

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 14, 2015

Diane M. Fremgen
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP1788

Cir. Ct. No. 2014JV214

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN THE INTEREST OF MARIAH E., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

MARIAH E.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Kenosha County:
JASON A. ROSSELL, Judge. *Affirmed.*

¶1 GUNDRUM, J.¹ Mariah E. appeals from the circuit court's nonfinal order waiving the juvenile court's jurisdiction in this case. She contends the circuit court erroneously exercised its discretion when it waived her into adult court. We disagree and affirm.

Background

¶2 On June 17, 2014, the State filed a delinquency petition charging sixteen-year-old Mariah with two counts of battery of a peace officer, one count of battery to an emergency worker, three counts of resisting an officer, one count of obstructing an officer, and one count of disorderly conduct. The delinquency petition alleges the following.

¶3 Just before 2 a.m. on June 16, 2014, city of Kenosha police officers responded to a report of several girls fighting and yelling outside. Arriving at the address to which he was dispatched, Officer David Yandel discovered Mariah, who was upset, breathing heavily, and sweating, and appeared to be trying to hide under the porch. When Yandel, who was in full uniform, identified himself as a police officer, Mariah, who appeared to be intoxicated, responded with obscenities and resistance. Yandel informed Mariah that she was under arrest due to her apparent underage consumption of alcohol. When he attempted to take control of her left arm, she kicked him in his knee, struck him in the chest, and ran away. Yandel pursued Mariah, and she continued to resist arrest until Yandel finally subdued her with the help of another officer. Mariah continued her use of obscenities and significant physical resistance, including kicking her feet at

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Yandel. As a result of Mariah's resistance, Yandel experienced bleeding to two of his fingers and pain in his knee and back, and the second officer observed damage to his squad car.

¶4 The officers conveyed Mariah to the public safety building where she continued her physical resistance against three different police officers, to the point where they directed her to the ground to gain control. Once secured in a cell, Mariah continued to "kick the walls and bang herself against the wall." Because of the suspected underage alcohol use, officers transported her to a hospital for medical clearance before continuing detention. At the hospital, Mariah remained uncooperative and directed obscenities toward the nursing staff. She became "combative, and kicked and swung her arms violently." During this altercation, Mariah struck Yandel in his chest and chin and kicked a nurse in the shoulder, causing both individuals pain.

¶5 In addition to filing the delinquency petition, the State also filed a petition seeking waiver of Mariah into adult court. Mariah opposed the petition and the circuit court held a waiver hearing. At the hearing, the court found prosecutorial merit in the delinquency petition and then heard testimony on the issue of waiver from Mariah's mother and a county court services worker and a "Youth Competency Program" worker, both assigned to Mariah.

¶6 The court services worker testified for the State that she had supervised Mariah related to a prior finding of delinquency made just months earlier for theft and operating a motor vehicle without the owner's consent. The services worker testified that Mariah had been expelled from school due to her conduct related to the prior delinquency finding, that Mariah is "highly intelligent" and "more mature than other juveniles her age," and that the services worker was

not aware of Mariah having any mental illness or developmental disabilities. The services worker confirmed that during Mariah's juvenile supervision Mariah was supervised with electronic monitoring but had allowed the battery on the monitoring device to "die" an "excessive" number of times, thereby precluding the division from determining whether Mariah was compliant with home monitoring restrictions. The services worker also confirmed that there were times during the current period of supervision when Mariah's urine tested positive for illegal substances and that Mariah's drug and alcohol counseling was cancelled because Mariah missed too many appointments.

¶7 The services worker further testified that during Mariah's supervision stemming from her prior offenses, Mariah had participated in both the "Youth Competency Program" and the WAIT program. Regarding the Youth Competency Program, the worker stated that the program is "our most intensive community-based service for youth mentorship and direction." Regarding the WAIT program, the worker explained that this program is "geared to look at cognitive thinking patterns, skill building, and education; and some of the areas that they focus on are social skills, anger management, alcohol and drug education, consequential thinking patterns, social skills, [and] peer relationships." She testified that at the time Mariah committed the offenses underlying this petition, she had already successfully completed the ten-week-long WAIT program.

¶8 This witness also testified that Mariah had GPS monitoring and home monitoring detention, which are "more restrictive-type services," and that she did not believe placement outside the home or in a correctional setting was suitable for Mariah. She pointed out that approximately three weeks before the June 16 incident, Mariah had been before the circuit court for consideration of

sanctions related to her performance on supervision, and the court had lectured and counseled her but held sanctions in abeyance for two months. She further noted that Mariah was sixteen years and eight months old at the time of this hearing and confirmed that “if Mariah were to ... remain at home,” the services worker “would have approximately 16 months to work with” Mariah, but if Mariah “was placed out of home she could remain on juvenile supervision until she is 19 if still in school,” “[d]epending on the circumstances.”

¶9 Mariah called two witnesses. Mariah’s mother testified that shortly before the June 16 incident, Mariah learned that her father would be released from prison and this caused Mariah to become “very upset.” The mother further testified that while on juvenile supervision, Mariah’s attitude had improved and she had been making better decisions. Mariah also called as a witness the Youth Competency Program worker who worked with Mariah while she was on juvenile supervision. The program worker explained that Mariah was “doing very well” in the program, was hoping to get back into a high school, and had “stopped using marijuana.”

