



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00262-CV

IN THE MATTER OF L.C., A
JUVENILE

FROM THE 323RD DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 323-98810J-13

MEMORANDUM OPINION¹

Appellant L.C., a juvenile, appeals the trial court's order transferring him to the custody of the Texas Department of Criminal Justice (TDCJ) to serve the remainder of his twenty-three year determinate sentence for capital murder. Appellant contends that the trial court's decision to transfer him constitutes an abuse of discretion. We affirm.

¹See Tex. R. App. P. 47.4.

Background Facts

Appellant was born in July 1999. From 2011 through 2013, he was charged with committing several offenses, including burglary, theft, and assault causing bodily injury. During that time period, appellant also had several school disciplinary issues.

In 2013, when appellant was thirteen years old, he killed a five-year-old boy by striking his head with a bowling ball. After appellant struck the boy's head with the ball once, the boy fell to the ground and was still alive. Appellant then hit the boy again, killing him. According to appellant, he did so because the "boy was bothering him" and because appellant had taken a drug that had caused him to become violent. After killing the boy, appellant told his friends what he had done and took them to see the body.

The State filed a petition alleging that appellant had engaged in delinquent conduct by committing capital murder.² A grand jury approved the petition.³ The trial court adjudicated appellant delinquent⁴ for committing capital murder and

²See Tex. Penal Code Ann. § 19.03(a)(8) (West Supp. 2016); see also Tex. Fam. Code Ann. § 51.03(a)(1) (West Supp. 2016), § 53.04(a) (West 2014).

³See Tex. Fam. Code Ann. § 53.045 (West Supp. 2016); *In re L.G.*, No. 02-07-00418-CV, 2008 WL 4053024, at *3 (Tex. App.—Fort Worth Aug. 28, 2008, no pet.) (mem. op.) ("A trial court lacks the authority to impose a determinate sentence unless the State presents its petition to the grand jury, and the grand jury approves it."). The State later filed amended petitions, and a grand jury likewise approved the amended petitions.

⁴See Tex. Fam. Code Ann. § 54.03(a), (f) (West 2014).

assessed a determinate sentence of twenty-three years' confinement to be served in the Texas Juvenile Justice Department (TJJD) "with a possible transfer to [TDCJ]."⁵

During his confinement in TJJD, which began in late 2013, appellant continued to engage in troubling behavior. He assaulted and threatened staff and other youth. He had "criminally minded" responses to questions about moral dilemmas in a psychological evaluation. He had "412 documented incidents of misbehavior resulting in 278 referrals to the [s]ecurity [u]nit and 95 [s]ecurity admissions." He engaged in inappropriate sexual behavior and vandalism. He fled apprehension and "[c]hunk[ed] [b]odily [f]luids." He tended to be impulsive, failed to plan ahead, demonstrated irritability, disregarded others' safety, and had a lack of remorse for aggressive behavior. Appellant "appear[ed] to be unconcerned" about the possibility of his transfer to TDCJ. He "exhibit[ed] an absence of internal motivation to conform and follow prosocial standards set within a controlled environment." He was placed in the agency's most restrictive programs "designed to manage and rehabilitate youth with highly aggressive behaviors and . . . failed to demonstrate a reduction in aggression or advancement in the program[s]."

⁵See Tex. Fam. Code Ann. § 54.04(d)(3) (West Supp. 2016) (stating that a court may sentence a child to commitment in TJJD with possible transfer to TDCJ if the child engaged in certain criminal conduct and a grand jury approved the State's petition).

TJJD evaluated appellant's rehabilitative treatment progress on a monthly basis using a scale of one to four, with four signifying the highest level of rehabilitation. With the exception of two months toward the beginning of 2015, appellant remained on stage one during the entirety of his years-long confinement in TJJD. He did so despite receiving services that included medication and programs related to anger management and behavior management. Although enrollment in a capital and violent offender treatment program could have helped him, his ongoing behavioral issues impeded his participation in it. Appellant is involved in a gang and does not appear to have any intent to leave it.

A report by Leonard Cucolo, a TJJD court liaison, that the trial court admitted as an exhibit states, "It appears that staff and treatment providers have worked diligently to provide interventions and opportunities for [appellant] to make progress and succeed in the TJJD program, though [appellant] has not demonstrated [any] benefit from these interventions." The report also states, "There is little evidence to suggest that [appellant] would choose to benefit from rehabilitative treatment in the future."

In May 2016, a representative from TJJD wrote a letter to the trial court that asked the court to transfer appellant to TDCJ.⁶ The letter stated in part,

⁶See Tex. Hum. Res. Code Ann. § 244.014(a) (West Supp. 2016) (stating that after a juvenile who is serving a determinate sentence becomes sixteen years old, TJJD may refer the child to the juvenile court for approval of the child's

“[Appellant] has not yet completed his 23 year sentence. . . [H]e is 16 years of age. We believe his conduct within the [TJJD] has indicated that the welfare of the community requires his transfer.” After holding an evidentiary hearing in June 2016, the trial court signed an order transferring appellant to TDCJ. Appellant brought this appeal.

