**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

March 11, 1999

**Marilyn L. Graves**
**Clerk, Court of Appeals**
**of Wisconsin**



**No. 98-3188**

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

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**IN THE INTEREST OF MORGAN V.,**
**A PERSON UNDER THE AGE OF 17:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**MORGAN V.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for La Crosse County: JOHN J. PERLICH, Judge. *Affirmed.*

EICH, J.[1] We granted Morgan V. leave to appeal a nonfinal order waiving juvenile court jurisdiction. He argues that the circuit court erroneously

[1] This appeal is decided by a single judge pursuant to §752.31(2)(e), STATS.

exercised its discretion by waiving him into adult court without considering that he had never previously been offered services in the juvenile system. We reject his argument and affirm the order.

Morgan V. was charged in a delinquency petition with three counts of burglary and one count of attempted burglary. He was sixteen years old when the alleged crimes occurred. The State petitioned the juvenile court to waive jurisdiction. After holding a hearing, the court ruled that it was in the best interests of Morgan V. and society for the case to be transferred to adult criminal court because "that's where [he] can get the most help and the most assistance." A formal waiver order was subsequently entered and a criminal complaint was filed setting forth the four charges. We have stayed the criminal proceedings pending this appeal.

Waiver of juvenile court jurisdiction is within the sound discretion of the circuit court. ***In re B.B.***, 166 Wis.2d 202, 207, 479 N.W.2n 205, 206-07 (Ct. App. 1991). The primary consideration in such proceedings is the child's best interests. ***In re C.W.***, 142 Wis.2d 763, 767, 419 N.W.2d 327, 328-29 (Ct. App. 1987). While the circuit court must state its findings on the record, and must address each of the criteria enumerated under § 938.18 STATS.,[2] ***In re J.A.L.***, 162

[2] Section 938.18, STATS, provides in part:

> (5) If prosecutive merit is found, the court shall base its decision whether to waive jurisdiction on the following criteria:
>
> (a) The personality and prior record of the juvenile, including whether the juvenile is mentally ill or developmentally disabled, whether the court has previously waived its jurisdiction over the juvenile, whether the juvenile has been previously convicted following a waiver of the court's jurisdiction or has been previously found delinquent, whether such conviction or delinquency involved the infliction of serious bodily injury, the juvenile's motives and attitudes, the juvenile's physical and

(continued)

Wis.2d 940, 960, 471 N.W.2d 493, 501 (1991), the weight to be accorded to each of the listed factors remains within the court's discretion. ***In re G.B.K.***, 126 Wis.2d 253, 259, 376 N.W.2d 385, 389 (Ct. App. 1985). Juvenile jurisdiction will be waived if the court determines, by clear and convincing evidence, that it would be contrary to the best interests of the child or the public for the case to remain in juvenile court. ***In re. J.A.L.***, 162 Wis.2d at 960, 471 N.W.2d at 501. 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." ***Id.*** at 961, 471 N.W.2d at 501.

In support of his argument that the court erroneously exercised its discretion in waiving juvenile court jurisdiction over him because it failed to consider that he has never previously been offered services in the juvenile system, Morgan V. first points out that he is a high school student "with no prior record,

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> mental maturity, the juvenile's pattern of living, prior offenses, prior treatment history and apparent potential for responding to future treatment.
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> (b) The type and seriousness of the offense, including whether it was against persons or property, the extent to which it was committed in a violent, aggressive, premeditated or willful manner, and its prosecutive merit.
>
> (c) The adequacy and suitability of facilities, services and procedures available for treatment of the juvenile and protection of the public within the juvenile justice system, and, where applicable, the mental health system and the suitability of the juvenile for placement in the serious juvenile offender program under s. 938.538 or the adult intensive sanctions program under s. 301.048.
>
> (d) The desirability of trial and disposition of the entire offense in one court if the juvenile was allegedly associated in the offense with persons who will be charged with a crime in circuit court.

no prior acting out at school, no difficulties in the home, an intact marriage between his parents, no strife or divisiveness at home, no drinking or drug abuse, or any other common factors seen in juvenile court"—and that he is, overall, a "considerate kid." He then argues that, given his lack of a prior record, his cooperation and the recognition that he needs help, it is plain that he would benefit from the various services available in the juvenile system—including academic assistance and counseling; services which, he says, have never been offered to him in the past. Beyond this, his argument is largely undeveloped.

The State argues that the circuit court considered the statutory criteria enumerated under § 938.18, STATS., and properly exercised its discretion to waive juvenile court jurisdiction. We agree.[3]

In its decision, the court recognized that, while Morgan V. apparently had a minor learning disability, and that his "[m]ental maturity is questionable," he does not suffer from any form of mental illness or developmental disability. The court also acknowledged that Morgan V. had not previously been adjudicated delinquent, that he lives with his parents and appears to get along with them, and that the crimes with which he was charged did not involve serious bodily harm to anyone. The court then discussed the nature of the charged offenses.

> [T]hese are four extremely serious offenses, three burglaries and one attempted burglary. They involved a lot of premeditation, a lot of thinking about each and every individual crime. Use of gloves indicates some level of sophistication. Certainly a large amount of money involved. If we're talking about restitution, we're not going to get that in the short time available in the juvenile

[3] Morgan V., apparently, does not contest this, for he has not filed a reply brief.

> system. One of incidents involved a weapon, an ax, that was used by this individual, although luckily against property and not persons.

The court went on to express its concern over the fact that Morgan V. continued to commit burglaries even after being interviewed by police—and after being chased by police and barely escaping apprehension—and that he may have lied about the amount of money taken from the victims of the offenses. The court also noted that Morgan V. was not a "follower" in the commission of the offenses, but that at least one of them was allegedly committed by him with only minimal assistance by another party.

Finally, the court recognized that Morgan V. is in need of services—services which are available in both the juvenile and adult systems. Because of his age, however—he was seventeen at the time of the hearing—the court felt that he could not remain in the juvenile system for a sufficient length of time for the system to adequately address his treatment needs. The court noted in this regard that Morgan V. is already in the adult system on other charges, and concluded that, based on all of the factors considered, it was in both his and society's best interests that he be waived into adult court.

The circuit court's decision considers the required factors in light of the record and Morgan V.'s history, and we cannot say that its conclusion was unreasonable. Morgan V. has not persuaded us that the court erroneously exercised its discretion in ruling as it did.

*By the Court.*—Order affirmed.

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