

Opinion issued December 29, 2022.



In The
Court of Appeals
For The
First District of Texas

NO. 01-21-00374-CV

NO. 01-21-00375-CV

IN THE MATTER OF M.S.

**On Appeal from the 313th District Court
Harris County, Texas
Trial Court Case No. 2020-01618J**

MEMORANDUM OPINION

M.S., a juvenile, was charged by petition with delinquent conduct for aggravated robbery and capital murder. On the State's motion to certify M.S. as an adult to face criminal charges in criminal district court, the juvenile court issued an order waiving its original jurisdiction and transferring M.S.'s cases to the criminal district court. In this accelerated appeal, M.S. argues the juvenile court abused its

discretion by waiving its jurisdiction over his criminal cases because the juvenile court's order does not specifically state the juvenile court's reasons for waiving its jurisdiction.

We affirm the juvenile court's order.

Background

On August 3, 2020, at around 1:45 a.m., M.S. and three other suspects allegedly broke into the Villalon family residence in Baytown, Texas and demanded money. M.S., who was sixteen years old at the time, is alleged to have kicked in the home's front door and fired one shot into the floor from his 9-millimeter rifle to show the two adults and five or six children who were present in the home that "he meant business." The suspects broke into the bedroom where Jason Villalon ("Jason") and his brother, Luis Deleon ("Deleon"), were sleeping, and demanded money. M.S. allegedly announced he was police, kicked in a door behind which a teenage girl was calling police, and ordered Deleon and other teenage boys into the bathroom and held them at gunpoint, while another suspect, J.L., pistol-whipped Jason and then shot Jason's mother, 41-year-old Margarita Villalon ("Margarita"), in the back of the head when she tried to activate the alarm.

On August 6, 2020, the State filed an adjudication petition alleging M.S. had engaged in delinquent conduct on August 3, 2020, by committing aggravated robbery with a deadly weapon against Deleon. On August 12, 2020, the State filed

a second adjudication petition alleging M.S. had engaged in delinquent conduct on August 3, 2020, by committing the capital offense of murder against Margarita.¹

The State filed motions requesting that the juvenile court waive its exclusive original jurisdiction over M.S.'s capital murder and aggravated robbery cases and transfer both cases to criminal district court where M.S. would stand trial as an adult. On June 14, 2021, the juvenile court held an evidentiary hearing on the State's motions. At the conclusion of the hearing, the juvenile court found there was probable cause to support the charged offenses against M.S. and that the State had met its burden to support waiver of the court's jurisdiction.

On June 15, 2021, the juvenile court signed an order waiving its jurisdiction over M.S.'s capital murder and aggravated robbery cases and transferring both cases to criminal district court ("Order"). The Order states in relevant part:

This Court bases its findings on its observations at the hearing, the clerk's record, the diagnostic studies, the social evaluations, the circumstances of the child and the offense, and all evidence presented at the hearing. The Court grants waiver of juvenile jurisdiction and discretionary transfer to criminal court based on the following reasons:

(1) [M.S.] is charged with a violation[] of a penal law of the grade of felony, namely capital murder and aggravated robbery-deadly weapon, committed on or about the 3rd day of August, 2020.

(2) There has been no adjudication of this offense.

¹ The State charged Margarita Villalon's murder as a capital offense because it alleged the murder was committed in the course of the suspects' attempt to rob Jason.

(3) [M.S.] was 14 years of age or older at the time of the commission of the alleged offense having been born on December 5, 2003.

(4) There is probable cause to believe that [M.S.] committed capital murder and aggravated robbery-deadly weapon as alleged in the petitions filed under these petition numbers.

(5) Because of the seriousness of the alleged capital murder and aggravated robbery-deadly weapon and [M.S.'s] conduct during it, the welfare of the community requires criminal proceedings.

(6) The background of [M.S.] necessitates transfer to criminal district court for the welfare of the community.

The Order further states that in reaching its decision, the juvenile court considered among other things, whether:

- (1) the offense was against [a] person or property, and it gave greater weight in favor of waiver [of] this offense which was committed against the person of another;
- (2) the sophistication and maturity of [M.S.];
- (3) the record and previous history of [M.S.]; and
- (4) the prospects of adequate protection of the public and the likelihood of reasonable rehabilitation of [M.S.] by use of procedures, services and facilities currently available to the Juvenile Court.

