**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

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| STATE OF WASHINGTON, | ) | |
| | ) | DIVISION ONE |
| Respondent, | ) | |
| | ) | No. 66577-4-I |
| v. | ) | |
| | ) | OPINION PUBLISHED |
| QUINCY TYREE CHILDRESS, | ) | IN PART |
| | ) | |
| Appellant. | ) | FILED: July 16, 2012 |
| _____ | ) | |

Dwyer, J. — In Washington, a juvenile court may decline jurisdiction, thus transferring the matter for adult criminal prosecution, where the court determines by a preponderance of the evidence that declination would be in the best interest of the juvenile or the public. In making this determination, the court must consider the eight Kent[1] factors originally set forth by the United States Supreme Court. The juvenile court's declination decision is a jurisdictional determination, not a sentencing determination. Indeed, as the juvenile must be found guilty of the alleged offense beyond a reasonable doubt prior to receiving any sentence, the declination decision itself does not subject the juvenile to any sentence whatsoever. Accordingly, neither the state nor federal constitution requires the facts supporting declination to be proved to a jury beyond a reasonable doubt.

Here, the juvenile court determined that declining jurisdiction over Quincy

[1] Kent v. United States, 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966).

Childress would be in the best interest of Childress or the public. In so doing, the court properly considered the eight factors set forth in Kent. Childress's constitutional rights were not thereby violated. Because Childress's additional contention, that the juvenile court abused its discretion in declining jurisdiction, is also without merit, we affirm.

I

Quincy Childress was charged in juvenile court with rape in the second degree based upon a November 12, 2009 incident involving A.P., a counselor working at Cypress House. Cypress House is a home for juvenile sex offenders where Childress was living at that time. A.P. reported to police that "she was sitting on a couch in Cypress House when Childress put his thumbs on her throat and attempted to choke her." She further reported that Childress sat on top of her and put his hand under her shirt and bra. Childress "then put his hand down A.P.'s . . . pants and penetrated her vagina with his finger." A.P. was able to escape when a co-worker entered the house. Childress was 15 years old at the time of the incident.

The State filed a motion requesting that the juvenile court decline jurisdiction and transfer the case for adult criminal prosecution. In its decline of jurisdiction report, the probation department recommended that the trial court decline jurisdiction. Childress filed a memorandum in opposition to declination, contending that the community could be adequately protected without a decline

of jurisdiction by the juvenile court.

At an April 14, 2010 hearing, the court considered the eight factors set forth in Kent v. United States, 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966). Based upon its consideration of those factors, the juvenile court declined jurisdiction. Childress moved for reconsideration of the juvenile court's declination order; the court denied his motion. Childress was thereafter convicted of rape in the second degree in the superior court and sentenced to a term of incarceration of 84 months to life.

He appeals, assigning error only to the juvenile court's declination of jurisdiction.

II

Childress contends that the declination procedure violated his federal constitutional rights to due process and to a jury trial because the juvenile court found the facts necessary to decline jurisdiction by a preponderance of the evidence. Such facts, he asserts, are facts essential to punishment that must be proved to a jury beyond a reasonable doubt. We have previously rejected this contention. We now do so once more.

Striking down a hate crime statute that permitted a defendant to be sentenced beyond the statutory maximum based upon a factual finding made by the trial court, the United States Supreme Court in Apprendi v. New Jersey held that, "[o]ther than the fact of a prior conviction, any fact that increases the

penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). Whether the fact is labeled an "element" or a "sentencing factor," the Court explained, is not of consequence. Apprendi, 530 U.S. at 494. "[T]he relevant inquiry is one not of form, but of effect—does the required finding expose the defendant to a greater punishment than that authorized by the jury's guilty verdict?" Apprendi, 530 U.S. at 494. The statute invalidated therein, the Court determined, violated the defendant's constitutional rights to due process and to a jury trial, which, collectively, entitle the accused to have a jury determine beyond a reasonable doubt every element of a charged offense. Apprendi, 530 U.S. at 477, 490.