The Propriety of the Transfer Decision

In one point, appellant contends that the trial court abused its discretion by transferring him to TDCJ. When TJJD refers a juvenile who is serving a determinate sentence to a trial court for a possible transfer to TDCJ, the court must set a hearing. Tex. Fam. Code Ann. § 54.11(a) (West Supp. 2016). At the conclusion of the hearing, the court may either order the juvenile’s return to TJJD or transfer the juvenile to TDCJ’s custody for the completion of the sentence. *Id.* § 54.11(i). In making the decision of return or transfer, the court

may consider the experiences and character of the person before and after commitment to [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 [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.

transfer to TDCJ if the child has not completed the sentence and the “the child’s conduct . . . indicates that the welfare of the community requires the transfer”).

Id. § 54.11(k); see *In re H.C.*, No. 02-15-00149-CV, 2016 WL 354297, at *2 (Tex. App.—Fort Worth Jan. 28, 2016, no pet.) (mem. op.) (explaining that under section 54.11(k), “the trial court may assign different weights to the factors it considers, and the court need not consider every factor”).

We review a transfer under section 54.11 for an abuse of discretion. *In re K.Y.*, 392 S.W.3d 736, 737 (Tex. App.—Dallas 2012, no pet.); *In re J.D.P.*, 149 S.W.3d 790, 792 (Tex. App.—Fort Worth 2004, no pet.). “We are to review the entire record to determine whether the trial court acted without reference to any guiding rules and principles. We may not reverse a trial court’s decision merely because we disagree with that decision, so long as the trial court acted within its discretionary authority.” *J.D.P.*, 149 S.W.3d at 792 (citation omitted). An abuse of discretion does not occur when some evidence of substantive and probative character supports the trial court’s decision. See *K.Y.*, 392 S.W.3d at 737.

In addition to the facts recited above, the evidence at the transfer hearing established that when appellant was first confined in TJJD, Cucolo explained to him that his release, parole, or transfer to TDCJ would be based on his progress and behavior. Appellant completed a psychological evaluation that showed that he did not have a serious mental disease or defect. While confined, he earned some credits toward a high school diploma.

Concerning the capital and violent offender treatment program that appellant did not participate in, Cucolo testified,

[I]t is a residential program for kids -- for youths that are committed to us with violent offenses

It is an intensive program that is at the Giddings Unit. It's led by a master level and Ph.D. therapist. It is a closed group. So all the kids are housed in one dorm and they're in one group and they move through their treatment together. They focus on their committing offense, the nature of it, as well as, the manner in which it was committed. They explore, examine their life history through a life story component for the purpose of understanding different life events that may have contributed to their personality development and certainly how they became the individual who committed the offense they committed.

They also have another major component called the crime story or what is called the crime reenactment, and youth will reenact their offenses for the purpose of understanding the steps, stages that they took in the commission of their offense, understanding the thoughts and feelings that led to their offense, as well as, being exposed to hopefully an understanding of the impact of that offense. They reenact it both ways; from a victim perspective, as well as, their -- as their offender, and they will role play within other youths' committing offenses and, again, it's to understand ways, I mean, they were able to commit the offense and ways to intervene with different steps, different stages to prevent offenses from occurring again.

One of the things in the offense aspect of it, they also examine their entire history of any kind of delinquent conduct, criminal offenses as well, to understand where that pattern began, how it began. So it's a very important program, and it's a very successful program with kids with these types of offenses.

Cucolo acknowledged that the capital and violent offender program is the "Cadillac" of TJJD's programs and that appellant had a high need for it. But Cucolo explained that because of appellant's "[e]xtremely poor" and disruptive behavior (including the acts described above) and his poor response to programs offered to him, he could not adequately and safely be managed in TJJD. Cucolo

testified that to be eligible for the program, appellant would have to “establish a fairly stable behavior record.”

Cucolo testified that appellant’s behavior had negatively impacted TJJJ’s ability to provide services to other children; he explained that appellant had “hurt a lot of kids.” Cucolo recommended appellant’s transfer to TDCJ.

Appellant’s mother also testified. She explained that appellant’s father had spent most of appellant’s life in prison and that when appellant’s father was not in prison, he ignored appellant’s attempts to cultivate a parent-child relationship. Appellant’s mother testified that appellant’s limited relationship with his father caused appellant to become angry. According to appellant’s mother, appellant has remorse for killing the five-year-old boy.

Appellant testified that the trouble he had caused since being confined in TJJJ was because he could not control his anger. With regard to the murder he committed, appellant testified that at the time, he was upset about school and family and just wanted to hurt or kill someone. He also testified,

I have a journal that I write in every day, two to three hours a day or every time I feel myself getting the urge to get upset. I write . . . in my journal and say what I say to my victim and how I’m sorry and what things be on my mind when I think about him and how I have dreams about him and what that does to me inside my mind.

