COURT OF APPEALS
DECISION
DATED AND FILED

July 27, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP1845-CR **Cir. Ct. No. 2014CF596**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MORGAN E. GEYSER,

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 Morgan E. Geyser appeals from a nonfinal order denying a reverse waiver to juvenile court.[2] The dispositive issue is whether Geyser 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 Geyser'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 Geyser 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

[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).

of May 31, 2014, when twelve-year-old P.L. was found by a passerby lying, blood-soaked in the grass pleading for help. P.L. was stabbed nineteen times in her chest, abdomen, arm, and legs. When asked who had done this to her, P.L. responded that it was Geyser.

¶4 Geyser and Anissa Weier, another defendant in this case, 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." Geyser and Weier hatched the murder plot in December 2013 or January 2014, and planned for it to coincide with Geyser's sleepover birthday party. Geyser and Weier 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, Geyser and Weier attempted several times to murder P.L., with each attempt being frustrated. Geyser and Weier 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, Geyser and Weier left to find Slenderman.

¶5 On August 1, 2014, the circuit court found Geyser incompetent to proceed to trial. She regained competency under the law at a hearing held on December 18, 2014. 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 June 17 and 18, 2015, on the reverse waiver, pursuant to WIS. STAT. § 970.032(2).

¶6 Testimony at the hearing revealed that Geyser was diagnosed by several experts with schizophrenia and oppositional defiant disorder and that she would need long-term mental health treatment. Despite the necessity for early treatment, Geyser had consistently refused medication to combat the symptoms of her illness. Instead, she prefers to continue to reside in "the fictional world that she has operated in and have contact with the fictional characters that she's had contact with in the past."[4] The circuit court denied Geyser's reverse waiver request, in a decision consolidated with Weier for the purpose of disposition, noting that Geyser 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. Geyser 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] Testimony from Dr. Deborah Collins revealed that Geyser hears voices from a person named Maggie, and she has visits from Harry Potter characters, including Voldemort and Snape.

Reverse Waiver

¶8 The adult criminal court has exclusive, original jurisdiction over Geyser 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 Geyser 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 Geyser 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 Geyser 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 Geyser 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 Geyser 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. The court explained,

> This Court continues to be concerned what happens after 18. For Ms. Geyser's situation based on the nature of schizophrenia and mental health laws, once she left the juvenile system there would be no oversight, no control, no ways to [ensure] public safety, no ways to [ensure] that she receive[d] the adequate treatment that she needs.

¶11 Trudy Breach, a reintegration social worker and case manager at Copper Lake, testified that if Geyser were placed at Copper Lake she would undergo an assessment period where staff members would make a referral based on mental health needs, which may include medication, psychiatric therapy, family therapy, and victim impact programs. Significantly, Breach testified that a girl found guilty in adult court and sentenced to state prison and a girl found guilty in juvenile court and sentenced to a period of confinement would both be held at Copper Lake (until the age of eighteen) and would both receive exactly the same treatment.

¶12 Testimony also revealed that if Geyser 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., Geyser would receive a court order for a five-year maximum sentence—three years' confinement at Copper Lake and two years' supervision in the community. Breach explained, however, that a juvenile may be released early from the three-year confinement, serving as little as one year of her original sentence. If released early, the juvenile would still only be required to serve two years of supervision in the community, serving only three years of her original five-year sentence. When a youth completes the SJO program at Copper Lake (both the institutional and community release programs), she 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 Geyser would remain confined at Copper Lake receiving treatment.

¶13 Dr. Kenneth Casimir, Associate Medical Director at Winnebago Mental Health Institute, testified, "Quite simply, I believe that the focus of the proceedings here should be about obtaining reliable long-term treatment for

[Geyser]." The circuit court considered the relevant facts and testimony and determined that Geyser would receive adequate, if not better, treatment in the adult criminal justice system as treatment would continue past her eighteenth birthday. The court found it imperative, given the crime and Geyser's treatment needs, that adult supervision was warranted beyond Geyser'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 Geyser 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

¶14 The circuit court concluded that Geyser 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."

¶15 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 Geyser and Weier had many opportunities to realize the magnitude of their choice and back out of the plan. Geyser and Weier 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 remain quiet—to support the court's belief in the serious nature of the offense.

¶16 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 Geyser'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

¶17 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 in Geyser's case. According to the circuit court, "longer term control is necessary" for Geyser and, thus, the "juvenile system does not offer deterrence." The court was chiefly concerned with what happens to Geyser after the age of eighteen in order to ensure the protection of the community in the future, noting "[t]here has to be assurance that [this] doesn't happen again, assurance to the public that [this] doesn't happen again." In the juvenile system, Geyser 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."

¶18 Donna Bennett, a social worker for Waukesha County Health and Human Services, testified that it was the department's position that Geyser would be best served in adult court as the department believes that she is a danger to the public and in need of "restrictive custodial treatment … [r]ather than placement back at home or something other than a secure setting." Casimir testified that Geyser was, at the time of the circuit court's decision, untreated for her mental health disorders, meaning that she is still a danger to society as her delusions remain intact. He explained, "In her untreated state [she is] certainly at risk to once again engage in violent behavior." While careful to clarify that not all schizophrenics are dangerous, Casimir conceded,

> [Geyser's] belief, fixed delusional belief, in Slenderman and his ability to harm her … and her subsequent need for violent behavior, because of that, makes her mental illness dangerous…. When your delusion, when your fixed delusion tells you to kill people and when your insight doesn't allow you to seek treatment then schizophrenia becomes dangerous. It is a dangerous illness untreated, and hence we are here.

¶19 Geyser does not believe that she is mentally ill, and she refuses to take medication. Casimir testified that schizophrenics are "notorious for going off their medication[s]," and it is his belief that without continued supervision of treatment there is no guarantee that Geyser will continue to persistently and faithfully take her medication. Casimir expounded that Wisconsin does not have a preemptory supervisory system for mental health, and he "would be concerned that after age 18, after this program were to be completed, in order to come back into the attention of law enforcement, county mental health, the courts, there would have to be some kind of outlandish behavior [by Geyser]." The circuit court's determination that deterrence would be best accomplished in the adult criminal court system 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 Geyser. *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.