¶10 Following the hearing, the circuit court waived Mariah into adult court. Mariah filed a petition for leave to appeal the nonfinal waiver order. We granted the petition. Additional facts will be provided as necessary.

Discussion

¶11 We will affirm a circuit court’s decision to waive a juvenile into adult court unless the court erroneously exercised its discretion. *State v. Tyler T.*, 2012 WI 52, ¶24, 341 Wis. 2d 1, 814 N.W.2d 192. “A juvenile court erroneously exercises its discretion if it fails to carefully delineate the relevant facts or reasons motivating its decision or if it renders a decision not reasonably supported by the

facts of record.” *Id.* On review, we look for reasons to uphold the court’s waiver decision. *Id.*

¶12 In making the waiver determination, a circuit court considers, as relevant here, the personality and prior record of the juvenile, the type and seriousness of the offense committed, and the adequacy and suitability of facilities, services and procedures available in the juvenile system. WIS. STAT. § 938.18(5). The weight given to these factors is within the circuit court’s discretion. *G.B.K. v. State*, 126 Wis. 2d 253, 259, 376 N.W.2d 385 (Ct. App. 1985). Ultimately, to waive a juvenile into adult court, the court must conclude that the evidence is clear and convincing that “it is contrary to the best interests of the juvenile or of the public” for the case to be heard in juvenile court. Sec. 938.18(6).

¶13 Mariah contends the circuit court erroneously exercised its discretion by “predetermin[ing]” the length of supervision she would receive if she remained in the juvenile system and comparing it “to a speculative maximum probation term that could be imposed in the adult court”; giving “significant weight” in its waiver decision to the amount of time available to supervise Mariah in the adult system as opposed to the juvenile system; and not considering “Mariah’s personality and the seriousness of the offense [as] factors that point toward retaining juvenile jurisdiction.” The State asserts that the court properly exercised its discretion. We agree with the State.

¶14 Regarding her length of supervision contention, Mariah asserts that the circuit court improperly compared the amount of time during which she might have supervision if she remained in the juvenile system with the amount of time she might have supervision if she was waived into the adult system. Specifically,

Mariah points out that following related testimony from the court services worker, the court stated that if Mariah remained in juvenile court, there would be only about a year and a half “to work with” her, while if she was waived into adult court, “she could potentially be placed on probation ... for well over four years It could even be up to five years.” Mariah acknowledges that at the time of the hearing she was subject to in-home placement, and if such placement was ultimately ordered by the court on the delinquency petition, the maximum amount of supervision time available in fact would have been about a year and a half, as indicated by the court. Similar to testimony from the court services worker, Mariah points out, however, that the *possibility* existed that the court might ultimately order her to be placed outside the home, and if that occurred, “the remaining time available to supervise her would amount to 28 months from the date of the waiver hearing.” She also asserts that it is unlikely she would receive the maximum of five years of probation if waived into adult court.

¶15 We find no error of discretion related to the above observation by the circuit court. While it may be that twenty-eight months of supervision was a possibility if Mariah remained in the juvenile system and a full five years of probationary supervision was not likely to be the final disposition if she was waived into adult court, the court was considering the undisputed reality that waiver into the adult system would provide the *opportunity* for a much longer period of supervision than if Mariah remained in the juvenile system. This was a correct observation and an appropriate consideration. *See G.B.K.*, 126 Wis. 2d at 260 (it is appropriate for the court to give weight to “the short period of time left in the juvenile system”).

¶16 Mariah next contends the circuit court erroneously exercised its discretion by giving “significant weight” in its waiver decision to the difference

between the amount of time available to supervise Mariah in the juvenile system versus the adult system, also arguing that the supervision time available in the juvenile system is sufficient. That may be Mariah's view, but a circuit court does not err by holding a different view, so long as its view is reasonable. Here, the court's view on the supervision-time issue is reasonable.

¶17 The circuit court expressed its view that based upon Mariah's age of sixteen years and eight months the amount of supervision time left in the juvenile system might be inadequate to properly address her rehabilitation needs. The court pointed out that in the months just prior to this incident Mariah had been adjudicated delinquent for theft and operating a motor vehicle without the owner's consent and that the June 16 incident represented an "escalating course of conduct," expressing that "as the offense severity goes up ... the need for services also goes up." The court expressed its agreement with the court services worker that neither out-of-home placement nor a correctional setting through the juvenile system would be appropriate for Mariah. The court also discussed an additional program available through the juvenile system (the "ACE 180 Program"), but explained why it did not believe that program would be appropriate for Mariah. The court emphasized that if waived into adult court, Mariah could potentially be placed on probation, and intimated that services available through probation would be appropriate for Mariah. While the circuit court noted that it considered Mariah's age as "one" of the "heavier factors" in its waiver determination, the record demonstrates it was by no means the only factor considered by the court.

