

[Cite as *State v. Beacham*, 2010-Ohio-2743.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

Appellee

v.

DONALD REESE BEACHAM

Appellant

C.A. No. 25010

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE Nos. DL 09-02-0412
 CR 09-05-1432

DECISION AND JOURNAL ENTRY

Dated: June 16, 2010

WHITMORE, Judge.

{¶1} Defendant-Appellant, Donald Beacham, appeals from the judgment of the Summit County Court of Common Pleas, Juvenile Division, concluding that there was insufficient time to rehabilitate him in the juvenile system and relinquishing jurisdiction to the General Division. This Court affirms.

I

{¶2} On February 17, 2009, Lieutenant Michael Gay of the Cuyahoga Falls Police Department filed two complaints against Beacham in the juvenile court, each alleging a single count of rape pursuant to R.C. 2907.02(A)(1)(b). Beacham stipulated to a finding of probable cause, and the State filed a motion to relinquish jurisdiction so as to bind-over the case to the General Division and try Beacham as an adult. The juvenile court set the matter for an amenability hearing. The hearing took place on April 17, 2009, and both sides presented expert

testimony. On April 28, 2009, the juvenile court issued a decision, granting the State's motion to relinquish jurisdiction.

{¶3} On May 19, 2009, a grand jury indicted Beacham on the following offenses: (1) two counts of rape, pursuant to R.C. 2907.02(A)(1)(b); and (2) two counts of gross sexual imposition, pursuant to R.C. 2907.05(A)(4). Beacham appealed from the juvenile court's order, transferring his case to the General Division, but this Court dismissed the appeal for lack of a final, appealable order. See *In Re: D.B.* (July 27, 2009), 9th Dist. No. 24770. Thereafter, Beacham entered a no contest plea, and the trial court sentenced him to ten years to life in prison and classified him as a Tier III Sex Offender.

{¶4} Beacham now appeals from juvenile court's order, transferring his case to the General Division, and raises two assignments of error for our review. For ease of analysis, we combine his assignments of error.

II

Assignment of Error Number One

“WHETHER THE LOWER COURT ERRED IN DETERMINING THAT THERE WAS INSUFFICIENT TIME TO REHABILITATE THE JUVENILE DEFENDANT WITHIN THE JUVENILE COURT SYSTEM.” (Sic.)

Assignment of Error Number Two

“WHETHER THE LOWER COURT ERRED IN DETERMINING THAT THE JUVENILE DEFENDANT'S POTENTIAL TO REFUSE TO COOPERATE IN TREATMENT POSED A RISK THAT THE JUVENILE DEFENDANT MAY NOT BE AMENABLE TO REHABILITATION NOTWITHSTANDING THE OPINIONS OF THE EXPERT PSYCHOLOGISTS.” (Sic.)

{¶5} In his assignments of error, Beacham argues that the juvenile court erred by relinquishing jurisdiction to the common pleas court. Specifically, Beacham argues that the

evidence supports the conclusion that he is amenable to rehabilitation and that there is sufficient time to rehabilitate him within the juvenile system. We disagree.

“‘[A]fter a complaint has been filed alleging that a child is a delinquent child for committing an act that would be a felony if committed by an adult, the court at a hearing may transfer the case for criminal prosecution[.]’ R.C. 2151.26(C)(1). Before ordering a discretionary bind-over, a court considers the age of the victim, any physical harm to the victim, whether the juvenile had a concealed weapon, and prior rehabilitative efforts. R.C. 2151.26(C)(2). The court also determines: 1) whether the juvenile was 14 years or older at the time of the offense; 2) whether probable cause exists for the act charged; and 3) whether there are reasonable grounds to find that the ‘child is not amenable to care or rehabilitation or further care or rehabilitation in any facility designed for the care, supervision, and rehabilitation of delinquent children’ and that ‘[t]he safety of the community may require that the child be placed under legal restraint, including, if necessary, for the period extending beyond the child’s majority.’ R.C. 2151.26(C)(1). Both Juv.R. 30 and R.C. 2151.26(F) require the court to state the reasons for the transfer.” *State v. E.C.*, 9th Dist. No. 04CA008547, 2005-Ohio-2967, at ¶9.