The Court has since applied the rule set forth in Apprendi to invalidate various sentencing schemes, in each case determining that the facts authorizing the imposition of a sentence greater than that authorized by a jury verdict or guilty plea were required to be found by a jury beyond a reasonable doubt. Cunningham v. California, 549 U.S. 270, 127 S. Ct. 856, 166 L. Ed. 2d 856 (2007) (holding that California's indeterminate sentencing law, which authorized the trial court judge to find facts exposing a defendant to an elevated upper term sentence, violated the right to a jury trial); United States v. Booker, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005) (holding that facts triggering an elevated sentence under the then-mandatory Federal Sentencing Guidelines

must be proved to a jury beyond a reasonable doubt); Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004) (invalidating a Washington statute authorizing the imposition of a sentence beyond the standard range for the offense based upon findings made by the sentencing judge); Ring v. Arizona, 536 U.S. 584, 112 S. Ct. 2428, 153 L. Ed. 2d 556 (2002) (invalidating an Arizona statute that authorized the imposition of the death penalty based upon aggravating factors found by the trial court judge).

We have previously addressed the application of the Apprendi rule to our state's declination procedure. State v. H.O., 119 Wn. App. 549, 81 P.3d 883 (2003). There, H.O. contended that the Supreme Court's decisions in Apprendi and Ring "require that a juvenile court use the 'beyond a reasonable doubt' standard to determine whether to decline jurisdiction over a juvenile charged with a crime." H.O., 119 Wn. App. at 552. Distinguishing Apprendi and Ring, we rejected that contention:

> We do not read Apprendi and Ring as broadly as does H.O. In those cases, either the guilt or the sentence of an accused was at issue. Neither guilt nor sentencing is at issue at the decline hearing. Rather, the hearing is designed to determine whether the case should be heard in juvenile or adult court. Neither of these cases requires that this jurisdictional determination, intended only to determine the appropriate forum for trial, must be supported by the "beyond a reasonable doubt" standard. All that is required is sufficient evidence for a judge to make the discretionary determination whether to retain or transfer jurisdiction of the case.

H.O., 119 Wn. App. at 554-55 (footnote omitted). We similarly rejected H.O.'s assertion that In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368

(1970), required such a result. That case "present[ed] the single, narrow question whether proof beyond a reasonable doubt is among the 'essentials of due process and fair treatment' required during the adjudicatory stage when a juvenile is charged with an act which would constitute a crime if committed by an adult." Winship, 397 U.S. at 359. Because, we determined, "[a] declination hearing is not an adjudicatory proceeding," Winship was inapplicable. H.O., 119 Wn. App. at 555.

Thereafter, Division Two relied on our decision in H.O. in holding that neither Apprendi nor Blakely apply to a juvenile decline proceeding. In re Pers. Restraint of Hegney, 138 Wn. App. 511, 528, 158 P.3d 1193 (2007). Acknowledging that Washington courts had not yet decided whether Blakely required that "a jury must find beyond a reasonable doubt that a defendant is not amenable to treatment as a juvenile before the juvenile court may decline juvenile jurisdiction," Hegney, 138 Wn. App. at 527, the court followed the "'overwhelming weight of authority,'" which concluded "'that Apprendi does not apply to a juvenile waiver proceeding because it is not a sentencing proceeding, but rather a determination of the court's jurisdiction.'" Hegney, 138 Wn. App. at 527-28 (quoting State v. Kalmakoff, 122 P.3d 224, 227 (Ct. App. Alaska 2005)). The court agreed with the Alaska Supreme Court that the reasoning of these decisions "'foreshadow[ed] that courts will not arrive at a different decision following Blakely.'" Hegney, 138 Wn. App. at 528 (quoting Kalmakoff, 122 P.3d

at 227).[2]

Notwithstanding the fact that we have previously determined that the Apprendi rule is not implicated by our state's juvenile decline procedure, Childress asserts that intervening case law renders our prior decisions no longer authoritative. He contends that the rule set forth in Apprendi and Blakely—that all facts legally essential to a defendant's punishment must be proved to a jury beyond a reasonable doubt—is sufficiently expansive to apply to the facts supporting a juvenile court's order of decline.