The Order also states that the juvenile court's decision to waive its jurisdiction and transfer M.S.'s cases to the district court was "[b]ased on the above, as well as the totality of the evidence presented in the clerk's record, at the hearing, in the written reports, studies, and investigations[.]"

This appeal followed.²

Specificity of the Order

In his sole issue on appeal, M.S. argues the juvenile court abused its discretion by waiving its jurisdiction over his capital murder and aggravated robbery cases because the Order does not “specifically state the juvenile court’s reasons” for

² Texas Family Code Section 56.01(c)(1)(A) provides “a vehicle for immediate, interlocutory appeal to the courts of appeals and then to the Texas Supreme Court” from orders waiving a juvenile court’s original jurisdiction under Family Code Section 54.02. *See Ex parte Thomas*, 623 S.W.3d 370, 382–83 (Tex. Crim. App. 2021) (explaining Family Code Section 56.01(c)(1)(A) provides for immediate, interlocutory appeal of orders waiving a juvenile court’s original jurisdiction under section 54.02); *see also* TEX. FAM. CODE § 56.01(c)(1)(A). Appeals from orders waiving a juvenile court’s original jurisdiction under Family Code Section 54.02 are accelerated and take “precedence over all other cases.” TEX. FAM. CODE § 56.01(h). They must be filed within twenty days after the juvenile court signs its order waiving jurisdiction. *See* TEX. R. APP. P. 26.1(b). The juvenile court in this case signed its order waiving jurisdiction on June 15, 2021. M.S. did not file his notices of appeal until July 7, 2021. The State initially filed a motion to dismiss M.S.’s appeal claiming that because M.S. filed his notices of appeal twenty-two days after the trial court signed its order waiving jurisdiction, we lacked jurisdiction to consider his appeals. The State later withdrew its motion relying on *Verburgt v. Dorner*, 959 S.W.2d 615 (Tex. 1997). In *Verburgt*, the Texas Supreme Court held that a motion for extension of time to file a notice of appeal may be implied where a party files its notice of appeal late, but within the fifteen-day window allowed under Texas Rule of Appellate Procedure 26.3. *See id.* at 617; TEX. R. APP. P. 26.3 (allowing appellate court to extend time to file notice of appeal if notice is filed “within 15 days after the deadline for filing the notice of appeal”). The “implied” motion for extension to file a notice of appeal recognized in *Verburgt* has not been adopted by the Texas Court of Criminal Appeals and does not apply in criminal appeals. *See Olivo v. State*, 918 S.W.2d 519, 523 (Tex. Crim. App. 1996). Because as the State acknowledges, M.S. filed his notices of appeal within fifteen days after the deadline for filing his notices of appeal, provided a reasonable explanation for the delay, and this matter involves a civil appeal, we hold a motion for extension of time to file M.S.’s notices of appeal is implied, and we have jurisdiction to consider the appeals. *See Verburgt*, 959 S.W.2d at 617.

waiving its jurisdiction.”³ Relying on the Court of Criminal Appeal’s recent decision in *Ex parte Thomas*, 623 S.W.3d 370 (Tex. Crim. App. 2021), the State argues the Order is sufficient to waive the juvenile court’s jurisdiction because juvenile courts are not required to make “case-specific fact-finding[s] beyond a statement of the reasons for transfer.” *Id.* at 379.

A. Applicable Law

Juvenile courts have exclusive original jurisdiction over cases involving delinquent conduct by children. *See* TEX. FAM. CODE §§ 51.02(2)(b) (defining “[c]hild” as relevant here as a “person who is . . . seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct . . . as a result of acts committed before becoming 17 years of age”), 51.03(a)(1) (defining “[d]elinquent conduct” as “conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail”). When committed by a minor, capital murder and

³ In his appellate brief, M.S. asserts that “[b]ecause the evidence set forth in the [Order] which [the juvenile court] relied on to make its transfer decision is insufficient, the juvenile court abused its discretion.” Although M.S. includes the standard of review for challenges to the sufficiency of the evidence, he does not challenge the sufficiency of the underlying evidence or provide any meaningful analysis of the issue. Instead, Appellant complains only of the lack of specificity in the Order. Thus, to the extent M.S. attempts to challenge the sufficiency of the evidence supporting the Order, the issue is waived. *See* TEX. R. APP. P. 38.1(i) (requires appellant’s brief to contain clear and concise argument with appropriate citations to authorities and record); *Marin Real Estate Partners, L.P. v. Vogt*, 373 S.W.3d 57, 75 (Tex. App.—San Antonio 2011, no pet.) (“A failure to provide substantive analysis of an issue waives the complaint.”).

aggravated robbery constitute delinquent conduct. See TEX. PENAL CODE § 51.03(a)(1); see also *id.* §§ 19.02 (defining murder), 19.03 (defining capital murder)⁴, 29.02 (defining robbery), 29.03 (defining aggravated robbery).