“[A] juvenile court’s determination regarding a child’s amenability to rehabilitation in the juvenile system is reviewed by an appellate court under an abuse-of-discretion standard.” *In re M.P.*, 124 Ohio St.3d 445, 2010-Ohio-599, at ¶14. An abuse of discretion is more than an error in judgment or law; it implies an attitude on the part of the trial court that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶6} Initially, this Court pauses to address the confusion that has arisen with regard to the content of the record in this matter. When Beacham initially appealed from the juvenile court’s order, he filed his notice of appeal and praecipe in the juvenile court even though his case had already been bound over to the General Division. The juvenile court placed the exhibits that were admitted at the amenability hearing into an envelope, which the deputy clerk received and signed, and a court reporter prepared a transcript of the amenability hearing. Pursuant to Beacham’s praecipe, the juvenile court transferred the transcript and the exhibits from the amenability hearing to the Summit County Clerk of Courts as part of the juvenile court record.

See App.R. 9(A) (“The original papers and exhibits thereto filed in the trial court, the transcript of proceedings, if any, including exhibits, and a certified copy of the docket and journal entries prepared by the clerk of the trial court shall constitute the record on appeal in all cases.”); App.R. 9(B) (providing for preparation, upon request of an appellant, of transcript and directing that paper exhibits that were admitted remain with the transcript).

{¶7} Both the online docket and the notice of the filing of the record from Beacham’s first appeal note the filing of the transcript and exhibits in this Court. See *In Re: D.B.* (June 29, 2009), 9th Dist. No. 24770. Accordingly, these items became part of the “record” on appeal. App.R. 9(B). This Court then dismissed Beacham’s first appeal for lack of a final, appealable order. At this point, Beacham’s entire juvenile court file should have been returned to the clerk at the juvenile court because that was the court where Beacham filed his notice of appeal. App.R. 30(B) (“Papers transmitted as the record on appeal or review shall upon disposition of the case be returned to the court or agency from which they were received.”). The juvenile court then should have transferred the entire record, including the transcript and exhibits from the amenability hearing, to the Summit County Court of Common Pleas where the case was bound over. This way, when Beacham completed his case in the General Division, he could file his notice of appeal and praecipe in the General Division, and the clerk at the General Division could have transferred the entire record, including the exhibits, transcript, and filings from juvenile court, to this Court. Unfortunately, this did not happen.

{¶8} When this Court received the record in the current appeal, both the transcript and exhibits from Beacham’s amenability hearing were missing. These items were absent because when this Court dismissed Beacham’s first appeal: (1) the Summit County Clerk of Courts returned Beacham’s file and the exhibits to the juvenile court, but kept the transcript of the

amenability hearing with the first appellate file; and (2) the juvenile court transferred Beacham's file to the General Division as a result of the bind-over, but kept the exhibits. Thus, both the exhibits and transcript were separated from the remainder of Beacham's file and retained by the clerks of two separate courts, neither of which were taking any action in Beacham's case. As previously noted, these items should have been in the possession of the General Division because they became part of the "record" when Beacham first appealed.

{¶9} Beacham ultimately sought to supplement the record in this appeal when the State pointed out that both the transcript and exhibits from the amenability hearing were absent from the file. A supplementation of the record is unnecessary, however, because both of these items were already part of the "record," not new materials Beacham sought to include. Beacham requested the transfer of the entire record when he filed his notice of appeal in the General Division. This Court simply did not receive the entire record because it was not present in its entirety at the clerk of courts for the General Division, as it should have been, when Beacham requested its transfer. This Court now has the entire record before it. We find it necessary, however, to warn litigants of the importance of physically examining the record on appeal to ensure that all of its necessary components are present in the appellate court. Had both parties done so here, this confusion would not have arisen.