Recent United States Supreme Court precedent limiting the scope of that rule suggests otherwise. See Oregon v. Ice, 555 U.S. 160, 129 S. Ct. 711, 172 L. Ed. 2d 517 (2009). In Ice, the Court addressed the constitutionality of an Oregon statute requiring judges "to find certain facts before imposing consecutive, rather than concurrent, sentences." 555 U.S. at 164. The

[2] See also United States v. Miguel, 338 F.3d 995, 1004 (9th Cir. 2003) (holding that Apprendi "by its own terms" does not apply to transfer proceedings because a transfer to adult criminal court "does not 'increase the penalty . . . beyond the prescribed statutory maximum' for those crimes") (quoting Apprendi, 530 U.S. at 490); United States v. Juvenile, 228 F.3d 987, 990 (9th Cir. 2000) (holding that transfer statutes are not analogous to statutes "increasing the potential penalties in adult criminal cases," as a transfer statute "does not *per se* increase punishment; it merely establishes 'a basis for district court jurisdiction of prosecutions to which it applies'") (quoting United States v. David H., 29 F.3d 489, 491 (9th Cir. 1994)); State v. Rodriguez, 205 Ariz. 392, 401, 71 P.3d 919 (2003) (holding that statute allowing for transfer of juvenile to adult criminal court "does not implicate Apprendi" because the judge's transfer determination "does not subject [the] juvenile to enhanced punishment; it subjects the juvenile to the adult criminal justice system"); People v. Beltran, 327 Ill.App.3d 685, 689-90, 765 N.E.2d 1071 (2002) (holding that the state's transfer statute did not violate the Apprendi rule because the transfer hearing "determines not the minor's guilt but the forum in which his guilt may be adjudicated"); State v. Jones, 273 Kan. 756, 778, 47 P.3d 783 (2002) (holding that Apprendi does not apply to juvenile waiver hearings because the applicable statute "does not involve guilt or innocence, but involves the determination of which system will be appropriate for a juvenile offender"); Caldwell v. Commonwealth, 133 S.W.3d 445, 453 (Sup. Ct. Ky. 2004) (holding that the Apprendi rule was not implicated because "[a] juvenile transfer proceeding does not involve sentencing or a determination of guilt or innocence").

defendant asserted that his Sixth Amendment right to a jury trial was violated when consecutive sentences were imposed based upon facts found by the trial judge. Ice, 555 U.S. at 166. He contended that he was entitled "to have the jury, not the sentencing judge, find the facts that permitted the imposition of consecutive sentences." Ice, 555 U.S. at 166.

The Supreme Court disagreed, rejecting the defendant's suggestion that "the federal constitutional right attaches to every contemporary state-law 'entitlement' to predicate findings." Ice, 555 U.S. at 170. Rather, "[t]he jury-trial right is best honored through a 'principled rationale' that applies the rule of the Apprendi cases 'within the central sphere of their concern.'" Ice, 555 U.S. at 172 (quoting Cunningham, 549 U.S. at 295 (Kennedy, J., dissenting)). This "core concern," the Court explained, is the "legislative attempt to 'remove from the [province of the] jury' the determination of facts that warrant punishment for a specific statutory offense." Ice, 555 U.S. at 170 (alteration in original) (quoting Apprendi, 530 U.S. at 490). The decision to impose sentences concurrently, the Court recognized, is not "rooted in the historic jury function" of "determining whether the prosecution has proved each element of an offense beyond a reasonable doubt." Ice, 555 U.S. at 163. Accordingly, the Court "declined to extend Apprendi to an area of criminal sentencing—concurrent or consecutive sentencing—in which the jury had traditionally played no role." Villalon v. State, 956 N.E.2d 697, 703 (Ct. App. Ind. 2011).

Because it limits the Apprendi rule to those cases directly implicating that rule's "core concern," Ice is significant here. Washington courts have not, since Ice was decided, had the occasion to consider its reasoning in evaluating the constitutionality of juvenile decline proceedings. However, other states have. See, e.g., Kirkland v. State, 67 So.3d 1147 (Dist. Ct. App. Fla. 2011); Villalon, 956 N.E.2d 697; State v. Andrews, 329 S.W.3d 369 (Sup. Ct. Mo. 2011), cert. denied, 131 S. Ct. 3070, 132 S. Ct. 260 (2011). In so doing, these states have concluded that the rule set forth in Apprendi does not apply to such proceedings.

