COURT OF APPEALS
DECISION
DATED AND FILED

July 27, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP1836-CR **Cir. Ct. No. 2014CF597**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANISSA E. WEIER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County: MICHAEL O. BOHREN, Judge. *Affirmed*.

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

¶1 PER CURIAM. Under our criminal justice system in Wisconsin, an act that is considered a crime if committed by an adult is considered a "delinquent act" if committed by a child. The Wisconsin Legislature, however, has created

narrow exceptions to this general rule. Pursuant to WIS. STAT. § 938.183(1)(am) (2013-14),[1] the legislature has decreed that if a child over the age of ten has attempted or committed first-degree intentional homicide, that child will be charged in adult criminal court, absent the child's burden to prove he or she is entitled to a "reverse waiver" to juvenile court.

¶2 Anissa E. Weier appeals from a nonfinal order denying a reverse waiver to juvenile court.[2] The dispositive issue is whether Weier met her burden to prove by a preponderance of the evidence that reverse waiver under WIS. STAT. § 970.032(2) is appropriate under the circumstances. The circuit court denied Weier's request after determining that she failed to do so. We affirm, as the circuit court properly exercised its discretion when it rationally considered the relevant testimony, applied the proper legal standard, and reached a conclusion that a reasonable judge could reach.

BACKGROUND

¶3 Twelve-year-old Weier was charged with attempted first-degree intentional homicide[3] as party to a crime, by use of a dangerous weapon, in a criminal complaint filed on June 2, 2014. As set forth in the criminal complaint, as well as testimony at the preliminary hearing, the charge stems from the events of May 31, 2014, when twelve-year-old P.L. was found by a passerby lying,

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

[2] This court granted leave to appeal the order. *See* WIS. STAT. RULE 809.50(3).

[3] Attempted first-degree intentional homicide is a Class B felony. *See* WIS. STAT. § 939.32(1)(a).

blood-soaked in the grass pleading for help. P.L. had been stabbed nineteen times in her chest, abdomen, arm, and legs. When asked who had done this to her, P.L. responded that it was Morgan Geyser, another defendant in this case. Officers quickly learned that a third "friend," Weier, was also involved.

¶4 Weier and Geyser were found walking together miles from the scene. Both girls admitted to conspiring to murder their friend in order to become proxies for Slenderman, a fictional figure conceived on a website devoted to horror stories. Weier explained to police that once they killed P.L. "they would become proxies of Slenderman [and] they would then move up and live with Slenderman in [his] mansion." Weier and Geyser hatched the murder plot in December 2013 or January 2014, and planned for it to coincide with Geyser's sleepover birthday party. Weier and Geyser discussed the details of the crime for months at school and on the bus, using code words so they would not be discovered. During the evening of May 30 and the morning of May 31, Weier and Geyser attempted several times to murder P.L., with each attempt being frustrated. The girls finally lured P.L. into a game of hide-and-seek in the woods, where Weier pushed P.L. to the ground and sat on her. After Weier got off P.L. and stood to the side, Geyser went "ballistic" stabbing her. After telling P.L. to lay quietly and that they would find help for her, Weier and Geyser left to find Slenderman.

¶5 After a preliminary hearing on February 16 and 17, 2015, the circuit court found probable cause to proceed. The circuit court held a two-day evidentiary hearing on May 26 and 27, 2015, on the reverse waiver, pursuant to WIS. STAT. § 970.032(2).

¶6 Dr. Michael Caldwell, a psychologist at the Mendota Juvenile Treatment Center, testified that he diagnosed Weier with persistent depressive disorder, a delusional disorder, which he explained has dissipated since the time of the crime, and an underlying diagnosis of schizotypy,[4] which made Weier vulnerable to accepting a belief in Slenderman. The circuit court denied Weier's reverse waiver request, in a decision consolidated with Geyser for the purpose of disposition, noting that Weier had failed to meet her burden to prove by a preponderance of the evidence that reverse waiver under WIS. STAT. § 970.032(2) was appropriate under the circumstances. Weier appeals.