{¶10} Upon consideration of R.C. 2152.12's factors and the evidence presented at the amenability hearing, the juvenile court ultimately exercised its discretion to relinquish its jurisdiction and bind-over Beacham to the General Division. Beacham argues that the juvenile court abused its discretion by binding him over because the evidence showed that he was amenable to rehabilitation within the juvenile system. The following evidence emerged at the amenability hearing.

{¶11} The charges brought against Beacham arose as a result of his victimization of two male neighbors, A.H. and S.H., who were then six and three years old, respectively. Beacham was fourteen years old when his neighbor, Paula H., asked him to babysit her children. For a period of approximately one year, Beacham sexually abused both boys; fondling their penises, performing fellatio on them, partially inserting his penis into both boys' anuses, and inserting a "three inch cone-shaped toy object" into both boys' anuses. Beacham eventually stopped abusing the boys, and the abuse remained undiscovered for several years. When A.H. began his sixth year of grade school, which included health class, his memories of abuse reemerged and triggered serious depression. A.H. finally told his mother, Paula H., what had happened, and Paula reported the incident to the Cuyahoga Falls Police Department.

{¶12} Detective Kirk Dirker testified that he interviewed Beacham on February 17, 2009, shortly before Beacham's twentieth birthday. Detective Dirker testified that Beacham eventually admitted to sexually assaulting both boys, but that Beacham was not initially forthcoming in the interview. Detective Dirker admitted, however, that after questioning Beacham about sexually abusing A.H., Beacham voluntarily informed the police that he also had abused S.H.

{¶13} Paula H. testified that Beacham made himself available to babysit her children and that she trusted him to do so because their families were good friends. She did not discover that A.H. had been abused until he started missing school due to stomachaches, nervousness, and bouts of crying. According to Paula, once A.H. recalled the abuse, he began receiving failing grades in school and suffering from depression. Paula testified that both A.H. and S.H. are receiving therapy as a result of the abuse. She expressed concern over the cost of therapy for multiple children and the strain on the family as a result of Beacham's actions. She also

expressed concern that Beacham also had abused her daughter when he babysat the children because her daughter “had some issues that pointed towards sexual abuse.”

{¶14} Dr. Lynn Luna Jones testified that she is a licensed psychologist who treats both A.H. and S.H. Dr. Jones testified that both children have suffered psychological harm and continue to suffer from depression. Although A.H. discusses the issues stemming from his sexual abuse with Dr. Jones, she testified that S.H. has yet to report that he was sexually abused. Dr. Jones opined that S.H. displays many symptoms of abuse, but that it is unclear whether he remembers the abuse. According to Dr. Jones, A.H. and S.H.’s abilities to progress through their issues are complicated by the fact that Beacham’s family continues to live next door and the two families have such close contact with one another.

{¶15} Dr. Jones also discussed the differences between low-risk, moderate-risk, and high-risk sexual offenders. Dr. Jones explained that even after sexual offenders receive intensive treatment during incarceration, the general recommendation for moderate-risk offenders is that they receive an additional two years of treatment after their release. Dr. Jones further testified that, if a person did not complete a treatment program, that person would be at a higher risk to reoffend in the future.

{¶16} Dr. Thomas Webb performed Beacham’s bind-over evaluation for the juvenile court. Dr. Webb testified that Beacham displayed mild psychiatric symptoms in the emotional area as well as mood problems. Dr. Webb described Beacham as having an “unusual mood sensitivity” and “lack of judgment in managing his own sexual urges” as a young adult “as well as his apparent continuing attraction to pornographic content.” Dr. Webb specified that Beacham has an addiction to pornography, but that “he has been working on [it.]” Dr. Webb’s ultimate conclusion was that “given the nature of [Beacham’s] emotional immaturity he could be

served by sexual offender interventions within the juvenile system. However, opportunities certainly exist within the adult system as well.” Dr. Webb thought Beacham could finish his treatment within a year, but also recommended that treatment continue “until the therapist is ensured that [Beacham] is able to maintain control *** over [his] emotional urges.”

