



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-23-00994-CV

IN THE MATTER OF B.D.R.

From the 289th Judicial District Court, Bexar County, Texas
Trial Court No. 2020JUV00079
Honorable Rose Sosa, Judge Presiding

Opinion by: Beth Watkins, Justice

Sitting: Patricia O. Alvarez, Justice
Irene Rios, Justice
Beth Watkins, Justice

Delivered and Filed: May 8, 2024

AFFIRMED

B.D.R. appeals the juvenile court's order transferring him from the Texas Juvenile Justice Department to the Texas Department of Criminal Justice. We affirm.

BACKGROUND

In November 2019, then-fifteen-year-old B.D.R. shot and killed Shaun Marvin Baker during an attempted robbery. In January 2020, the State filed an original petition for waiver of jurisdiction and discretionary transfer to criminal court, alleging B.D.R. committed capital murder. In October 2020, the State filed an original petition alleging B.D.R. committed the delinquent conduct of murder and seeking a determinate sentence. In November 2020, as part of a plea agreement, B.D.R. judicially admitted and confessed to committing the delinquent conduct of murder, and the trial court imposed a determinate sentence of ten years at the TJJD with a possible

transfer to the TDCJ. In September 2023, with B.D.R.'s nineteenth birthday approaching, the juvenile court held a transfer hearing to determine whether B.D.R. should remain in the TJJD or transferred to the TDCJ for the remainder of his sentence. At that time, B.D.R. had served 44 months of his sentence.

At the conclusion of the hearing, the juvenile court ordered B.D.R. transferred to the TDCJ to serve the remainder of his sentence. The juvenile court informed B.D.R. he would be eligible for parole from the TDCJ in 16 months' time. B.D.R. appealed.

ANALYSIS

Transfer to the TDCJ

B.D.R. contends the juvenile court abused its discretion in ordering his transfer to the TDCJ to serve the remainder of his sentence.

Applicable Law and Standard of Review

The TJJD may refer a juvenile to the juvenile court for transfer to the TDCJ "if (1) the juvenile's conduct 'indicates that the welfare of the community requires the transfer' and the juvenile (2) is between sixteen and nineteen years old, (3) is serving a determinate sentence, and (4) has not completed his sentence." *In re J.R.*, No. 02-23-00149-CV, 2023 WL 6631531, at *2 (Tex. App.—Fort Worth Oct. 12, 2023, no pet.) (mem. op.) (quoting TEX. HUM. RES. CODE ANN. § 244.014(a)). On receipt of a referral, the juvenile court must hold a transfer hearing. TEX. FAM. CODE ANN. § 54.11(a). "Under Texas law, a transfer hearing is not a trial; a juvenile is neither being adjudicated nor sentenced." *In re D.L.*, 198 S.W.3d 228, 230 (Tex. App.—San Antonio 2006, pet. denied). "Rather, the transfer hearing is a second chance hearing after the juvenile has already been sentenced to a determinate number of years." *Id.* (internal quotation marks omitted). "[T]he hearing does not need to meet the same stringent due process requirements as a trial in which a person's guilt is decided." *Id.* When conducting a transfer hearing, a juvenile court may

consider “written reports and supporting documents from probation officers, professional court employees, guardians ad litem appointed under Section 51.11(d), professional consultants, employees of the Texas Juvenile Justice Department, or employees of a post-adjudication secure correctional facility in addition to the testimony of witnesses.” TEX. FAM. CODE § 54.11(d). In making the determination whether to transfer, a juvenile court may consider:

- the experiences and character of the person before and after commitment to the [TJJD] 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 [TJJD], 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 859, 864 (Tex. App.—San Antonio 2012, no pet.). “Additionally, the court can assign differing weights to the factors considered.” *Id.*

We review a juvenile court’s transfer decision for an abuse of discretion. *Id.* To do so, we review the record to determine whether the juvenile court “acted arbitrarily, unreasonably, or without reference to any guiding principles or rules.” *Id.* If “some evidence” supports the juvenile court’s decision, we uphold it. *Id.*

Application

The juvenile court heard testimony from nine witnesses and received multiple reports and exhibits for consideration. The State called the court liaison for the TJJD and the victim's mother; B.D.R. testified on his own behalf as did four juvenile justice center employees and his parents.