. . . .

. . . It make[s] me feel sorry because I . . . took his life just because I was upset.

When appellant's counsel asked him why the court should delay a decision to send him to TDCJ, he responded,

I'm trying to make a change. When I get upset I'm not . . . impulsive as I was before. . . . When I get upset first thing come to my mind is my mama. Like I need to get out there to help her And I don't want to go to [TDCJ]. If I go I'll be an old man when I get out. I want to do something better. I don't want to be living my life in here, growing up in here. . . . So I'm trying to do something different like go to college, start me a business, do everything that I want to do but do it in a different way so it's successful to me.

. . . .

. . . If the Court decides to send me back, I'm going to do what I got to do to . . . complete my treatment, do everything that I'm supposed to do in TJJD and avoid going to [TDCJ], and, like, due to my negative behavior, I know different things can happen to me. So it shouldn't take for me to come back. I understand that. For me to come back to realize, hey, man you're doing too much. Like -- I want to, like, be good. I don't want everybody to know my reputation. Oh, you got to watch him, he like to assault people and hurt people. I want people to be like, oh, yeah, I can allow him to help me around. You know what I'm saying? And when I get mad, I just walk away or I use my coping skills. I get my journal and I write in my journal. That's all I do.

On cross-examination, appellant acknowledged that he had been told several times while confined that if his behavior did not improve, he would be transferred to TDCJ and that he had nonetheless not changed his behavior.

Although a factfinder could have weighed some evidence such as appellant's expression of remorse and his asserted desire to improve his behavior in favor of returning appellant to TJJD, in light of the violent, malicious character of appellant's capital murder offense, his continuing pattern of aggressive criminal acts before and after committing that offense, his failures to

change this pattern while knowing that a transfer to TDCJ was possible, his disruption of TJJD services that could benefit other juveniles, and the recommendation of TJJD and the prosecutor that transfer was warranted, we cannot conclude that the trial court acted without guiding rules and principles by transferring appellant to TDCJ. See *K.Y.*, 392 S.W.3d at 737; *J.D.P.*, 149 S.W.3d at 792; see also Tex. Fam. Code Ann. § 54.11(k); *In re J.B.C.*, No. 02-07-00431-CV, 2008 WL 4531701, at *4 (Tex. App.—Fort Worth Oct. 9, 2008, no pet.) (mem. op.) (upholding a transfer to TDCJ when a juvenile had been adjudicated for murdering his grandmother and the juvenile was assaultive and threatening during his confinement in the juvenile system).

Appellant contends that that the trial court could not transfer him to TDCJ without allowing him an opportunity to participate in the capital and violent offender program. But “Texas courts have . . . held that a trial court does not abuse its discretion in transferring a juvenile to TDCJ even when evidence suggests that the possibility of more specialized treatment would be obtained by a juvenile’s return to [TJJD].” *J.B.C.*, 2008 WL 4531701, at *3; see also *J.R.W. v. State*, 879 S.W.2d 254, 258 (Tex. App.—Dallas 1994, no writ) (upholding a trial court’s transfer of a juvenile to TDCJ even though a state psychologist recommended that he be sent back for participation in a specialized program); *In re C.D.R.*, 827 S.W.2d 589, 592–93 (Tex. App.—Houston [1st Dist.] 1992, no writ) (rejecting a juvenile’s claim that he should have been returned for a specialized sex offender program). We cannot conclude, as appellant argues,

that appellant's participation in the capital and violent offender program was a prerequisite to his transfer to TDCJ.⁷ See *J.B.C.*, 2008 WL 4531701, at *4 (affirming a juvenile's transfer to TDCJ even though one of the juvenile's case managers testified that the juvenile would benefit from specialized treatment in the juvenile system). The trial court could have reasonably found that appellant's success in the capital and violent offender program was unlikely given his numerous assaultive and criminal acts while confined and that his presence in the program could have jeopardized the success of other participants.

Considering all of the evidence presented in the trial court, we cannot conclude that the court abused its discretion by granting TJJD's request to transfer appellant to TDCJ. See Tex. Fam. Code Ann. § 54.11(i)(2), (k); *K.Y.*, 392 S.W.3d at 737. We overrule appellant's point.

Conclusion

Having overruled appellant's sole point, we affirm the trial court's order transferring appellant to TDCJ to serve the remainder of his sentence.

PER CURIAM

PANEL: LIVINGSTON, C.J.; MEIER and GABRIEL, JJ.

DELIVERED: January 26, 2017

⁷Appellant contends that TJJD cannot deny "a youth a chance at such a program for unruly behavior." As the State contends, however, this conclusion would require TJJD to risk sabotaging specialized programs by enrolling juveniles who have not shown willingness to meet the programs' standards.