{¶17} In addition to Dr. Webb’s evaluation, the juvenile court received testimony and a report from Dr. Dustin Wygant, another clinical psychologist that Beacham’s counsel retained to perform an independent psychological evaluation of Beacham. Dr. Wygant described Beacham as a “moderate risk” sexual offender. Dr. Wygant acknowledged the “predatory manner” by which Beacham victimized his younger neighbors and indicated that he had discussed that issue with Beacham in detail. He opined that Beacham could complete his treatment by the age of twenty-one, but noted that he would need “heavily intensive” treatment. Dr. Wygant’s ultimate conclusion was that Beacham “successfully complete an intensive sex offender specific treatment program in both a group and individual format” and that Beacham “not be allowed to maintain employment in a setting where he has unsupervised access to children and his contact with minors should be strictly monitored.” Dr. Wygant did not specifically offer an opinion as to whether he endorsed rehabilitation within the juvenile or adult system.

{¶18} Based on our review of the record, we cannot conclude that the juvenile court abused its discretion in granting the State’s motion to relinquish jurisdiction and bind-over Beacham to the General Division. Although Beacham is remorseful and has made progress in therapy, his offenses were extremely serious and continue to have repercussions. Both of his victims were young and placed their trust in Beacham, a good friend and neighbor of their family. Beacham seriously abused this trust by repeatedly raping both children after volunteering to babysit them. Beacham never came forward to report the abuse. Rather, he

eventually admitted to raping the boys only after A.H. fully recalled the abuse several years later. All of the psychologists who testified at the amenability hearing opined that Beacham would require intensive treatment. Dr. Webb opined that Beacham could be treated in either the juvenile or adult system. Further, Dr. Wygant described Beacham as a “moderate risk” offender, which Dr. Jones described as someone who generally requires two years of treatment beyond all the treatment received in confinement. If Beacham, in fact, would require more than eleven months of treatment, the treatment would have needed to extend beyond his twenty-first birthday and the reach of the juvenile court.

{¶19} The juvenile court exercised its discretion to bind-over Beacham to the General Division due to concerns that Beacham might not be able to complete his rehabilitation in less than one year and that he might pose a risk to the safety of the community, particularly in light of the fact that his family continues to live next door to the victims. None of the psychologists who testified at the amenability hearing definitively recommended that Beacham receive treatment within the juvenile system instead of the adult system. They merely expressed that it might be possible for Beacham to be rehabilitated in the juvenile system. The juvenile court did not abuse its discretion by rejecting this possibility and granting the State’s motion. See *State v. Watson* (1989), 47 Ohio St.3d 93, 96 (concluding that there was no abuse of discretion where juvenile court decided to bind over after considering the seriousness of the offense and the possibility that the juvenile system might not be able to rehabilitate the juvenile by the time he reached the age of twenty-one). As such, Beacham’s assignments of error lack merit.

III

{¶20} Beacham’s assignments of error are overruled. The judgment of the Summit

County Court of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

MOORE, J.
CONCURS

CARR, P. J.
CONCURS IN JUDGMENT ONLY, SAYING:

{¶21} I concur in the judgment, although I disagree with the majority's analysis.

{¶22} I agree that this Court reviews the juvenile court's determination regarding a child's amenability to rehabilitation within the juvenile system for an abuse of discretion. *In re M.P.*, 124 Ohio St.3d 445, 2010-Ohio-599, at ¶14. I further agree that, based on a review of the

record of the amenability hearing, the juvenile court did not abuse its discretion by finding that Beacham is not amenable to rehabilitation within the juvenile system due to his age and the paucity of time in which he would be subject to the juvenile court's jurisdiction.

{¶23} As a preliminary matter, I wish to emphasize that what happened to these child victims is both horrific and tragic. It is not my intent to demean their suffering or pardon Beacham's reprehensible conduct. I write separately, however, to illuminate what I perceive to be some systematic deficiencies regarding the management of unique cases such as this.