Experiences and character of the person before commitment to the TJJD. The juvenile court admitted into evidence court liaison Alanna Bennett's August 2023 court report. The report listed B.D.R.'s prior referrals and adjudications, including multiple assaults-bodily injury. His first referral for assault occurred in 2017. The juvenile court specifically mentioned his prior record when questioning his mother about her request to release B.D.R. to her. *In re D.S.*, 921 S.W.2d 383, 387–88 (Tex. App.—Corpus Christi—Edinburg 1996, writ dismissed w.o.j.) (noting Texas Family Code and case law authorize juvenile court to consider prior adjudicated and unadjudicated offenses).

The nature of the penal offense the person was found to have committed and the way the offense was committed. The court report described the underlying murder-in-the-course-of-robbery delinquent conduct based on police reports. The reports indicated B.D.R. and some friends planned the victim's robbery. B.D.R. pointed a gun into the partially open driver's side door, told the victim to get out, and then fired the gun causing the car to crash. When officers arrived at the scene, the victim was found unconscious in the driver's side of the vehicle; he was pronounced dead upon arrival at the hospital. Officers acquired surveillance video of the shooting. *See In re L.G.G.*, 398 S.W.3d 852, 862 (Tex. App.—Corpus Christi—Edinburg 2012, no pet.) (noting juvenile court could, within its discretion, recognize that juvenile had served less than five years for a serious, violent offense and that "goals of punishment, accountability, and the protection of the community would be better served" by transfer); *In re J.J.*, 276 S.W.3d 171, 180 (Tex. App.—

Austin 2008, pet. denied) (juvenile court did not abuse discretion given, inter alia, evidence that juvenile had been adjudicated delinquent for violent crimes involving deadly weapons).

Experiences and character of the person after commitment to the TJJD. Bennett testified B.D.R. had some successes while at the TJJD, including progressing to Stage YES (the highest stage in the TJJD’s rehabilitation program), completing the Capital & Serious Violent Offender Treatment Program and the Alcohol and Other Drugs Treatment Program, and earning an NCCER Core Curriculum certificate in welding. Bennett testified B.D.R. “achieved the highest level and was getting ready to prepare to be released to parole” but “he could not maintain it.” She stated, “He has all the skills, and when you get as high as you get in the program, we don’t demote you anymore down a stage unless you go to the Phoenix Program,¹ and then you get demoted all the way back down to stage one.” At the time of the hearing, B.D.R. was in the Phoenix Program and had been demoted “all the way back down to stage one.” Bennett explained B.D.R. had 105 documented incidents. Bennett stated some of these were minor rule violations such as disrupting scheduled activities, vandalism, and refusal to follow staff instructions. But B.D.R. also had multiple confirmed major rule violations, including altercations with other juveniles and assault causing injury to staff. One altercation took place on Family Day. “[B.D.R.] and another youth got into a -- appeared to be a gang related incident. [B.D.R.] fought with the other youth, and his brother and father were also trying to get involved in that fight as well.” That July 2023 altercation took place just a month before the transfer hearing. *See In re N.K.M.*, 387 S.W.3d at 864–65 (noting State’s evidence showed juvenile committed “many instances of misconduct” at the TJJD).

B.D.R. called four juvenile detention center employees:

- Matthew Cano testified B.D.R. had “always been respectful to me and my staff.”

¹ The record establishes that the Phoenix Program is “the most restrictive treatment program in TJJD and is used when youth have engaged in specific aggressive behavior.”

- Jesus Salinas testified B.D.R. “did good,” “had minor infractions for little things when he first got here,” and “never fought back.”
- ShaMonica Bisicoe testified B.D.R. “has been very respectful,” and talked to “other kids on the mod,” encouraging them to “get their GED or pick up a trade.”
- David Vara testified he “never had any issues with [B.D.R.],” “he has been really respectful to me and my staff,” and he had been “helping the younger kids . . . kind of letting them know the dos and don’ts of being in [the] facility.”

The State acknowledged and did not discredit this testimony, but argued B.D.R.’s repeated and recent violent acts overshadowed his good behavior in the Bexar County Juvenile Detention Center. *See In re J.C.D.*, 874 S.W.2d 107, 108–09 (Tex. App.—Austin 1994, no writ) (affirming transfer order in part because juvenile court had discretion to value psychologist’s opinion that juvenile was at high risk for reoffending over Texas Youth Commission’s recommendation against transfer given juvenile’s “good record with no significant behavioral problems”).