The Supreme Court of Missouri, in upholding that state's juvenile certification statute, noted that

> [t]he courts in every jurisdiction that have juvenile-certification statutes similar to Missouri's and that have considered this issue have concluded that Apprendi's rule does not apply to juvenile transfer or certification proceedings and that there is no constitutional right to a jury determination respecting the transfer of a juvenile's case to a court of general jurisdiction.

Andrews, 329 S.W.3d at 374-75. Echoing the United States Supreme Court's concern with restricting the Apprendi rule to decisions within the jury's historical realm, the court explained:

> The juvenile division's consideration of the statutorily defined criteria in determining whether it should retain jurisdiction over a juvenile is not the type of factual determination that was understood to be within the jury's domain by the framers of the Bill of Rights and, therefore, is not controlled by Apprendi and its progeny. In fact, the determination of those criteria does not increase the statutory maximum punishment the juvenile will face; it only determines which court has final jurisdiction over the juvenile. The statutory maximum punishment is established by statutes found in the criminal code, not by a juvenile division in a

certification proceeding.

Andrews, 329 S.W.3d at 372-73. The court concluded that the defendant's certification

> did not expose him to any greater punishment than authorized by the jury's verdict as required to violate Apprendi. This is because the judgment that certified [the juvenile] to be tried as an adult did not impose any sentence on him whatsoever. Instead, it only determined that his case would be heard in a circuit court of general jurisdiction rather than the juvenile division of the circuit court—a decision to which other courts have determined Apprendi does not apply.

Andrews, 329 S.W.3d at 375-76 (internal citation omitted) (citing Gonzales v. Tafoya, 515 F.3d 1097, 1116 (10th Cir. 2008); United States v. Miguel, 338 F.3d 995, 1004 (9th Cir. 2003)).

The Indiana Court of Appeals employed similar reasoning in upholding its state's analogous juvenile waiver statute. Villalon, 956 N.E.2d at 702-04. The court recognized that,

> [a]s a practical matter, a child who is alleged to have committed a delinquent act and is not retained in the juvenile justice system but is waived into adult court will (if found guilty) face harsher consequences for his or her conduct. Nonetheless, Ice makes clear that not all judicial fact-finding ultimately resulting in an increased term of incarceration invades the province of the jury. . . . Villalon provides no argument as to how our juvenile waiver statute might be understood to encroach upon the jury's traditional domain.

Villalon, 956 N.E.2d at 704. The court further determined that its juvenile waiver statute did not implicate Apprendi's "core concerns":

> [T]he waiver statute does not set forth the elements of an offense, does not provide for a determination of guilt or innocence, and is

> not directed to consequences *after* adjudication of guilt. It does not provide a sentencing enhancement correlated with the State's proof of a particular fact. Accordingly, we conclude that the statute does not implicate the core concerns of Apprendi.

Villalon, 956 N.E.2d at 704. Thus, the court rejected the defendant's contention that he was entitled to have a jury determine the facts supporting the juvenile court's waiver of jurisdiction. Villalon, 956 N.E.2d at 702-04.

Given the Supreme Court's recent elucidation regarding the scope of Apprendi—and the persuasive reasoning of other state courts in upholding their own juvenile jurisdiction statutes—we conclude that our reasoning in prior opinions rejecting the arguments presented herein is sound. The trial court's declination decision is a jurisdictional determination, intended only to locate the appropriate forum for a defendant's trial. It does not impose upon the defendant any sentence at all, much less one greater than the prescribed statutory maximum.

Although, here, declination was necessary for Childress to be subject to the greater punishments available in adult criminal court, it was not sufficient; in order for Childress to be subject to any punishment at all, Childress first had to be convicted—by a jury based upon facts proved beyond a reasonable doubt—of the alleged offense. The trial court found by a preponderance of the evidence that "declination would be in the best interest of the juvenile or the public." RCW 13.40.110(3). No more is necessary. H.O., 119 Wn. App. at 554-55. Childress's constitutional rights were not thereby violated.