{¶24} First, I disagree with the majority's reliance on the testimony of Dr. Luna Jones in support of the conclusion that there was not enough time to rehabilitate Beacham, as a "moderate-risk" offender, within the juvenile system. Although the parties stipulated to her qualifications as a psychologist, there is nothing in the record to indicate that Dr. Luna Jones was personally qualified by way of education, training, or experience to testify regarding sex offender treatment protocols or the treatment time necessary to rehabilitate a sex offender. Dr. Luna Jones testified as to protocols and treatment provided at Summit Psychological, without ever testifying that she is involved with that facility's treatment of sex offenders. Moreover, Dr. Luna Jones is the treating psychologist for the two victims, and never testified that she had assessed or evaluated Beacham, or even that she had ever met him. Without the requisite foundation, I would not accord Dr. Luna Jones' testimony regarding the time necessary to rehabilitate Beacham any weight.

{¶25} Second, I write separately to reiterate the concerns expressed by the juvenile court. This case is indeed "difficult" given Beacham's subjection to the "extremely harsh" adult penalties he faces for acts committed when he was merely fourteen. The juvenile judge repeatedly decried the insufficient time remaining in which she would retain authority to

adequately address Beacham's rehabilitation in the interests of both the completion of his treatment and the safety of the community. The juvenile judge lamented her lack of recourse in the event that Beacham failed to cooperate with his treatment plan were he to be retained within the juvenile justice system for purposes of adjudication and disposition. I share her concerns and question the State's decision to render the juvenile court impotent to effect a more reasonable result.

{¶26} R.C. 2152.11 allows the State to initiate the process by which the juvenile court may impose a more restrictive disposition, specifically, a serious youthful offender disposition. Beacham would have been eligible for a discretionary serious youthful offender disposition given that he was fourteen years old at the time of the alleged commission of an offense of violence. R.C. 2152.11(A)(1) and (D)(2)(b). Had the State initiated this process, the juvenile court could have imposed a traditional juvenile disposition, as well as an adult sentence which would be stayed pending Beacham's successful completion of the traditional juvenile disposition. R.C. 2152.13(D)(2)(a)(i)-(iii). R.C. 2152.14 allows for the invocation of the adult portion of the offender's sentence while he is in the custody (or an escapee from the custody) of the Ohio Department of Youth Services ("DYS"), or while on parole or aftercare from DHS, under certain conditions, including "engag[ing] in conduct that creates a substantial risk to the safety or security of the institution, the community or of the victim." R.C. 2152.14(A)/(B). Unfortunately, the more restrictive serious youthful offender disposition is only available if the prosecuting attorney initiates the process. R.C. 2152.13(A).

{¶27} Had the State evaluated the circumstances of this particular case, it might have alleviated the concerns shared by both the juvenile court and myself. I reiterate that I do not demean the seriousness of Beacham's conduct or the trauma to these young victims. They have

suffered grave and unspeakable horrors. Given other circumstances, however, including Beacham's youth at the time of the commission of these acts, his cessation of those acts for many years, and his confession to acts beyond the scope of police inquiry, I believe that justice might better have been served by providing the juvenile court with the option to retain jurisdiction and further authority to invoke harsher adult penalties in the event of Beacham's failure to comply with treatment requirements.

{¶28} I would further express my own frustration with an unyielding statutory scheme which limits the jurisdiction of the juvenile court in cases such as this one. It is unreasonable to limit the juvenile court's jurisdiction over a youth who committed delinquent acts as a child, when those acts have come to light during the period in which the juvenile court still has authority over the defendant. Limiting the juvenile court's authority over a defendant only to the age of twenty-one, when the acts came to light when the defendant was twenty, practically compels the finding of the lack of amenability. It is unfortunate that there is no mechanism to extend the jurisdiction of the juvenile court on a voluntary or consensual basis beyond the defendant's attainment of the age of twenty-one in these rare circumstances.

APPEARANCES:

TIMOTHY J. TRUBY, Attorney at Law, for Appellant.

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