



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-16-00340-CV

**IN THE MATTER OF S.A.H.**

From the 436th District Court, Bexar County, Texas  
Trial Court No. 2014JUV01290  
The Honorable Lisa Jarrett, Judge Presiding

Opinion by: Jason Pulliam, Justice

Sitting: Marialyn Barnard, Justice  
Patricia O. Alvarez, Justice  
Jason Pulliam, Justice

Delivered and Filed: November 30, 2016

**AFFIRMED**

This is an appeal from an order transferring appellant from the Texas Juvenile Justice Department (“the TJJD”) to the Texas Department of Criminal Justice – Institutional Division (“the TDCJ”). In a single issue on appeal, appellant asserts the trial court erred by transferring him because the record shows he should have been placed on TJJD parole. We affirm.

**BACKGROUND**

On February 23, 2015, appellant<sup>1</sup> was adjudicated as a child who engaged in delinquent conduct, namely aggravated assault with a deadly weapon (a firearm), and was committed to the TJJD for a ten-year determinate sentence. Appellant arrived at the TJJD in Brownwood on March 9, 2015, where he remained until April 16, 2015, at which time he was removed to the TJJD’s

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<sup>1</sup> Appellant was born on February 17, 1998.

facility in Giddings. During his short stay in Brownwood, appellant was involved in three assaults. He assaulted peers during two of the incidents, and a peer and an adult staff member during the third incident. As a result of his assaulting the staff member, appellant was arrested, as an adult, for assault of a public servant. Appellant was arrested on April 9 and returned to the juvenile facility the next day because the offense was not pursued. Appellant was later transferred to Giddings on April 16, 2015. During his first thirteen days at the Giddings facility, appellant was involved in one assault on a staff member. On April 29, 2015, appellant was bench-warranted to Bexar County to be a material witness in a case, and was in Bexar County until June 30, 2015. When he returned to Giddings from Bexar County in July, he was involved in two more assaults and two other incidents of threatening others. Of the two assaults, one involved the assault of an adult, and appellant was again arrested for assault of a public servant. This time, appellant was charged and transferred to the Lee County jail pending trial. He was eventually convicted of assault of a public servant and punishment was assessed at seven-year's confinement in the TDCJ.

On March 17, 2016, the TJJD requested the trial court conduct a transfer hearing to determine whether appellant should be transferred to the TDCJ because appellant had not completed his sentence and the welfare of the community required that he be transferred. Following a hearing,<sup>2</sup> the trial court ordered that appellant be transferred to the TDCJ to complete his original ten-year determinate sentence.

### **STANDARD OF REVIEW**

We review a trial court's decision to transfer a juvenile from TJJD to TDCJ for an abuse of discretion. *In re N.K.M.*, 387 S.W.3d 859, 864 (Tex. App.—San Antonio 2012, no pet.). We review the entire record to determine if the trial court acted arbitrarily, unreasonably, or without

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<sup>2</sup> Appellant was eighteen years old at this time.

reference to any guiding principles or rules. *Id.* The trial court's decision will be upheld if the record contains some evidence to support it. *Id.*

After a juvenile with a determinate sentence reaches the age of sixteen, but before reaching the age of nineteen, the TJJD may request an order approving the transfer of the juvenile to the TDCJ if the sentence has not been completed and the juvenile poses a continuing risk to the community's welfare. TEX. HUM. RES. CODE ANN. § 244.014(a) (West Supp. 2016). The juvenile court must conduct a hearing to make this determination. TEX. FAM. CODE ANN. § 54.11(a) (West Supp. 2016). After evidence has been presented and the hearing has concluded, the trial court may order the juvenile transferred to the TDCJ for completion of his determinate sentence or returned to the TJJD with or without approval for release. *Id.* § 54.11(i), (j).

