

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 26, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-1117

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN THE INTEREST OF RAMON H.,
A PERSON UNDER THE AGE OF 17:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

RAMON H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
C. WILLIAM FOUST, Judge. *Affirmed.*

¶1 DEININGER, J.¹ Ramon H. appeals an order waiving juvenile court jurisdiction over him for several offenses he committed when he was fifteen years old. He claims that the trial court erred in not conducting an evidentiary hearing on his allegations that the State manipulated a delay in conducting his waiver hearing, in denying his request for discovery on the manipulation issue, and, finally, in waiving him into adult court. We reject Ramon's assertions of error and affirm the court's exercise of discretion in waiving juvenile court jurisdiction.

BACKGROUND

¶2 Madison police, while investigating a possible attempted robbery and the robbery and beating of an elderly man the previous day, apprehended Ramon on September 13, 1998. Because he was a runaway and a "fugitive" wanted by authorities in Illinois, Ramon was placed in secure custody. Two days later, he voluntarily consented to be returned to Illinois. The State subsequently filed delinquency and waiver petitions on October 7, alleging that Ramon, who was then fifteen, had committed eight criminal offenses in Dane County, including armed robbery and burglary, aggravated battery to an elderly person, criminal damage, and vehicle theft.

¶3 At the scheduled waiver hearing on November 5, 1998, the State informed the court that Ramon was incarcerated in Illinois, and accordingly, the court adjourned the matter indefinitely. In September 1999, the court contacted the prosecutor to ascertain the status of the case. She responded with a letter

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

stating that she had “made numerous efforts over the last 12 months to contact officials in Illinois to attempt to have [Ramon H.] brought back to Wisconsin to face his numerous felony charges.” She also indicated that she had recently learned that the Illinois authorities might now be willing to consent to Ramon’s return to Wisconsin, and she requested the court to leave the juvenile case open while she continued to pursue that end. Ramon, who was now seventeen, was ultimately returned to Dane County on March 6, 2000.

¶4 At a March 13th hearing on the State’s petition to waive juvenile jurisdiction, the court denied Ramon’s motion to dismiss the waiver proceeding “due to the state’s failure to process this case in a timely manner.” It concluded that Ramon had not met his burden to make a prima facie showing of intentional manipulation in delaying the waiver hearing, and further, that Ramon was not prejudiced by the delay in that Ramon’s present age would not weigh heavily in its waiver determination. The court also denied Ramon’s request for discovery in order to “bolster up [his] case” on the manipulation issue, granted his request for a psychological examination, and heard testimony from a social worker on the waiver criteria. On April 7th, after considering the psychologist’s report, additional testimony and the parties’ arguments, the court ordered Ramon waived into adult court. We subsequently granted Ramon’s petition for leave to appeal the waiver order.

ANALYSIS

¶5 Ramon first argues that the trial court erred in denying his motion to dismiss the waiver proceedings without conducting “an evidentiary hearing to ascertain whether the state manipulated the system to avoid juvenile court jurisdiction.” See *State v. Becker*, 74 Wis. 2d 675, 678, 247 N.W.2d 495 (1976).

As the State points out, however, this is not a case where criminal charges were originally brought in adult court for an offense committed when the defendant was a juvenile. Proceedings against Ramon began in juvenile court and remained there until the court fully considered the State's waiver request and granted it. Thus, the holdings of *Becker* and *State v. Velez*, 224 Wis. 2d 1, 589 N.W.2d 9 (1999), on which Ramon relies, have no relevance here.² As the court explained in *Velez*, the evil to be prevented is "a deliberate delay in instituting proceedings" which "unfairly deprives a juvenile offender of the opportunity he or she otherwise would have had to a waiver hearing on whether the criminal court should exercise its jurisdiction." *Id.* at 14. Here, Ramon was not denied the opportunity for a waiver hearing in the juvenile court before facing adult criminal charges, and he was therefore not entitled to a *Becker* hearing.³