“A juvenile court may waive its exclusive original jurisdiction and transfer a juvenile case to the appropriate district court for criminal proceedings if certain statutory and constitutional requirements are met.” *Ex parte Thomas*, 623 S.W.3d at 372. As relevant here, Texas Family Code Section 54.02(a) states that a juvenile court may waive its exclusive original jurisdiction and transfer a child’s case to the criminal district court for criminal proceedings if:

- (1) the child is alleged to have violated a penal law of the grade of felony;
- (2) the child was:
 - (A) 14 years of age or older at the time he is alleged to have committed the offense, if the offense is a capital felony [or] a felony of the first degree, and no adjudication hearing has been conducted concerning that offense; [and]
- ...
- (3) after a full investigation and a hearing, the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the

⁴ See TEX. PENAL CODE § 19.03(a)(2) (stating person committed capital felony offense if they “intentionally commit[] the murder in the course of committing or attempting to commit . . . robbery”).

child the welfare of the community requires criminal proceedings.

TEX. FAM. CODE § 54.02(a); *see also In re Z.T.*, No. 05-21-00138-CV, 2021 WL 3645103, at *8 (Tex. App.—Dallas Aug. 17, 2021, pet. denied) (mem. op.). “If the juvenile court waives jurisdiction, it shall state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court, and shall transfer the person to the appropriate court for criminal proceedings . . .”

TEX. FAM. CODE § 54.02(h).

B. Standard of Review

On appeal from a juvenile court’s order waiving its exclusive jurisdiction, we begin by reviewing the legal and factual sufficiency of the evidence to support the juvenile court’s findings under Section 54.02(f).⁵ *In re C.M.M.*, 503 S.W.3d 692,

⁵ Prior to September 2015, a defendant was allowed to appeal a juvenile court order certifying the defendant to stand trial as an adult and transferring the defendant to a criminal court under Family Code Section 54.02, but only in conjunction “with the appeal of a conviction of or an order of deferred adjudication for the offense for which the defendant was transferred to criminal court.” TEX. CODE CRIM. PROC. art. 44.47(a)–(b), *repealed by* Act of May 12, 2015, 84th Leg., R.S., ch. 74, §§ 4–6, 2015 Tex. Gen. Laws 1065, 1066. Such appeals were considered criminal matters, and thus appealable to the courts of appeals, and then the Court of Criminal Appeals. *Id.* at (c); *see generally* TEX. CONST. art. V, § 5(a) (stating Court of Criminal Appeals is final authority for interpreting criminal law in Texas). In 2015, the Legislature repealed Article 44.47 of the Code of Criminal Procedure and added Section 56.01(c)(1)(A) of the Family Code, which “took review of these claims away from [the Court of Criminal Appeals] and created a vehicle for immediate, interlocutory appeal to the courts of appeals and then to the Texas Supreme Court.” *Ex parte Thomas*, 623 S.W.3d at 382–83. The Court of Criminal Appeals noted in *Ex parte Thomas*, 623 S.W.3d 370 (Tex. Crim. App. 2021) that “[t]he Texas

701 (Tex. App.—Houston [14th Dist.] 2016, pet. denied); *see also In re A.M.*, 577 S.W.3d 653, 659 (Tex. App.—Houston [1st Dist.] 2019, pet. granted) (“In reviewing a discretionary transfer, we evaluate the trial court’s findings of fact under traditional sufficiency-of-the-evidence principles.”). If the juvenile court’s findings are supported by legally and factually sufficient evidence, then we review the ultimate waiver decision under an abuse-of-discretion standard. *In re C.M.M.*, 503 S.W.3d at 701.