The remainder of this opinion has no precedential value. It will, therefore, be filed for public record in accordance with the rules governing unpublished opinions.

III

Childress additionally contends that the trial court abused its discretion by declining jurisdiction because the State failed to prove by a preponderance of the evidence that declination was in the best interest of Childress or the public. We disagree.

A juvenile court's decision to decline jurisdiction is discretionary and subject to reversal only if based on clearly untenable or manifestly unreasonable grounds. State v. M.A., 106 Wn. App. 493, 498, 23 P.3d 508 (2001). The court's factual findings will not be reversed if they are supported by substantial evidence. M.A., 106 Wn. App. at 498. Substantial evidence exists where there is sufficient evidence to persuade a fair-minded, rational person of the truth of the premise. State v. Ware, 111 Wn. App. 738, 742, 46 P.3d 280 (2002).

After holding a decline hearing, the juvenile court may "order the case transferred for adult criminal prosecution upon a finding that the declination would be in the best interest of the juvenile or the public." RCW 13.40.110(3). The State has the burden of proving by a preponderance of the evidence that declining jurisdiction is in the best interest of the juvenile or the public. State v. Toomey, 38 Wn. App. 831, 834, 690 P.2d 1175 (1984). In determining whether

to decline jurisdiction, the juvenile court must consider the eight factors originally enumerated by the United States Supreme Court in Kent, 383 U.S. at 566–67.[3] The Kent factors are:

> (1) the seriousness of the alleged offense and whether the protection of the community requires waiver; (2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner; (3) whether the alleged offense was against persons or against property; (4) the prosecutive merit of the complaint; (5) the desirability of trial and disposition of the entire offense in one court when the juvenile's accomplices in the alleged offense are adults; (6) the juvenile's sophistication and maturity as determined by consideration of his or her home, environmental situation, emotional attitude, and pattern of living; (7) the juvenile's record and previous history; and (8) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile by the use of procedures, services, and facilities available in the juvenile court.

M.A., 106 Wn. App. at 497-98.

Not all eight of the Kent factors must be proved in order to justify declination; however, the juvenile court's failure to give appropriate consideration to the Kent factors constitutes an abuse of discretion. M.A., 106 Wn. App. at 498. "This court examines the entire record, including the court's oral opinion, to determine the sufficiency of the court's reasons for declination." H.O., 119 Wn. App. at 556.

Here, in making its decision to decline jurisdiction, the juvenile court considered the decline of jurisdiction report provided by the probation

[3] Our Supreme Court has adopted the Kent factors to govern decline hearings in Washington. See State v. Williams, 75 Wn.2d 604, 606-07, 453 P.2d 418 (1969); see also State v. Massey, 60 Wn. App. 131, 136-37, 803 P.2d 340 (1990).

department and Childress's memorandum in opposition to declination. The decline of jurisdiction report, which applied the eight Kent factors to the alleged offense, recommended declination. It asserted that the alleged offense was "aggressive, violent, and willful" in that Childress had allegedly "force[ed] the victim to the floor, attempt[ed] to use the victim's own hood from her sweatshirt to cover her head and face to smother her, chok[ed] her with his thumbs on her throat, and digitally penetrat[ed] her vagina." The report additionally provided Childress's history, noting that Childress had previously been adjudicated guilty for the offense of battery based upon an incident that occurred at an inpatient facility where Childress was being treated for issues related to his "sexually deviant behavior." In addition, Childress was alleged "to have written notes to other youth in the facility promoting the rape of female staff members." The report referred to numerous other similar incidents throughout Childress's life, including, most recently, a report from his mother that he had sexually assaulted his 16-year-old sister. Finally, the report noted that, in 2008, Childress "was determined to be at high risk for a future sexual offense and high risk for a future violent offense."

The probation counselor deemed important the fact that Childress had previously had the opportunity to address his "sexually deviant behavior" in a juvenile facility and that, nevertheless, his behavior "has not curtailed but rather it has escalated to this current offense." Although the counselor believed that

the juvenile justice system could "provide appropriate protection while in custody and appropriate interventions," he recognized as a "shortcoming in the system" that its jurisdiction over Childress would end at age 21. Given that the counselor could not determine whether Childress could be successfully treated by that time, he asserted that the longer period of confinement provided by the adult criminal system was more appropriate.