DISCUSSION

Standard of Review

¶7 We review a circuit court's decision to deny reverse waiver under an erroneous exercise of discretion standard. *See* ***State v. Kleser***, 2010 WI 88, ¶37, 328 Wis. 2d 42, 786 N.W.2d 144. "An appellate court will affirm a discretionary decision if the circuit court examined the relevant facts, applied a proper standard of law, and using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Id.*** Importantly, we will not overturn a circuit court's discretionary determination if the record reflects that discretion was exercised; instead, we will seek out reasons to sustain the decision. ***State v. Verhagen***, 198 Wis. 2d 177,191, 542 N.W.2d 189 (Ct. App. 1995).

[4] Caldwell described schizotypy as "a diminished ability to determine what is real and what is not real and a lot of people have varying degrees of this."

Reverse Waiver

¶8 The adult criminal court has exclusive, original jurisdiction over Weier by virtue of WIS. STAT. § 938.183(1)(am), which grants jurisdiction to the adult court where a juvenile over the age of ten is charged under WIS. STAT. § 940.01(1)(a) with attempted first-degree intentional homicide. The difference between a child convicted in adult court and a child adjudicated delinquent in juvenile court is significant. Stated simply, the State loses all jurisdiction and oversight over a child at the age of eighteen[5] under a juvenile order, absent some other court proceeding. *See* WIS. STAT. § 938.355(4). In adult court, however, the state retains oversight during adulthood for the entire length of the sentence upon conviction, which in this case would not exceed sixty years. *See* WIS. STAT. § 939.50(3)(b).

¶9 WISCONSIN STAT. § 970.032(2) provides a mechanism by which a juvenile may obtain a reverse waiver from adult court to juvenile court. Under § 970.032(2), "[i]f the court finds probable cause to believe that the juvenile has committed the violation of which he or she is accused … the court shall determine whether to retain jurisdiction or to transfer jurisdiction [to the juvenile court]." The court *must* retain jurisdiction in adult court "unless the juvenile proves by a preponderance of the evidence all of the following" elements:

[5] The circuit court assumed that if reverse waiver was granted and Weier was adjudicated delinquent in juvenile court she would be ordered to participate in the Serious Juvenile Offender (SJO) program under WIS. STAT. § 938.538. Under the SJO program, one exception to oversight ending at the age of eighteen is when a youth has been adjudicated delinquent for committing a Class A felony. Sec. 938.538(3)(a)1m. Under that scenario, jurisdiction and oversight could continue until the age of twenty-five. ***Id.*** All parties agree, however, that as Weier was charged with a Class B felony, the juvenile system could only maintain jurisdiction over her until the age of eighteen.

> (a) That, if convicted, the juvenile could not receive adequate treatment in the criminal justice system.
>
> (b) That transferring jurisdiction to the court assigned to exercise jurisdiction under [WIS. STAT.] chs. 48 and 938 would not depreciate the seriousness of the offense.
>
> (c) That retaining jurisdiction is not necessary to deter the juvenile or other juveniles from committing the violation of which the juvenile is accused under the circumstances specified in [WIS. STAT. §] 938.183 (1)(a), (am), (ar), (b) or (c), whichever is applicable.

Sec. 970.032(2). The weight the court affords each factor is within its discretion. *See* ***J.A.L. v. State***, 162 Wis. 2d 940, 960, 471 N.W.2d 493 (1991). Importantly, if the juvenile fails to prove any one of the statutory prongs, the reverse waiver is thwarted "no matter how compelling" the evidence is on the others. *See* ***Kleser***, 328 Wis. 2d 42, ¶97.

