COURT OF APPEALS
DECISION
DATED AND FILED

March 4, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2987 **Cir. Ct. No. 02 JV 1555**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

IN THE INTEREST OF CECIL L., JR.,
A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

CECIL L., JR.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: CHRISTOPHER R. FOLEY, Judge. *Affirmed.*

¶1 SCHUDSON, J.[1] Cecil L., Jr., appeals from the nonfinal circuit court order waiving juvenile court jurisdiction under WIS. STAT. § 938.18.[2] He argues that the court's decision to waive juvenile jurisdiction was "unsupported by the record" because, he contends, "no facts were offered to support a finding that the serious juvenile offender program was inadequate for [his] treatment and the protection of the public." He also argues that the court improperly based its decision "on its belief that his punishment should be more severe than the maximum possible term of an order of supervision in the juvenile justice system." This court disagrees and, therefore, affirms.

I. BACKGROUND

¶2 In a delinquency petition filed August 23, 2002, the State charged Cecil with felony murder, party to a crime. According to the petition, on July 30, 2002, Cecil, then about sixteen and three-quarters years old, assisted Brandon Mason's attempted armed robbery of Adrien Drew as Drew was sitting in a car. While Cecil waited in another car nearby, Mason, intending to steel the wheel rims from Drew's Monte Carlo, approached Drew and fired a gun through the driver's side window, killing him.

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[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e), (3) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version.

[2] The order indicates that the waiver decision was based on "[c]onsideration of the evidence presented on the criteria listed in Wisconsin Statutes 48.18(5)." WISCONSIN STAT. § 48.18, however, was repealed by 1995 Wis. Act 77, §§ 87-99. WISCONSIN STAT. § 938.18(5) is substantially the same as the former § 48.18(5).

This is not the first time this court has reviewed an order for waiver of jurisdiction that incorrectly refers to a statute that was repealed years ago. As recently as May 21, 2002, this court called this to the attention of another circuit court in the juvenile division for Milwaukee County. *See* ***State v. Romel M.***, No. 02-0181, unpublished slip op. (WI App May 21, 2002). This court now asks the presiding judge of the division to take the necessary steps to assure that documents are updated to reflect the current statutes.

¶3 According to the petition, Mason told Cecil, "'I had to shoot him[;] he wouldn't give up his car.'" Also according to the petition, Cecil admitted "he knew that Mason was going to do the robbery … for the rims and also knew that Mason was armed." Cecil also admitted that "he was willing to help with the robbery by following Mason in Mason's car once Mason had stolen the Monte Carlo," and that "he did touch the gun used in this homicide when Mason picked him up … that day."

¶4 At Cecil's waiver hearing on October 25, 2002, brief testimony was presented by Tana Jeter, an intake specialist at the Milwaukee County Children's Court Center who was familiar with Cecil's juvenile court history, Sean Lansing, a youth minister and former director of a youth ministry who had worked extensively with Cecil, and Dawn Cureton, Cecil's religious education teacher and youth group coordinator. The court also considered letters from Cecil's sister and from four members of the victim's family.

¶5 Tracking the statutory waiver criteria, Ms. Jeter described Cecil's characteristics. She also described the burglary resulting in Cecil's only prior adjudication and told of his successful completion of probation in September 2001. She recommended that the court waive jurisdiction. Ms. Jeter explained that although services within the juvenile system "may be appropriate" for Cecil, "the time remaining may provide some restrictions regarding the services being provided." She was not asked to elaborate, and did not explain what she meant by "restrictions."

¶6 Mr. Lansing and Ms. Cureton related their very positive experiences working with Cecil and their faith in his strong potential, particularly given his respectful personality and strong family and religious support systems. They were

not, however, aware of his delinquency history and were shocked to learn about his involvement in the felony murder.

¶7 The State recommended waiver. While contending that "the seriousness of the crime alone is more than enough to carry a waiver to adult court," the State also pointed out that Cecil, with his intelligence, maturity, good family and religious training, certainly "knew right from wrong" but, nevertheless, had committed burglary and felony murder.

¶8 The defense recommended the serious juvenile offender program as the "only option" for Cecil. Defense counsel emphasized Cecil's relatively minor role as the lookout in the felony murder, his remorse, and the positive aspects of his life and character.

¶9 The court, commenting on the "unspeakable tragedy" for the families of both the victim and offender and for the community, expressed its enormous frustration, particularly given Cecil's many positive attributes and advantages. The court addressed the criteria under WIS. STAT. § 938.18(5), particularly emphasizing the seriousness of the offense, *see* WIS. STAT. § 938.18(5)(b), and Cecil's role:

> Do I think Cecil expected Mr. Drew to be shot? Do I think he wanted Mr. Drew to be shot? No, I don't think any of those things. Do I think he was a willing participant in a circumstance in which there was a very high likelihood that someone could be very seriously hurt or killed? Yes, I do. And whether he wanted it to happen or not, it did happen. He participated in setting emotions, the series of events that lead to Mr. Drew being killed, and he bears significant responsibility for that.

