity for a long-term out of home placement programming," and "[h]is limited history does not suggest he would be unwilling to engage with and succeed in future programming." We disagree. As the district court found, "it is unclear whether [appellant] will openly work with any potential providers." The record reflects that appellant was provided extensive support services from a county public health and human services department for approximately ten years, that he received counseling services through a range mental health facility beginning in 2016, and

that he spent a week at a mental health center in 2019. But despite receiving some social and mental-health services prior to this offense, appellant was described as having a "flat affect." And a psychologist's report stated that appellant acknowledged being "irritated by previous psychologists and did not take the testing seriously." In fact, the report noted that appellant "strongly resisted discussing the specifics of the actual assault," has a history of resistance to taking psychiatric medications, and did not agree with the previous determination that he was incompetent to stand trial. Finally, appellant fails to show how his participation in programming would serve the interests of public safety. *See Matter of Welfare of H.B.*, 956 N.W.2d 7, 14-15 (Minn. App. 2021) (stating that the disputed issue with the fourth factor is not whether the child "might benefit from programming were he to actually take part and complete it"; rather the issue is "whether programming as part of EJJ serves public-safety interests rather than adult certification"), *rev. granted* (Minn. May 26, 2021). Therefore, the district court did not clearly err in finding that this factor failed to rebut the presumption of adult certification.

C. Adequacy of punishment or programming available in the juvenile justice system and the dispositional options available for the child

The fifth and sixth factors consider "the adequacy of the punishment or programming available in the juvenile justice system" and the "dispositional options available for the child." Minn. Stat. § 260B.125, subd. 4(5), (6). These two factors are frequently considered together. *See*, *e.g.*, *D.T.H.*, 572 N.W.2d at 745. In addressing the adequacy of juvenile justice punishment, it is appropriate to consider the length of potential

sentences of the dispositional options and whether those sentences "sufficiently address the seriousness of the offense or ensure public safety." *J.H.*, 844 N.W.2d at 39.

Appellant argues that the district court erred in finding that the fifth and sixth factors weigh in favor of certification because its determination that "public safety on this factor is served by certifying [appellant] to stand trial as an adult is refuted by its . . . finding that there are suitable juvenile disposition options." "But the mere availability of juvenile programming does not necessarily favor maintaining juvenile jurisdiction." *In re Welfare of R.D.M., III*, 825 N.W.2d 394, 401 (Minn. App. 2013), *rev. denied* (Minn. Apr. 16, 2013). Moreover, this court has recognized that "[i]n some cases, a strong need for treatment that . . . would require more time to complete than that remaining under juvenile jurisdiction may weigh in favor of certification." *H.S.H.*, 609 N.W.2d at 263. And the certification statute emphasizes public safety rather than treatment options. *State v. Mitchell*, 577 N.W.2d 481, 489 (Minn. 1998).

Here, the district court considered appellant's mental-health issues along with the treatment options available to address those issues. But the district court also considered that it was unclear whether there was sufficient time to complete treatment and whether appellant was even open to participating in treatment. The district court then noted the severity of the offense and the lengthy presumptive prison sentence associated with the offense. The district court determined that the interests of public safety favored certification, particularly in light of the disparity between the presumptive prison sentence and the amount of time the court would have jurisdiction over appellant in the EJJ system. The district court's findings on these factors are well reasoned and supported by the record.

Therefore, under these circumstances, appellant cannot show that the district court erred in determining that the fifth and sixth factors weigh in favor of certification.

D. Weighing of the factors

The ultimate question here is whether the district court clearly erred by finding that public safety was best served by certifying this case to adult court. *See J.H.*, 844 N.W.2d at 35. After making extensive findings, the district court determined that five of the six public-safety factors failed to rebut the presumption of certification. One of these factors was the seriousness of the offense, which is one of the two factors that must be given the greatest weight. *See* Minn. Stat. § 260B.125, subd. 4. The district court thoroughly analyzed each factor and, as discussed above, the record supports the district court's findings and analysis of each factor. Accordingly, the district court did not abuse its discretion by concluding that public safety is best served by certifying appellant for adult prosecution.

Affirmed.