A court abuses its discretion if it acts without reference to any guiding rules and principles. *In re Nat’l Lloyds Ins.*, 507 S.W.3d 219, 226 (Tex. 2016) (orig. proceeding). Courts have held that “[a] juvenile court abuses its discretion when its decision to transfer is essentially arbitrary, given the evidence upon which it was based.” *In re C.M.M.*, 503 S.W.3d at 701 (citing *Moon v. State*, 451 S.W.3d 28, 47 (Tex. Crim. App. 2014), *overruled on other grounds by Ex parte Thomas*, 623 S.W.3d 370 (Tex. Crim. App. 2021)). “By contrast, a waiver decision representing ‘a reasonably principled application of the legislative criteria’ generally will pass muster under this standard of review.” *In re C.M.M.*, 503 S.W.3d at 701 (quoting *Moon*, 451 S.W.3d at 47).

Supreme Court has not addressed the method of analysis and review of orders transferring jurisdiction in juvenile cases, but it is not bound by *Moon*.” *Id.* at 383.

C. Analysis

In *Moon v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014), *overruled by Ex parte Thomas*, 623 S.W.3d 370 (Tex. Crim. App. 2021), the Court of Criminal Appeals held that a juvenile court must “show its work” in an order waiving juvenile jurisdiction under Family Code Section 54.02 by including case-specific fact findings supporting the court’s decision to waive its jurisdiction. *Id.* at 49 (stating “Section 54.02(h) obviously contemplates that both the juvenile court’s reasons for waiving its jurisdiction and the findings of fact that undergird those reasons should appear in the transfer order”); *see also* TEX. FAM. CODE § 54.02(h) (“If the juvenile court waives jurisdiction, it shall state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court, and shall transfer the person to the appropriate court for criminal proceedings . . .”). The Court further held that when reviewing the sufficiency of the evidence supporting the juvenile court’s decision to waive its jurisdiction, an “appellate court must limit its sufficiency review to the facts that the juvenile court expressly relied upon, as required to be explicitly set out in the juvenile transfer order under Section 54.02(h).” *Id.* at 50.

In 2021, the Court of Criminal Appeals reversed course in *Ex parte Thomas* and overruled *Moon*. In *Ex parte Thomas*, the applicant was charged with capital murder. When he was nineteen years old, the juvenile court waived its jurisdiction

and transferred the case to criminal district court, where the applicant pleaded guilty to a lesser charge of murder. The applicant “did not appeal his transfer or his case or file a writ of habeas corpus.” *Ex parte Thomas*, 623 S.W.3d at 372. Years later, after the Court decided *Moon*, the applicant filed a petition for writ of habeas corpus arguing that “because the order waiving juvenile jurisdiction [over his case] did not contain factually-supported, case-specific findings, it was invalid, and thus the [criminal] district court never acquired jurisdiction.” *Id.* The Court rejected the applicant’s argument.

Reversing *Moon*, the *Ex parte Thomas* Court held that no provision in the relevant statute “require[s] the juvenile court to recite the underlying facts upon which its reason for transfer is based.” *Id.* at 379. The Court explained that contrary to *Moon*’s reasoning, Section 54.02(h) “merely directs the juvenile court to state the reasons for the waiver set out in the statute.” *Id.* While acknowledging that Section 54.02(h) states that the juvenile court “shall state specifically in the order its reasons for waiver . . . including the written order and findings of the court,” the Court held that the “*including the written order and findings of the court*” additional language in Section 54.02(h) “allows for ‘findings,’ but it does not require case-specific fact-finding beyond a statement of the reasons for transfer.” *Id.* (quoting TEX. FAM. CODE § 54.02(h)) (emphasis added). Thus, although an order waiving a juvenile court’s jurisdiction must state the court’s reasons for doing so, the Court held

juvenile courts are not required to include in the order detailed, case-specific findings supporting their decision. *See id.* at 381–83. “A juvenile transfer order entered after the required transfer hearing [that] compl[ies] with the statutory requirements constitutes a valid waiver of jurisdiction even if the transfer order does not contain factually-supported, case-specific findings.” *Id.* at 383; *see also In re J.T.B.*, No. 13-22-00205-CV, 2022 WL 7708451, at *6 (Tex. App.—Corpus Christi—Edinburg Oct. 13, 2022, no pet. h.) (mem. op.) (noting *Ex parte Thomas* held lack of “factually-supported, case-specific findings” does not make order waiving jurisdiction invalid and rejecting argument juvenile court’s written and oral findings were deficient because they did not “reference any of the relevant testimony”); *In re D.I.R.*, 650 S.W.3d 172, 181 n.5 (Tex. App.—El Paso Oct. 8, 2021, no pet.) (“*Moon* suggested case-specific fact-findings are a requirement for transfer orders in the juvenile framework, which the Court of Criminal Appeals expressly overruled in *Ex parte Thomas* . . .”).