The court further emphasized that the armed robbery Cecil intended was "planned, premeditated, willful, involving use of the weapon," and noted Cecil's prior "significant offense."

¶10 While acknowledging that many of the waiver criteria supported the defense's position, the court ordered waiver, explaining:

> [Cecil] has potential for responding to future treatment. … One of the keys … is … what his needs are, and what the community's needs are, and how long term they are.
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> If he's retained as a serious juvenile offender[,] … that gives … the department of corrections authority over him for a period of five years. And no one can reasonably argue to me … that the types of services available in the juvenile correction setting are not better for a kid with this type of background with these abilities …. I mean they're more individualized, they're more readily available, they're more tailored to meet the needs of juveniles as opposed to adults, so they are more suitable.
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> The issue is whether they are adequate, and that goes to the issue of how long he needs to be subject to our authority. And to me, that's the corker when considered in conjunction with what happened. … Mr. Drew is dead. And as I said earlier[, Cecil] bears significant responsibility for putting in motion the events that lead to his death, even though he didn't intend for it to happen.
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> … [A]m I comfortable with the proposition that Cecil, having been involved in this behavior … would be walking the streets of this community without any authority being exercised over him by the department of corrections authorities five years from now given what's happened. I'm not comfortable with that prospect at all.

Thus, the court concluded that both Cecil's best interests and the community's best interests required waiver.

II. DISCUSSION

¶11 This court recently summarized the standards of review governing appeals from waivers of juvenile jurisdiction:

> Waiver of juvenile jurisdiction under [WIS. STAT. § 938.18] is within the sound discretion of the circuit court. We review the circuit court's decision for misuse of discretion. We first look to the record to see whether discretion was in fact exercised. If discretion was exercised, we will look for any reason to sustain the court's discretionary decision. We will "reverse a juvenile court's waiver determination if and 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."
>
> The paramount consideration in determining waiver is the best interests of the child. It is within the circuit court's discretion how much weight should be afforded each of the factors under [WIS. STAT. § 938.18(5)]. The circuit court must state its finding with respect to the criteria on the record. If the circuit court determines by clear and convincing evidence that it would be contrary to the best interests of the child or the public for the juvenile court to hear the case, it must enter an order that waives jurisdiction and refers the matter to the district attorney for appropriate proceedings in criminal court.

State v. Elmer J.K., III, 224 Wis. 2d 372, 383-4, 591 N.W.2d 176 (Ct. App. 1999) (citations omitted).

¶12 Cecil concedes that the court "did address, in varying degrees," each of the statutory criteria. He argues, however, that the record does not support, and the court did not explain, the proposition that five years under juvenile jurisdiction would be inadequate to serve Cecil's needs and protect the community. While Cecil's argument has some merit, it does not prevail.

¶13 The brief record of the waiver hearing is devoid of details about the serious juvenile offender program or, for that matter, the nature of the supervision Cecil might receive in the adult system. Indeed, on appeal, Cecil has offered nothing to establish that the serious juvenile offender program would be more suitable. *See* ***Barakat v. DHSS***, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995) (appellate court need not consider "amorphous and insufficiently

developed" argument). Thus, the record offers this court no basis on which to weigh the systems' relative appropriateness for Cecil and no basis on which to second-guess the circuit court's assessment.

¶14 Thus, ironically, Cecil's appellate argument primarily relies on the *circuit court's* comments acknowledging what it viewed as the greater suitability of the juvenile corrections system. But that same court, despite that view, concluded that waiver was appropriate. And while the court expressed its conclusion in terms of its "comfort" level rather than through a detailed description of the factors underlying its determination, that is understandable. After all, at some point in waiver proceedings, courts, lacking crystal balls, necessarily rely on their experience in assessing whether the remaining time available for supervision within the juvenile system is sufficient to serve the juvenile and protect the community. Here, given Cecil's age, delinquency history, character and maturity, and particularly given the fact that despite Cecil's probation and strong support systems he still engaged in felony murder, the court could reasonably conclude that five years were not enough.

¶15 To conclude that waiver is appropriate, a juvenile court need not determine that each and every statutory criterion supports waiver. *See* ***B.B. v. State***, 166 Wis. 2d 202, 209, 479 N.W.2d 205 (Ct. App. 1991) ("We have held that sec. 48.18, Stats., does not require a finding against the juvenile on every criterion before waiver is warranted."). And "although the juvenile court is directed to give its primary or foremost weight to the child's interests, it has discretion in weighing all the factors" under the statutory criteria. ***Id.*** at 209.

¶16 Here, the court, weighing the criteria, reasonably assigned great significance to the seriousness of the crime and the limited time remaining for

supervision within the juvenile system. While its conclusion may have been a close call, the circuit court's careful consideration of the testimony, accurate application of the statutory criteria, and reasonable exercise of discretion are evident in the record. Thus, this court concludes that the circuit court did not erroneously exercise discretion in waiving juvenile court jurisdiction.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.