WIS. STAT. § 970.032(2)(a): Adequate Treatment

¶10 The circuit court determined that regardless of whether Weier is adjudicated in adult court or in juvenile court her initial period of detention would take place at Copper Lake School for Girls. The circuit court concluded, based on a review of the testimony, that Weier would receive "essentially the same type of programming up until age 18" and the court did not "see a big difference in treatment overall at Copper Lake" under placement as either a juvenile or an adult. Conversely, the circuit court questioned whether Weier would receive adequate treatment in the juvenile system after the age of eighteen, concluding that mental health treatment/oversight would end at age eighteen under the juvenile system, but it would continue under an adult criminal disposition.

¶11 Laurie McAllister, the corrections unit supervisor at Copper Lake, testified that any youth placed at Copper Lake receives the exact same programming and the exact same treatment, regardless of whether they are placed

there under a juvenile order or an adult court sentence. She explained that the only difference in going to Copper Lake as an adult or a juvenile was in the process, not specifically the treatment. When a youth initially arrives at Copper Lake, regardless of being sentenced as a juvenile or as an adult, there is a twenty-one day reception period where needs, such as education or mental health, are assessed. For a juvenile offender, after those assessments are completed, Copper Lake holds a planning conference, which includes the youth, the parents, the social worker, the county representative or state agent, and a reviewer from the Office of Juvenile Offender Review (OJOR). The goal is to work on transitioning back into the community. A planning conference is held every ninety days. If, however, a juvenile is placed at Copper Lake under an adult court sentence, she will not have the same planning conference procedure. Instead, the juvenile's status is reviewed by the Bureau of Classification and Management.

¶12 Shelley Hagan, director of the OJOR, clarified the planning conference procedure, noting that while a juvenile under an adult sentence would "have the same treatment team. We treat all our kids alike, whichever door they come in," she would not have a ninety-day review and her and her family would not be included in the planning process. Hagan confirmed the difference for a youth serving an adult sentence:

> [T]he program review committee representative from [Taycheedah Correctional Institution] is going to be talking with a team at [Copper Lake] that consists of a social worker, a teacher, unit manager, youth counselor from the living unit. So, it's more of an institution to institution type of conversation. We don't have the parental involvement that we do with the juvenile orders, the youth isn't necessarily going to be part of that process and there's no community supervision representative at that point.

¶13 Testimony also revealed that if Weier were placed at Copper Lake under a juvenile order, she would likely enter the Serious Juvenile Offender (SJO)

program. Under the SJO program, pursuant to WIS. STAT. § 938.538(3)(a)1., Weier would receive a court order for a five-year maximum sentence—three years' confinement at Copper Lake and two years' supervision in the community. Hagan explained, however, that a juvenile may be released early from the three-year confinement, serving as little as one year to eighteen months of their original sentence. When an offender completes the SJO program at Copper Lake (both the institutional and community release programs), that individual is no longer monitored or treated by the State. *See* § 938.538(5). This could happen on her eighteenth birthday or before. *See* ***id.*** Significantly, the circuit court judge would have no control over the length of time Weier would stay confined at Copper Lake receiving treatment.

¶14 Weier argues that parental involvement in the planning process is paramount to her treatment needs, and the circuit court erred as her parents will not be involved in her care if reverse waiver does not occur. The circuit court considered the relevant testimony regarding the procedural differences under a juvenile order or an adult sentence and determined that the differences in the process would not affect the adequacy of the treatment Weier would receive. The court found it imperative, given the crime and Weier's treatment needs, that adult supervision was warranted beyond Weier's eighteenth birthday. We conclude that the circuit court properly exercised its discretion given the facts presented and made a decision a reasonable judge could make. As WIS. STAT. § 970.032(2) requires that Weier prove all of the statutory prongs in order to obtain a reverse waiver, we could stop our analysis here; however, for completeness we will address the remaining elements considered by the circuit court.

WIS. STAT. § 970.032(2)(b): Depreciate the Seriousness of the Offense

¶15 The circuit court concluded that Weier failed to meet her burden to prove by a preponderance of the evidence that transferring her case to juvenile court would not depreciate the seriousness of the offense:

> The offense involved in this case was violent, was premeditated. There was a conscious decision at the time of the offense to let the victim die. This was charged as attempted murder, but you have to keep in mind for both defendants that this was in fact not a happenstance that just didn't work out, they would have killed P.L. had they had more time had they thought about it…. This was premeditated murder and an attempt to do so.

