

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 12, 2005**

Cornelia G. Clark  
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. 2004AP1774-CR**

**Cir. Ct. No. 2002CF409**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**WAYLON A. MEYER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for St. Croix County:  
ROBERT H. RASMUSSEN, Judge. *Affirmed.*

¶1 PETERSON, J.<sup>1</sup> Waylon Meyer, a juvenile who was waived into adult court, appeals his conviction of two counts of fourth-degree sexual assault. He argues the trial court erroneously exercised its discretion when it denied his

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

motion asking the adult court to relinquish jurisdiction back to juvenile court. We disagree and affirm the judgment.

## BACKGROUND

¶2 The victim in this case claimed that in July and October 2001, Meyer had sexual contact with her. At the time of the assault, Meyer was fifteen and the victim was fourteen. Meyer was waived into adult court shortly before his seventeenth birthday.

¶3 On December 13, 2002, Meyer was charged in adult court with two counts of sexual contact with a person under sixteen, contrary to WIS. STAT. § 948.02(2). On April 15, 2003, a psychologist, Dr. Harlan Heinz, examined Meyer. Heinz determined that although Meyer was outwardly mature, he was two to three years younger emotionally than he was physically. Relying on Heinz's report, Meyer filed a motion asking the court to relinquish jurisdiction and transfer the case back to juvenile court. The court denied the motion. After we denied Meyer's motion to stay the case pending appeal of the denial of his motion, Meyer pled no contest to amended charges of two counts of fourth-degree sexual assault.

## DISCUSSION

¶4 Meyer based his motion on *State v. Vairin M.*, 2002 WI 96, 255 Wis. 2d 137, 647 N.W.2d 208. In that case, our supreme court laid out the criteria for when a juvenile may file a motion asking the criminal court to relinquish jurisdiction back to the juvenile court once the criminal court has assumed jurisdiction. The juvenile must allege a new factor that:

- (1) was not in existence at the time of the waiver decision or, if it was in existence, was unknowingly overlooked by all parties;

(2) is highly relevant to the criteria for waiver under WIS. STAT. § 938.18(5); and

(3) likely would have affected the juvenile court's determination that it would be contrary to the best interests of the juvenile or of the public for the juvenile court to hear the case.

*Id.*, ¶54. Whether to relinquish jurisdiction is a discretionary determination for the trial court. *Id.*, ¶55. We will sustain a discretionary determination if made and based upon the facts appearing in the record and in reliance upon the applicable law. *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). “Additionally, and most importantly, a discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination.” *Id.*

¶5 Meyer alleges the new factor in his case was Heinz's report. At the motion hearing, the trial court discussed each of the *Vairin* criteria. First, it determined that Heinz's report was a new factor. Second, it concluded that the report was not highly relevant because it is “only one factor among ten or more that the court would consider ....” The court stated that even if it had had the report at the time it was deciding whether to waive to adult court, the report would not have changed its decision. Therefore, the new information was not compelling, as the *Vairin* court required. *Id.*, ¶56. Because the court determined Meyer could not prove the second factor, it did not address the third factor.

¶6 We conclude the court properly exercised its discretion. It analyzed the appropriate factors as noted in *Vairin*. The court correctly noted that a child's mental maturity is one factor it has to consider when determining waiver under

WIS. STAT. § 938.18(5)(a). However, it is merely one factor of many.<sup>2</sup> *See id.* Thus, it was reasonable for the court to conclude that Meyer’s mental maturity was not sufficient reason to relinquish jurisdiction.

*By the Court.*—Judgment affirmed.

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

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<sup>2</sup> Pursuant to WIS. STAT. § 938.15(5), when the trial court considers whether to waive a juvenile into adult court, it should consider 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 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 the court of criminal jurisdiction.