¶18 The court also articulated its substantial consideration of Mariah's personality and prior record, the "type and seriousness" of the alleged offenses in this case, and "the adequacy and suitability of facilities, services and procedures available for treatment of [Mariah] and protection of the public within the juvenile

justice system.” *See* WIS. STAT. § 938.18(5). On these other factors, the circuit court noted a “gigantic negative. [Mariah] was involved in counseling, she was involved with Youth Competency, she had finished the WAIT Group, and June 16th still happened. The problem is that she had already engaged in the services whose sole focus is to prevent future crimes from occurring.” The court further observed that Mariah had been expelled from school and was “not in any form of schooling,” and while previously on juvenile supervision, she tested positive on more than one occasion for using an illegal substance.

¶19 The circuit court considered the type and seriousness of the particular offenses involving batteries to a peace officer and an emergency worker. The court noted that Mariah’s alleged attacks on these individuals were “aggressive” and “quite violent” and stated that her willingness to batter persons in such positions is significant, observing that “[t]he legislature has determined that those individuals are deserving of additional protection because of the nature of their job.” As discussed, regarding the adequacy and suitability of facilities, services and procedures available for treatment, the court noted that the services of which Mariah already had availed herself in the juvenile system had not succeeded in preventing “June 16” from occurring. It further expressed its belief that out-of-home placement in the juvenile system would not be likely to succeed and having the potential availability of the services in the adult probationary system, along with the possibility of supervision for a longer period of time, made the adult system more appropriate. Finally, after discussing why it did not believe the juvenile system was the most appropriate system for resolving Mariah’s offenses, the court further noted that it did not “see that there is any value that the public would get in terms of safety by providing services in the juvenile court.”

¶20 Mariah’s final contention is that her “personality and the seriousness of the offense[s] are factors that point toward retaining juvenile jurisdiction.” As discussed, the circuit court properly weighed all of the required considerations and its determination that waiver is appropriate was reasonable.

¶21 Mariah specifically complains about the circuit court’s reference to testimony at the waiver hearing about her setting up reminders for herself for appointments on her cell phone, conduct which the court concluded displayed an adult characteristic. On this point, the court stated, “That’s a very adult thing to do to be in control of one’s schedule and to set up alerts to remind one’s self.” Mariah’s criticism focuses on the technology aspect of the court’s comments—the use of a cell phone—and argues that use of a cell phone “exemplifies her youth not her adult lifestyle.”

¶22 We interpret the circuit court’s statement differently than Mariah. It appears to us that the court was not indicating that using a cell phone is “a very adult thing to do,” but that “be[ing] in control of one’s schedule” and “setting up alerts to remind one’s self” is “very adult.” Indeed, that is precisely what the court said. The court’s comments do not suggest that had Mariah used the phone to send a text message, it would have found that to be “a very adult thing to do.” Likewise, had she utilized a pocket calendar/reminder system of a less technological nature to maintain organized control over her own schedule, we think the court may well have made a comment similar to the one it made. In short, we interpret the court’s comments as its observation that Mariah’s strategy for remaining organized and ensuring she does not miss appointments was of an adult nature. We agree with the court’s observation.

¶23 Lastly, Mariah asserts that the “seriousness of the offenses” alleged in the petition “should not be a factor that supports waiver” because even the most significant charges against her were only Class H felonies. She relies on a waiver-related comment we made in our unpublished decision of *State v. Kadeem R.*, No. 2013AP2769, unpublished slip op. ¶10 (WI App Apr. 2, 2014), that “[a] strong argument can be made that when one considers all the Class A, B, C, D, and E crimes, a Class F crime is not quite the same.” In that case though, we *affirmed* the circuit court’s exercise of discretion in waiving sixteen-year-old Kadeem into adult court. *Id.*, ¶12. We looked at the underlying facts related to the particular Class F felony in that case (attempted burglary) and concluded that the circuit court did not err in its waiver decision based on those facts. *Id.*

¶24 To begin, WIS. STAT. § 938.18(5)(b) directs a circuit court to look not just at the seriousness of the offense, but also at the “type” of offense as well. Here, the circuit court observed that Mariah’s alleged batteries of the police officer and an emergency worker were “aggressive” and “quite violent” and elevated the severity of these offenses from other batteries. We agree. The battery charges did not arise from a fight between peers, but rather from Mariah’s alleged assaults on a police officer and an emergency worker, which demonstrated not only aggression but also a profound disrespect for authority and those charged with assisting others. This additional element makes her offenses more egregious. We further note as significant the fact that this incident resulted in multiple felony and misdemeanor charges.

¶25 We do make one additional observation regarding our decision in *Kadeem R.* and its relevance to this case. In *Kadeem R.*, we concluded that “the fact Kadeem was only two months away from his seventeenth birthday” substantially supported the circuit court’s waiver decision. *Kadeem R.*, No.

2013AP2769, unpublished slip op. ¶¶5, 12. Here, Mariah was four months away from her seventeenth birthday, likewise supporting waiver.

¶26 We conclude the circuit court did not erroneously exercise its discretion in waiving Mariah into adult court.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(2)(b)4.