¶6 Thus, the only question we need decide is whether, under all of the facts and circumstances presented, the trial court erroneously exercised its discretion in granting the State's petition to waive juvenile court jurisdiction over Ramon for the September 1998 offenses. Among these circumstances, to be sure,

² The supreme court held in *State v. Becker*, 74 Wis. 2d 675, 678, 247 N.W.2d 495 (1976) that "when the charging authorities have reason to believe that a child has committed an offense which, if committed by an adult, constitutes a crime, jurisdiction in a criminal court cannot be maintained on a charge brought after the child becomes eighteen, unless it is affirmatively shown that the delay was not for the purpose of manipulating the system to avoid juvenile court jurisdiction." Subsequently, in *State v. Velez*, 224 Wis. 2d 1, 589 N.W.2d 9 (1999), the court explained that an evidentiary hearing on the issue of manipulation is not a right, but that a trial court must first consider whether a defendant's motion "'on its face alleges facts which would entitle the defendant to relief.'" *Id.* at 17 (citation omitted). If so, an evidentiary hearing must be conducted; but if not, the court, may, in its discretion, deny a hearing after considering the motion, arguments, record and the law, if it determines that the "defendant holds only hope but articulates no factually-based good faith belief that any impropriety will be exposed through an evidentiary hearing." *Id.* at 17-18 (citation omitted).

³ For the same reason, Ramon's claim that the trial court erred in denying him discovery on the manipulation issue is of no assistance to him in this appeal.

is the eighteen-month delay in completing the waiver proceedings. We conclude that the court did not err in waiving juvenile jurisdiction, and accordingly, we affirm the appealed order.

¶7 A juvenile court may waive its jurisdiction if it is satisfied that the State has proved, by clear and convincing evidence, “that it would be contrary to the best interests of the juvenile or of the public” for the juvenile court to retain jurisdiction. *See* WIS. STAT. § 938.18(6). The decision to waive juvenile jurisdiction under § 938.18, lies within the sound discretion of the juvenile court. *See J.A.L. v. State*, 162 Wis. 2d 940, 960, 471 N.W.2d 493 (1991). The following are the statutory criteria on which the juvenile court must base its waiver decision:

(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 the court of criminal jurisdiction.

Section 938.18(5).

¶8 In exercising its discretion to order a waiver of jurisdiction, the juvenile court is not required to find that every factor weighs in favor of waiving jurisdiction. *See B.B. v. State*, 166 Wis. 2d 202, 209-10, 479 N.W.2d 205 (Ct. App. 1991). The juvenile court has discretion as to the weight it affords each of the criteria in deciding whether to waive jurisdiction. *See J.A.L.*, 162 Wis. 2d at 960. We will sustain the juvenile court’s decision to waive jurisdiction if the record indicates that discretion was in fact exercised and there is a reasonable basis for the decision. *See B.B.*, 166 Wis. 2d at 207.

¶9 In its decision to waive juvenile jurisdiction, the court stated that it was “impressed” with the psychologist’s evaluation, which emphasized Ramon’s need for treatment in a “secure environment” due to his “suicidal, aggressive and possibly homicidal inclinations.” The court specifically noted the psychologist’s finding that Ramon’s history and present status presented “significant barriers to formulating a therapeutic alliance,” and that “[p]rogress would be slow and difficult.” The court also reviewed Ramon’s prior offenses, which began when he was thirteen, and included several batteries, and two aggravated batteries, and noted that Ramon had “struck a staff member at the DuPage County [Illinois] Juvenile Detention Center more than 20 times.” The court expressly considered Ramon’s mental and developmental status, his motives and attitude (which the court characterized as “largely violent”), and his pattern of living (“he’s been institutionalized or on the run for as long as I’ve read about him”).

