

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 4, 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. 97-1921

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**IN THE INTEREST OF JAMES J.,
A PERSON UNDER THE AGE OF 17:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

JAMES E.J.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
MEL FLANAGAN, Judge. *Affirmed.*

WEDEMEYER, P.J.¹ James E.J., a juvenile, appeals from a non-final order waiving juvenile jurisdiction over him. James claims that the juvenile

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

court erred in finding that it would be in the best interest of both the public and James to waive juvenile court jurisdiction. Because the juvenile court did not erroneously exercise its discretion by finding that a waiver to adult court was in the best interest of the public and James, this court affirms.

I. BACKGROUND

On May 27, 1997, the State filed a delinquency petition charging that James E.J. committed the offense of second-degree sexual assault of a child. On June 3, 1997, the district attorney's office filed a petition for waiver of jurisdiction and notice of hearing with the Milwaukee County children's division. On June 12, 1997, the trial court waived the jurisdiction of the children's division of the circuit court of Milwaukee County over James E.J. Pursuant to § 809.50, STATS., James E.J. petitioned the court of appeals for leave to appeal a non-final order waiving juvenile jurisdiction. On June 27, 1997, the court of appeals granted the petition.

II. DISCUSSION

James claims that the juvenile court erroneously exercised its discretion by waiving him into adult court based on its finding that waiver was in the juvenile's and the community's best interest. This court rejects James's argument. This court will not reverse an order waiving jurisdiction unless there is an erroneous exercise of discretion. *See J.G. v. State*, 119 Wis.2d 748, 754, 350 N.W.2d 668, 672 (1984). The juvenile court is to set forth on the record relevant facts and a statement of the reasons motivating waiver. *See D.H. v. State*, 76 Wis.2d 286, 305, 251 N.W.2d 196, 206 (1977).

In rendering its decision, the juvenile court reasoned that waiving juvenile court jurisdiction was in the best interest of both James and the public because: (1) the crime involved the sexual assault of a fourteen-year-old child; (2) the crime was serious and violent and an act against another person; (3) James had an extensive record, including operating autos, fleeing offenses, and going AWOL from his probation program. The court noted that he had been making progress before his AWOL although he had been sanctioned several times for school violations. The court focused on whether there was a sufficient amount of time in the juvenile program to help James. It noted that appropriate programs exist in both the juvenile system and the adult system, but realized that one year in the juvenile system was not adequate. Looking at the whole picture, James had been under supervision since 1995, and during this time had committed an ongoing series of offenses. These offenses continued even under the strictest supervision. The court explained that if James is convicted, the system must address his educational problems, vocational problems, antisocial/behavior problems, and sexual offender treatment problems. The court decided in its discretion that one year was not enough time to address these problems.

The court reasoned that it was not in James's best interest to be tried in the juvenile system because he would not get a sufficient amount of treatment to prevent committing this offense again, nor was it in the public's interest because the public would still be at risk from this behavior in the future. Therefore, the court found that the State met its burden of clear and convincing evidence and that it is in the best interest of the juvenile and the public that this matter be handled in the adult court.

The trial court clearly offered a reasoned explanation for waiver and addressed, with sufficient specificity, the criteria set forth in § 938.18(5), STATS.²

² Section 938.18(5), STATS., states that the juvenile court:

[S]hall 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 mental maturity, the juvenile's pattern of living, prior offenses, prior treatment history and apparent potential for responding to future treatment.

(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 wilful 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.

Accordingly, this court concludes that the trial court did not erroneously exercise its discretion in waiving jurisdiction.

By the Court.—Order affirmed.

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