In opposition to declination, Childress asserted that the alleged offense was not "unusually severe, vicious, or calculating" in comparison with other forcible rape cases. Moreover, he argued that the State's report omitted the fact that, in adult court, the sentence for rape in the second degree is indeterminate, meaning that Childress could potentially serve a life sentence. In addition, Childress asserted that our state's sexually violent predator laws would provide sufficient protection for the community, as they allow, upon the filing of a petition by the State, for indefinite detention of anyone deemed to be a "sexually violent predator."

At the decline hearing, the juvenile court considered the eight factors set forth in Kent. First, the court found that "the seriousness of the offense and the protection of the community" weighed in favor of declination. In so finding, the court noted that, although a sexually violent predator petition could result in additional detention following a criminal sentence, such a petition was not guaranteed to be filed. With regard to the second factor, the court found that the

alleged offense was "a very serious, aggressive, violent and willful act, that certainly appeared to be premeditated." The court found that the third factor—whether the alleged offense was committed against a person—applied in favor of declining jurisdiction. With regard to the prosecutive merit of the complaint, the court noted that neither party had discussed the factor; thus, the court considered that factor to weigh neither in favor of nor against declination.

The court determined that the fifth factor—"the desirability of trial and disposition of the entire offense in one court"—did not apply, as Childress was the only person charged with the offense and, thus, would not have any adult co-defendants at trial. The factor regarding "the sophistication and maturity of the juvenile," the court determined, weighed in favor of retaining jurisdiction, as Childress did not have "the lifestyle of an adult." Similarly, the court determined that Childress's history with juvenile courts and law enforcement weighed against declination because he had not had "a significant amount of contact" with the courts or law enforcement.

Finally, the court determined that the eighth Kent factor, regarding "[t]he prospects of adequate protection of the public and the likelihood of reasonable rehabilitation . . . by use of procedures, services and facilities available to the juvenile court," weighed in favor of declination. The court recognized that Childress had a "significant history" of "concerns in relation to his sexualized behaviors." The court reasoned that services previously provided to Childress

had not resolved those concerns:

> Those behaviors started at age five. They have—although he has received counseling and therapy in relation to those issues, they, to this date, have not been successful. Not only have they not been successful, when you look at the severity of this offense, the allegations of this offense, with the severity of the allegations in relation to the sexualized behavior, it shows a disturbing pattern where the behavior is getting more and more severe, more intense.

Based upon its consideration of the Kent factors, the juvenile court declined jurisdiction.

Childress contends that the juvenile court abused its discretion in declining jurisdiction because the State failed to prove that declination was in the best interest of the public.[4] He asserts that three of the trial court's findings of fact in support of that conclusion are not supported by substantial evidence. He challenges the following findings: (1) that "[t]he protection of the community requires waiver, given the seriousness of the alleged offense"; (2) that "[t]he alleged offense was committed in an aggressive, violent, premeditated, or willful manner"; and (3) that "Juvenile Court procedures, services and facilities are not likely to result in reasonable rehabilitation of [Childress] or adequate protection of the public." Childress is incorrect on all accounts.

First, substantial evidence supports the juvenile court's finding that, given

[4] Childress also asserts that the State failed to prove that declination was in his best interest. However, the juvenile court need not determine that declination is in the best interest of *both* the child and the public. Rather, a determination that declination is in the best interest of the public is sufficient to support the juvenile court's decline of jurisdiction. RCW 13.40.110(3) ( "The court after a decline hearing may order the case transferred for adult criminal prosecution upon a finding that the declination would be in the best interest of the juvenile *or* the public." (emphasis added)).

the seriousness of the alleged offense, the protection of the community required declination. In making this finding, the court appropriately considered the fact that the juvenile criminal justice system could not retain jurisdiction over Childress beyond age 21. The court considered defense counsel's assertion that a sexually violent predator petition could subsequently be filed in order to provide further community protection but deemed important the uncertainty regarding whether such a petition would be filed. Moreover, contrary to Childress's contention, the alleged offense constitutes a serious crime. Childress was charged with rape in the second degree by forcible compulsion. See RCW 9A.44.050(1)(a). As the probation counselor's report indicated, Childress was alleged to have forced the victim to the ground, attempted to choke her and smother her with the hood from her sweatshirt, and digitally raped her. Substantial evidence supports the juvenile court's finding that protection of the community required declination due to the seriousness of the alleged offense.