Abilities of the person to contribute to society. Testifying from a letter he had written to the juvenile court, B.D.R. stated, “I earned my NCCER in welding and I was in the process of earning my carpentry certificate.” And, as referenced above, Bisicoe and Vara testified B.D.R. had acted as a mentor to other juveniles in the facility. *See In re J.A.*, No. 03-11-00259-CV, 2012 WL 2742552, at *1, 3 (Tex. App.—Austin July 3, 2012, no pet.) (mem. op.) (noting juvenile “received his GED and obtained vocational certificates in computers, welding, and building trades” and expressed a “desire to use his vocational skills to open and operate an auto-repair business”).

Recommendation of the TJJD and Prosecuting Attorney. Bennett conveyed the TJJD’s recommendation that B.D.R. be transferred to the TDCJ. In her court report, Bennett stated B.D.R.’s “noncompliance and his aggressive, impulsive and disruptive behaviors, even after receiving multiple interventions, provides evidence that he is not willing to comply with the expectations of the program that is addressed to reduce his risk of violent and aggressive behavior

and consistently apply the skills he has learned on a daily basis.” The State noted B.D.R. “can behave” and “is able to control himself when he wants to,” but he “falls into a constant violent pattern.” Citing a risk to society and to B.D.R. himself if he were not in a secure location, the State asked that he be transferred to the TDCJ. *See In re J.L.D.*, No. 04-21-00187-CV, 2022 WL 1751009, at *3 (Tex. App.—San Antonio June 1, 2022, no pet.) (mem. op.) (noting section 54.11(k) allows juvenile court to consider positions of TJJD and State).

Other relevant factors. The mother of the victim agreed B.D.R. “deserve[s] a second chance” but also testified he “didn’t learn anything in juvenile” and “is not ready to be released”; she asked he “do his ten years.” B.D.R.’s parents testified that: some of his problems were due to staff withholding his medication; he would be better off at home where they could supervise his medicine and counseling; and, “if he goes to prison, it’s not going to help,”—only serve to “make him angrier,” and he will “pick up more bad habits.”

Juvenile court’s balancing of section 54.11(k) factors. Although B.D.R. presented considerable favorable evidence, the State showed B.D.R. consistently engaged in disruptive, aggressive, and sometimes dangerous behavior both before and during his TJJD commitment. *See In re J.A.*, 2012 WL 2742552, at *3; *In re J.C.D.*, 874 S.W.2d at 108–09; *In re N.K.M.*, 387 S.W.3d at 865. The State presented evidence that B.D.R.’s history with juvenile authorities began as early as 2017. *See In re D.S.*, 921 S.W.2d at 387–88. B.D.R. argues the juvenile court improperly focused on the testimony of the court liaison, who had never worked directly with him and therefore lacked personal knowledge of his history and behavior in TJJD, instead of that of the staff who worked with him. Section 54.11(d) gives the juvenile court the authority to rely on a court liaison’s testimony. *See In re D.W.H.*, No. 08-99-00187-CV, 2000 WL 1643511, at *2 (Tex. App.—El Paso Nov. 2, 2000, no pet.) (mem. op.) (citing TEX. FAM. CODE § 54.11(d)). Moreover, when questioned by the juvenile court, B.D.R. acknowledged that after he reached Stage YES in

January, “things kind of just devolved[.]” He admitted committing the April and July 2023 assaults. And he acknowledged that if he had just stayed on Stage YES, he would have been “paroled straight out.” *See D.G.W. v. State*, Nos. 01-22-00697-CV & 01-22-00698-CV, 2024 WL 86501, at *4 (Tex. App.—Houston [1st Dist.] Jan. 9, 2024, no pet. h.) (mem. op.) (“D.G.W. does not truly contest that some evidence supports the trial court’s decision; instead, he argues that this evidence is outweighed by other evidence.”). The juvenile court could consider the TJJD’s and the State’s recommendation B.D.R. be transferred to the TDCJ as well as the serious nature of the offense of which he was convicted. *See In re J.L.D.*, 2022 WL 1751009, at *3; *In re L.G.G.*, 398 S.W.3d at 862; *In re J.J.*, 276 S.W.3d at 180. We conclude that the juvenile court did not act arbitrarily, unreasonably, or without reference to any guiding principles in ordering B.D.R. transferred to the TDCJ and that there is some evidence in the record to support its determination. *In re N.K.M.*, 387 S.W.3d at 864. We therefore overrule B.D.R.’s sole issue on appeal.

CONCLUSION

We affirm the juvenile court’s order transferring B.D.R. from the Texas Juvenile Justice Department to the Texas Department of Criminal Justice.

Beth Watkins, Justice