¶10 In weighing the “type and seriousness” of the present offenses, the court stated:

They involve a degree of wanton violence seldom seen. Frankly, one could probably make a case for waiver on simply the nature of the offenses here without much regard to the other criteria or even if all the other criteria weighed against waiver, the offense here is of such an horrendous type: it’s violent, it’s aggressive, it’s premeditated, it’s willful, it’s against persons.⁴

The court also considered the “adequacy and suitability of facilities to meet his needs and protect the public within the juvenile system,” and it noted that it had previously declined to waive “at least one armed robber ... in favor of placing him” in the serious juvenile offender (SJO) program, which could be for a period of up to five years. *See* WIS. STAT. §§ 938.34(4h), 938.355(4)(b) and 938.538. It rejected the SJO alternative however, because Ramon’s history and psychological evaluation “convinces me that five years isn’t enough” for the necessary incarceration and supervision to accomplish Ramon’s rehabilitation and the protection of the public. The court concluded that the State had “met its burden of establishing by clear and convincing evidence that it’s contrary to the interest of the public to keep [Ramon] in juvenile court.”

¶11 Ramon argues, however, that “the lack of documentation” regarding the eighteen months he spent in Illinois between the filing of the petition and the

⁴ The petition alleges that Ramon “repeatedly” struck the eighty-year-old victim with “a small animal trap as well as the head of a broom and an American flag” and pole, causing the pole to break into three pieces; that Ramon “grabbed a sling-type weed cutter, raised it and stated, ‘I’ll kill you with this, son-of-a-bitch’”; and that Ramon then ransacked the victim’s living room, took \$700 from his wallet, and stole his car. The victim suffered “lacerations and abrasions to his face ... an extremely large hematoma on his left hand, and scrapes and abrasions to both of his shins.”

waiver hearing “made it impossible for the court to conclude there was clear and convincing evidence in support of the waiver determination.” He claims that if the waiver process had gone forward in the fall of 1998, he would have been evaluated “in light of his then-age of 15,” but given the delay, he was waived based on being a seventeen-year-old, with “no additional documentation from Illinois since October of 1998.” Although we conclude that this is the proper context in which to consider the impact of the delay in conducting the waiver hearing (as opposed to the *Becker/Velez* issue Ramon attempted to raise), we reject Ramon’s assertion that the trial court erroneously exercised its discretion in waiving juvenile jurisdiction for this reason.

¶12 First, we note that Ramon’s arguments in this regard are a bit disingenuous. Ramon’s counsel successfully objected on Fifth Amendment grounds to a request from the prosecutor that he or Ramon “sign release forms for all correctional materials, all state of Illinois materials, and all hospital records.” More importantly, however, the court was very much aware of the difference in Ramon’s age at the time of the present offenses and the time of the waiver decision, and of the scarcity of information on his behavior and treatment in the intervening year-and-one-half. The court indicated that the age difference played little role in its waiver decision, noting that “even at age 15, I don’t think I would feel comfortable with this person performing that five years [referring to the SJO program] was enough time to address his needs and protect the public.” And, having recognized the need for current information regarding Ramon’s mental status and treatment needs, the court ordered a psychological evaluation, upon which it then properly relied in making the waiver determination.

¶13 We agree with the State that Ramon’s claims that he was prejudiced both by the delay in his waiver hearing and by the lack of correctional records

from Illinois for the intervening eighteen months are somewhat inconsistent. The information before the court at the waiver hearing was essentially that which would have been present in October 1998 (except for the recent psychological evaluation, which Ramon himself requested). The court reviewed and commented on all of the relevant factors under WIS. STAT. § 938.18; it gave appropriate weight to Ramon's apparent need for lengthy treatment and supervision, to his prior record, and to the nature of the present offenses; and it relied on no improper factors. In its ruling, the trial court applied the correct law to the relevant facts, and through a well-articulated rational process, reached a conclusion which a reasonable judge could reach. *See Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982). In giving primary weight to the gravity of the instant offenses, and to Ramon's present psychological make-up and treatment needs, the court did not erroneously exercise its discretion. *See B.B. v. State*, 166 Wis. 2d 202, 209-10, 479 N.W.2d 205 (Ct. App. 1991).

CONCLUSION

¶14 For the reasons discussed above, we affirm the appealed order.

By the Court.—Order affirmed.

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