Family Code Section 54.02(a) allows a juvenile court to waive its exclusive original jurisdiction and transfer a child’s case to the criminal district court for criminal proceedings if the child is alleged to have committed a felony offense, the child was fourteen years old or older when the offense was committed, the offense has not been adjudicated, and “after a full investigation and a hearing, the juvenile court determines that there is probable cause to believe that the child before the court

committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.” TEX. FAM. CODE § 54.02(a)(1), (2)(a), (3). The Order in this case states that the juvenile court’s decision to waive its jurisdiction and transfer M.S.’s cases to criminal district court was based on the following reasons: (1) M.S. was charged with two unadjudicated felony offenses, (2) there has been no prior adjudication of the offenses; (3) M.S. was fourteen years old or older when he allegedly committed these offenses, (4) there was probable cause to believe M.S. committed the charged offenses, and (5) given the seriousness of the offenses, M.S.’s conduct, and his prior background, the “welfare of the community requires criminal proceedings.” The reasons for waiver of jurisdiction expressly articulated in the Order closely track the language of Section 54.02(a) and thus, the Order complies with Section 54.02(h), as interpreted by *Ex parte Thomas*. *Id.* at 379 (holding Section 54.02(h) “merely directs the juvenile court to state the reasons for waiver set out in the statute”); *see also* TEX. FAM. CODE § 54.02(a), (h).

M.S. acknowledges that *Ex parte Thomas* “disavow[ed *Moon*’s] requirement of case-specific fact finding in the juvenile court’s waiver order,” and he does not dispute that the Order is sufficient under the standard articulated in *Ex parte Thomas*. Instead, M.S. asks this Court to find a “middle ground” between *Ex parte Thomas* and the more stringent requirements of *Moon* and articulate a standard requiring

“juvenile court[s to] do something more than merely parrot back statutory language in a waiver of jurisdiction order.” According to M.S., such an approach is necessary to “give some meaning to the statutory language [in Family Code Section 54.02(h)] that the juvenile court ‘shall state specifically.’” *See* TEX. FAM. CODE § 54.02(h).⁶

Ex parte Thomas, however, provides no such leeway. *Id.* at 383 (stating order that “compl[ies] with the statutory requirements constitutes a valid waiver of jurisdiction even if the transfer order does not contain factually-supported, case-specific findings”).

As an intermediate appellate court, we are bound by the Court of Criminal Appeals’ interpretation of Section 54.02(h) in *Ex parte Thomas*. *See Gonzales v. State*, 190 S.W.3d 125, 130 n.1 (Tex. App.—Houston [1st Dist.] 2005, pet. ref’d) (“[A]s an intermediate appellate court, we must follow the binding precedent of the Court of Criminal Appeals.”); *see also Swilley v. McCain*, 374 S.W.2d 871, 875 (Tex. 1964) (“After a principle, rule or proposition of law has been squarely decided by the Supreme Court, or the highest court of the State having jurisdiction of the particular case, the decision is accepted as a binding precedent by the same court or other courts of lower rank when the very point is again presented in a subsequent suit between different parties.”); *Mason v. State*, 416 S.W.3d 720, 728 n.10 (Tex.

⁶ M.S. does not propose any parameters for this “middle ground” other than asserting that the juvenile court’s order should include “[s]ome factual foundation and support” for the court’s decision to waive its jurisdiction.

App.—Houston [14th Dist.] 2013, pet. ref'd) (“When the Court of Criminal Appeals has deliberately and unequivocally interpreted the law in a criminal matter, we must adhere to its interpretation under the dictates of vertical stare decisis.”). Given the Court of Criminal Appeals’ clear and unequivocal interpretation of Section 54.02(h) in *Ex parte Thomas*, we cannot conclude that the juvenile court abused its discretion by waiving its jurisdiction and transferring M.S.’s cases to the district court because the juvenile court did not include in the Order additional case-specific facts supporting its decision.

We overrule M.S.’s sole issue.

Conclusion

We affirm the juvenile court’s order.

Veronica Rivas-Molloy
Justice

Panel consists of Chief Justice Radack and Justices Countiss and Rivas-Molloy.