COURT OF APPEALS
DECISION
DATED AND FILED

March 8, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP1395 **Cir. Ct. No. 2016JV66**

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

IN THE INTEREST OF T. L. J., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

T. L. J.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County: WILLIAM DOMINA, Judge. *Affirmed*.

¶1 HAGEDORN, J.[1] T.L.J. appeals from an order of the juvenile court waiving jurisdiction and allowing him to be tried as an adult. His burden is to show the court erroneously exercised its discretion. In support, however, he merely offers a different view of the statutory factors and the weight he thinks should have been granted to the various witnesses' testimony. As a result, we affirm.

BACKGROUND

¶2 The State filed a delinquency petition accusing T.L.J.—a minor—of armed robbery and operating a motor vehicle without the owner's consent, both as party to the crime. The petition alleged that T.L.J., along with four others, stole various items from a gas station before leaving in a stolen vehicle. During the course of the robbery, one of the individuals pulled out a handgun and threatened a store clerk and another person.

¶3 The State also filed a petition requesting the juvenile court waive its jurisdiction. The juvenile court held a hearing on the waiver petition. At the hearing, three witnesses testified: Jennifer Forkes, T.L.J.'s probation agent; Elizabeth Krueger, a human services worker assigned to T.L.J.; and Johnny Mailloux, a counselor who was familiar with T.L.J. Following the hearing, the juvenile court considered the statutory factors for waiver under WIS. STAT. § 938.18 and concluded waiver into adult court was proper. T.L.J. appeals this determination.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted. This court granted leave to appeal the order. *See* WIS. STAT. RULE 809.50(3).

DISCUSSION

¶4 T.L.J. contends that the juvenile court erroneously exercised its discretion in granting the State's waiver petition. He first invites us to reweigh the WIS. STAT. § 938.18 factors because, he reasons, the majority of the factors "establish that [he] should have remained in juvenile court." He also takes issue with the testimony of Forkes and Krueger, which he claims was "flawed" and "based upon minimal contact with T.L.J." Instead, T.L.J. maintains that the juvenile court should have listened to "the person who knew T.L.J. best—Johnny Mailloux," who recommended that T.L.J. remain in the juvenile system. T.L.J. also insists that the court erred because it did not make a specific finding that "T.L.J. had exhausted" all available juvenile services before it decided to waive its jurisdiction.[2]

¶5 The decision to waive juvenile court jurisdiction under WIS. STAT. § 938.18 is a discretionary one, committed to the juvenile court. ***State v. Tyler T.***, 2012 WI 52, ¶24, 341 Wis. 2d 1, 814 N.W.2d 192. As a result, we will reverse the juvenile court's decision only 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.*** In making its decision, the juvenile court "shall base its decision whether to waive jurisdiction" on the following factors:

> (a) The personality of the juvenile, including whether the juvenile has a mental illness or developmental disability, the juvenile's physical and mental maturity, and

[2] T.L.J. finally claims that the existence of "inter-county disputes" regarding T.L.J.'s placement precluded the juvenile court from waiving jurisdiction. This argument is void of any meaningful development, and we will not address it further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (undeveloped arguments need not be addressed).

> the juvenile's pattern of living, prior treatment history, and apparent potential for responding to future treatment.
>
> (am) The prior record of the juvenile, including 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, and the juvenile's prior offenses.
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> (b) The type and seriousness of the offense, including whether it was against persons or property and the extent to which it was committed in a violent, aggressive, premeditated or willful manner.
>
> (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 [WIS. STAT.] 938.538 or the adult intensive sanctions program under [WIS. STAT.] 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.

WIS. STAT. § 938.18(5). The weight to be afforded each factor rests solely in the discretion of the juvenile court. *See* ***J.A.L. v. State***, 162 Wis. 2d 940, 960, 471 N.W.2d 493 (1991) (construing WIS. STAT. § 48.18(5) (1989-90), the predecessor to § 938.18(5)). If the court—based on the enumerated factors—finds by "clear and convincing evidence that it is contrary to the best interests of the juvenile or of the public to hear the case, the court shall enter an order waiving jurisdiction." Sec. 938.18(6).

¶6 The record here amply demonstrates that the juvenile court meticulously considered the statutory factors and came to a reasonable decision.

The court considered T.L.J.'s personality, prior adjudications and interactions with the juvenile system, the seriousness of the current allegations and similarity to T.L.J.'s past conduct, the suitability of the juvenile system to deal with T.L.J's persistent bad behavior, and the status of T.L.J.'s co-actors. *See* WIS. STAT. § 938.18(5).