Substantial evidence also supports the juvenile court's finding that the alleged offense was "committed in an aggressive, violent, premeditated, or willful manner." As explained above, Childress allegedly forced the victim to the ground, attempted to choke and smother her, and "digitally penetrat[ed] her vagina." The police report filed following the incident indicated that the victim sustained physical injuries, including "scratches and swelling" on her neck. She

reported to the responding officer that, because Childress had attempted to choke her, "she was in fear for her life" during the incident. Nevertheless, Childress asserts that the alleged offense was not particularly violent relative to other second-degree rapes. Even were this so, Childress cites to no relevant authority in support of his contention that this precludes a juvenile court's determination that the alleged offense was committed in an aggressive and violent manner.[5] The court did not err by making this finding.

Finally, substantial evidence supports the juvenile court's finding that the procedures, services, and facilities of the juvenile court system were not likely to result in adequate protection of the public or reasonable rehabilitation of Childress. The probation counselor's decline report noted numerous previous incidents relating to Childress's "sexually deviant behavior," including a recent allegation that Childress had sexually assaulted his 16-year-old sister. Moreover, the report indicated that such incidents had occurred in facilities in which Childress was receiving treatment for his behavior. Childress had been

[5] Childress cites State v. Stubbs, 170 Wn.2d 117, 240 P.3d 143 (2010), in support of his assertion that "there must be something unique to this rape charge to warrant the finding that it was a serious premeditated offense requiring decline to protect the public." But Stubbs held only that an exceptional sentence for first degree assault, an element of which is that the defendant inflict "great bodily harm" in the course of the assault, cannot be premised upon a jury finding that the victim's injuries substantially exceeded those necessary to satisfy the elements of the offense. 170 Wn.2d at 128-31. Stubbs is inapposite here.

Childress additionally cites M.A., 106 Wn. App. 493, in support of his contention. There, we rejected the juvenile's argument on appeal that "the very nature of first degree assault is that of a violent crime, and so in virtually every case in which a juvenile is charged with first degree assault, this factor will be satisfied." M.A., 106 Wn. App. at 499. However, because the alleged assault at issue there was particularly violent, we did not address whether a less violent assault would have been sufficient to support the juvenile court's declination decision. M.A., 106 Wn. App. at 499. Accordingly, M.A. does not support Childress's assertion that the alleged offense must be uniquely severe in order to warrant declination.

adjudicated guilty for battery based upon an incident in which he attacked an employee of an inpatient facility where he was receiving treatment. Childress was also alleged to have written notes to other youths in the facility, encouraging the rape of female staff members. The juvenile court appropriately considered the fact that, although Childress had been receiving counseling and therapy, such efforts had not been successful. Moreover, the court recognized that, based upon the allegations herein, Childress's "sexualized behavior" demonstrated "a disturbing pattern where the behavior is getting more and more severe." Given the alleged offense, and the fact that Childress had previously attacked an employee of a similar inpatient facility, the trial court did not err by finding that the public would not be protected—and Childress would not be rehabilitated—were Childress to remain within the same juvenile system that had proved unsuccessful.

The trial court did not abuse its discretion by determining that declination would be in the best interest of the public and, accordingly, transferring Childress's case for adult criminal prosecution.[6]

Affirmed.

[6] Childress additionally asserts that the trial court erroneously relied upon a 2008 risk assessment that was performed when Childress was 13 years old and which, he contends, was of questionable accuracy based upon its own terms. Even were this so, the trial court did not, as Childress contends, decline jurisdiction primarily based upon the risk assessment. Although the risk assessment was noted in the probation counselor's report, the juvenile court's oral ruling makes clear that it did not principally rely upon the assessment.

Dwyer, J.

We concur:

Cox, J.

Grosse, J.