When conducting a transfer hearing, a trial court may consider written reports provided by "probation officers, professional court employees, professional consultants, or employees of the Texas Juvenile Justice Department," as well as the testimony of witnesses. *Id.* § 54.11(d). The court also may consider:

the experiences and character of the person before and after commitment to the Texas Juvenile Justice Department or post-adjudication secure correctional facility, the nature of the penal offense that the person was found to have committed and the manner in which the offense was committed, the abilities of the person to contribute to society, the protection of the victim of the offense or any member of the victim's family, the recommendations of the Texas Juvenile Justice Department, county juvenile board, local juvenile probation department, and prosecuting attorney, the best interests of the person, and any other factor relevant to the issue to be decided.

*Id.* § 54.11(k). The court is not obliged to consider all of the factors listed, and it may consider relevant factors not listed. *In re N.K.M.*, 387 S.W.3d. at 864. Finally, the court may assign differing weights to the factors considered. *Id.*

## ANALYSIS

In addition to the above history of appellant's assault of peers and adult staff members while in the TJJD, the trial court heard testimony from Tami Coy, who works for the TJJD as the TJJD/TDCJ liaison. Coy described appellant's behavior at TJJD as "poor" and "disruptive." Coy said the TJJD has various classification stages beginning with Stage 1 and progressing to Stage 5. Appellant never progressed past the entry-level Stage 1, and he did not complete any programs, obtain a high school diploma, or learn a trade while at the TJJD. Coy said the TJJD recommended transfer to the TDCJ because appellant was currently in prison for the new assault, which meant he could not go back to the TJJD to participate in their programs and reduce his risk. She believed transfer was in appellant's best interest. Coy also believed transferring appellant would provide protection for the victim in the underlying offense.

On cross-examination, Coy admitted assaults occur daily at the TJJD, but she thought appellant's history of assaults was "pretty high" for the amount of time he actually spent at the TJJD. Coy said that although appellant was at the TJJD for only five months, a youth could progress to at least Stage 2 during that time. She conceded it was not unusual for someone to not earn a high school diploma or learn a trade in only five months. Coy thought appellant could have responded to the program, but he did not. When asked again if she believed transfer was in appellant's best interest, Coy responded: "It's in the best interest of the community, as he's continued on with his assaultive behavior. So, maybe it is in his best interest because he requires more supervision."

The trial court admitted into evidence Coy's April 2016 report on appellant as well as the Bexar County Juvenile Probation Department's Determinate Sentencing Report<sup>3</sup> on appellant.

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<sup>3</sup> This report was prepared in April 2014 prior to appellant's trial for aggravated assault with a deadly weapon.

Both reports listed appellant's prior delinquent behavior (as early as 2008), including criminal mischief, resisting arrest, theft, failure to report, failure to pay restitution, possession of a weapon in prohibited places, assault of a public servant, and the underlying charge of aggravated assault with a deadly weapon. Both reports described the aggravated assault based on police reports. According to these reports, the victim stated he received a call from someone who identified himself as "Chino." "Chino" asked for the victim's location and if the victim was "Rudy." The victim told the caller he was "Rudy's" father, and the caller said he intended to shoot "Rudy." The victim then got into his vehicle and began driving home because he could not reach his son by telephone. Along the way, the victim saw another vehicle carrying appellant and "Chino." The other vehicle pulled up alongside the victim's car and appellant fired a semiautomatic handgun at the victim. The victim slammed on his brakes when appellant fired another round, but the shot missed. The police responded to the victim's call that he was being chased by a vehicle carrying two occupants who were shooting at him.

The Bexar County Juvenile Probation Department's Determinate Sentencing Report stated appellant's psychological examination diagnosed him with "conduct disorder, moderately severe, adolescent onset," attention-deficit/hyperactivity disorder, borderline intellectual functioning, that he was bi-polar, and that he suffered from cannabis and alcohol abuse. Five of appellant's six siblings have a juvenile and/or adult criminal record, and most, like appellant, were in placement with Child Protective Services at one time or another. Both of appellant's parents have a criminal history. The report detailed appellant's past unsuccessful discharges from residential treatment centers in 2013 and 2014. While in residential treatment, appellant had twenty-eight behavioral time outs for not following staff directives, cursing, refusing to do his work, damaging property, and negative peer interaction. Also during that time, he had fifteen security sanctions for refusing to comply with the behavioral time outs, fighting, assault on staff and peers, and verbal inciting.