¶7 The court first noted waiver petitions had been filed for T.L.J.'s co-actors. The court then moved to T.L.J.'s personality. The court acknowledged that T.L.J. had lost both his parents and suffered "unsettlement in terms of his placement as a result." The court also addressed T.L.J.'s diagnosis with "adjustment disorder, conduct disorder, and bereavement disorder," but observed that these disorders "are not identifiable major mental illnesses" that would require "excessive State intervention" like "schizophrenia or bipolar disorder." The court noted that T.L.J. had run away from a group home on "a number of occasions," and his response to attempted intervention was "marginal." T.L.J. "demonstrated a lack of interest … to participate in any intervention" during previous juvenile placements.

¶8 The court directly addressed T.L.J.'s extensive history in the juvenile system beginning when he was twelve. In 2012, T.L.J. operated a motor vehicle without the owner's consent. T.L.J. was also involved in a burglary of a "Family Dollar Store" taking "over $250 worth of items." The court specifically noted the violent nature of some of T.L.J.'s misconduct, including an armed robbery[3] and an armed car jacking.[4] The court further observed that T.L.J. was yet

[3] T.L.J. and another person held a hard object against a victim's head, made threats, and took her cell phone and wallet.

again "detained by police after driving a stolen vehicle and running" resulting in a serious accident *after* the conduct alleged in the petition.

¶9 The court considered the seriousness of the offense alleged in the petition and concluded that it was consistent with T.L.J.'s pattern of violent offenses. The court specifically noted that the present allegations involved "not just taking individuals' property but also demonstrating threatening behavior," and T.L.J. was "alleged to be an equal participant" in the crime.

¶10 The court also addressed the suitability of juvenile services for T.L.J., as opposed to the criminal justice system. The court specifically credited the testimony of Krueger and Forkes that the serious juvenile offender program "would not offer the type of oversight and treatment involvement" needed to serve T.L.J.'s interests and protect the public. The court also noted that T.L.J. had multiple opportunities to participate in the juvenile system, which he spurned. Given the ineffectiveness of previous juvenile intervention, the court concluded "it would be contrary to the interests of the public's protection" and "not in the best interests" of T.L.J for his case to remain in the juvenile court's jurisdiction.

¶11 The court's decision precisely mirrors the statutory factors and was a reasonable one. It placed great weight on the number and seriousness of T.L.J.'s previous run-ins with the law, as well as his failure to respond in any meaningful way to previous juvenile services.

[4] T.L.J. and others "blocked the car of a female," stole the female's car, and one of the co-actors fired a shot in the air. The car jacking occurred mere days prior to the conduct alleged here.

¶12 We decline T.L.J.'s invitation to reweigh the WIS. STAT. § 938.18 factors. T.L.J. may not agree with the weight the court afforded to his past criminal conduct and resistance to intervention, but such matters are reserved for the court's discretion. We will not impose our own assessment of the factors. *See* ***J.A.L.***, 162 Wis. 2d at 960. T.L.J.'s argument that the court erred by relying on the testimony of Forkes and Krueger is nothing more than a request for us to upset the juvenile court's assessment of witness credibility. He wishes us to accept Mailloux's testimony that T.L.J. should remain in the juvenile system and reject the conclusion of Forkes and Krueger. We may not substitute our judgment concerning whom to credit. *See* ***Johnson v. Merta***, 95 Wis. 2d 141, 151, 289 N.W.2d 813 (1980) (explaining that the "weight of testimony and credibility of witnesses … are matters to be determined by the trier of fact").[5] Finally, we have already rejected the argument that the juvenile court must find that all other options have been exhausted before waiving its jurisdiction. *See* ***G.B.K. v. State***, 126 Wis. 2d 253, 256, 376 N.W.2d 385 (Ct. App. 1985) (holding that the juvenile court need not find that "there are no adequate alternatives to waiver" before waiving its jurisdiction).[6] All § 938.18 requires is that the juvenile court find that "it is contrary to the best interests of the juvenile or of the public" to retain jurisdiction. Sec. 938.18(6). The court explicitly and permissibly did so here.

[5] T.L.J. offers an additional permutation of this argument. He claims that the juvenile court ignored its mandate to consider all of the factors outlined in WIS. STAT. § 938.18 by not specifically addressing Mailloux's testimony in its decision. We reject this argument. Section 938.18(6) requires the court to "state its finding with respect to the [enumerated] criteria." It does not somehow obligate the juvenile court to specifically address every line of testimony given during the hearing. The court addressed each statutory factor in turn. That is enough.

[6] The decision construed WIS. STAT. § 48.18(6) (1983-84). The provision is substantively identical to WIS. STAT. § 938.18(6).

By the Court.—Order affirmed.

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