

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 8 , 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-1896

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN THE INTEREST OF BRIAN S., A
PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

BRIAN S.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Kenosha County:
S. MICHAEL WILK, Judge. *Affirmed.*

BROWN, J. Brian S. appeals a juvenile court order waiving jurisdiction. The juvenile court found that waiver was necessary because the need to protect the public outweighed all other considerations. Brian argues that waiver was inappropriate and a misuse of the court's discretion because the record clearly demonstrates how he would benefit from the treatment options available in the

juvenile system. We conclude that the juvenile court did not misuse its discretion and affirm.

In February 1997, Brian, a person under the age of eighteen, was charged with being a party to a crime of burglary in violation of §§ 939.05 and 943.10(1)(a), STATS. He was accused of breaking into a home and vandalizing it, causing substantial damage. Prior to the trial, the State filed a petition under § 938.18, STATS., seeking waiver. After conducting a hearing on the motion, the juvenile court decided that it would be in the best interest of the public if it waived its juvenile jurisdiction. Brian appeals.

Waiver of jurisdiction under § 938.18, STATS., is within the sound discretion of the juvenile court. *See J.A.L. v. State*, 162 Wis.2d 940, 960, 471 N.W.2d 493, 501 (1991). We review a court's exercise of discretion to determine if there has been a misuse. *See id.* When considering a waiver petition, the juvenile court is to regard the best interest of the child as being paramount. *See id.*

In determining the issue raised by Brian, we first note that the juvenile court has discretion as to the weight it affords each of the criteria under § 938.18, STATS., in deciding whether to waive jurisdiction. *See J.A.L.*, 162 Wis.2d at 960, 471 N.W.2d at 501. We will look for reasons to sustain the juvenile court's decision, and we will reverse a waiver determination only if the record does not reflect a reasonable basis for the determination, or a statement of the relevant facts or reasons motivating the determination is not carefully delineated in the record. *See id.* at 961, 471 N.W.2d at 501.

The juvenile court determined that the need to protect the public outweighed all other factors. It began by noting that Brian was age appropriate; he was not developmentally disabled or mentally ill. The juvenile court then noted

that while Brian was charged with a crime against property, his conduct was violent, aggressive and apparently willful. Furthermore, Brian had previously been adjudicated delinquent in the past and the seriousness and violence of his offenses had escalated while he had been on juvenile supervision. Although Brian had a history of performing adequately in treatment, the juvenile court found that “there seems to be a pattern where he can do well in secure detention” but when he is released he continues to violate the law. The juvenile court concluded that the services in the juvenile system “have not seemed to have made much of a difference, so it is not clear that the services in the juvenile system, in fact, are adequate or suitable for [Brian].” Therefore, the juvenile court determined that the longer period of supervision available in the adult system would provide the public with a greater degree of protection than the two years of supervision available in the juvenile system.

The juvenile court clearly stated the relevant facts and reasons motivating its decision to waive jurisdiction, and the record contains sufficient evidence to support its decision. Obviously, when the juvenile court waived its jurisdiction it gave substantial weight to Brian’s history of escalating criminal conduct and the juvenile system’s failure to rehabilitate him, and it was within its discretion to do so. Accordingly, we affirm.

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.