According to the court, "[t]he nature of this offense, the youthfulness of the defendants, their mental development, the mental continued development of each of the defendants satisfies this Court … that to place the defendants in the juvenile setting unduly depreciates the nature of the offense, the seriousness of the offense."

¶16 Like the circuit court, other Wisconsin courts that have applied WIS. STAT. § 970.032(2) have analyzed para. (b) by considering whether the crime was premeditated. *E.g.*, ***State v. Dominic E.W.***, 218 Wis. 2d 52, 57-58, 579 N.W.2d 282 (Ct. App. 1998) (noting that the crime was impulsive, not premeditated, in addressing para. (b)). The circuit court highlighted the specific facts of this case revealed at the preliminary hearing, noting the premeditated nature of the crime. The plot to murder P.L. was conceived months in advance, and Weier and Geyser had multiple opportunities to realize the magnitude of their choice and back out of the plan. Weier and Geyser made multiple changes to their plan before finally succeeding. The circuit court also found it significant that the girls gave false information to P.L.—telling her to remain still so she would lose less blood and telling her they would get help when in fact they were leaving her to die and

wanted her to be quiet—to support the court's belief in the serious nature of the offense.

¶17 The circuit court was clear in its conclusion that this was not an accidental or impulsive crime; it was "violent," "premeditated," and "[t]here was a conscious decision at the time of the offense to let the victim die." The circuit court reasonably related the serious nature of the alleged offense to the nature and duration of Weier's potential punishment, finding that a reverse waiver to juvenile court would unduly depreciate the seriousness of the offense. The circuit court did not err in this discretionary decision.

WIS. STAT. § 970.032(2)(c): Deterrence

¶18 Although the circuit court touched briefly on general deterrence, noting that a message must be sent to the public "that a serious offense is dealt with on a serious basis that offers protections to everyone," the court focused its consideration predominantly on specific deterrence. The circuit court acknowledged that "Weier is diagnosed with a schizotypy disorder, it's delusional, it may have some impact with [Geyser] in that subordinate situation. [Weier] has backed off from Slenderman, acknowledges the nonexistence, she has been more subject to expressing remorse and showing some shame for what has occurred." Nevertheless, the court explained, "I'm satisfied that longer term control is necessary for the reasons that I've stated. I'm satisfied as to each of the defendants then that on the issue of deterrence, to return to the juvenile system does not offer deterrence." According to the court, in the juvenile system Weier would be released into the community: "No restraints, no supervision, no overview to see what happens, to see what happens to the person who was 12

when they committed this offense to what they're like at age 16, 17, or 18 to be sure they're safe in the community."

¶19 Dr. Antoinette Kavanaugh, a board certified forensic psychologist, testified that Weier has expressed remorse and regret for her part in the crime. Kavanaugh explained, however, that Weier does not understand how her mental illness played a role in the attempted murder of P.L., and she will need help understanding the role it played "so that doesn't happen again." Kavanaugh acknowledged that deterrence is difficult to get a handle on, but her analysis placed Weier as a moderate risk, which she did to err on the side of protecting the public. Caldwell, testified that he assessed Weier at a more liberal low risk compared to other juveniles subject to adult criminal prosecution, but he agreed with Kavanaugh that Weier has a high likelihood of treatability. The circuit court's determination that deterrence would be best accomplished in the adult criminal court system where Weier would receive continued treatment was not an erroneous exercise of discretion.

CONCLUSION

¶20 The circuit court properly "examined the relevant facts, applied a proper standard of law, and [used] a demonstrated rational process" to reach a reasonable discretionary decision to retain adult jurisdiction of Weier. *See* ***Kleser***, 328 Wis. 2d 42, ¶37.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.