In 2014, appellant attempted to leave a residential center in Houston, Texas. When he was confronted by a staff member, appellant became physically aggressive by picking up his mattress and charging at the staff member, whom he “successfully stabbed . . . with the end of a rattail comb that had been sharpened.” The report indicated appellant is a gang member, but that he had admitted he associated with negative peers and made “bad choices.” Finally, the report indicated appellant may have received good grades in school, but he had been suspended numerous times for fighting, cursing teachers, and being disruptive and disrespectful. The report also indicated appellant recognized he had an anger-control problem, and he has, at times, used the techniques taught him to walk away or go to his room to calm down.

Coy’s report began with appellant’s commitment to TJJD on February 23, 2015. Her summary of appellant’s behavior stated his recent conviction for assault of a public servant “in and of itself meets TJJD criteria for transfer.” The report stated that, during appellant’s three months at a TJJD facility, he displayed highly aggressive behavior; of the seven assaults on record, five were confirmed through hearings; and appellant accumulated twenty-eight documented incidents of misconduct, resulting in fourteen referrals and nine admissions to the security unit. Coy’s report also described the assault on the adult staff member that resulted in his conviction. The report stated that on July 23, 2015, during movement from the game room, appellant became argumentative with the staff member, Mr. Mathis, about going to school. Mathis told appellant he needed to accompany the staff, appellant continued to argue saying he would come when he was ready, and Mathis told appellant to get in line. As appellant walked back to his dorm, he called Mathis a “bitch,” and informed the staff that he (appellant) “ain’t no bitch.” Mathis again told appellant to get in line, at which point appellant ran up to Mathis and began hitting him with closed fists on the side of his head and his ears. Appellant was arrested on July 29, 2015, and later convicted and sentenced to seven years’ confinement in the TDCJ.

Coy's recommendation stated as follows:

... Prior to [appellant's] commitment, he was placed on probation on four different occasions for a number of other offenses. He did not benefit from participation in the treatment programs offered during his assignment to TJJD. His overall behavior and progress in the treatment program has been poor. Moreover, on July 23, 2015 [appellant] was convicted for the offense of assault of a public servant in Lee County and was assessed a TDCJ sentence of seven years. [Appellant] has thus already been transferred to the [TDCJ]. Therefore, at this time it is the recommendation of the [TJJD] that [appellant] be likewise transferred to the [TDCJ] on his original determinate sentence.

On appeal, appellant argues he has the ability to contribute to society, he is aware of his anger-control issues, and he recognizes he needs to use the techniques he learned in order to better control himself. Appellant asserts the trial court erred by transferring him to TDCJ, and instead, should have placed him on TJJD parole, which would have shortened, but not eliminated, his prison stay. On this record, however, we cannot agree the trial court abused its discretion.

Although appellant presented some favorable evidence, the State rebutted with evidence showing many instances of misconduct both before his TJJD commitment and during his TJJD commitment. Additionally, the State presented evidence of appellant's history with juvenile authorities beginning as early as 2008. Moreover, the trial court was permitted to consider the TJJD's recommendation that appellant be transferred to TDCJ and the serious nature of the offense of which he was convicted. *See* TEX. FAM. CODE § 54.11(k). The trial court also could assign different weights to the factors it considers. *In re N.K.M.*, 387 S.W.3d. at 864. Therefore, based on the evidence presented, we conclude the trial court did not abuse its discretion in ordering that appellant be transferred to TDCJ because there is some evidence in the record to support its determination.

**CONCLUSION**

We overrule appellant's issue on appeal and affirm the trial court's Order of Transfer to the Texas Department of Criminal Justice – Institutional Division.

Jason Pulliam, Justice