

FILED
11-13-2023
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

No. 2023AP285

In the interest of T.H., Jr., a person under the age of 18:

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

T.H., JR.,

Respondent-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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INTRODUCTION

There is nothing warranting this Court's review in this case. T.H. has tried to make this case sound like it raises a novel legal issue, but it does not. Appellate courts review circuit court decisions on waiving juvenile court jurisdiction for an erroneous exercise of discretion, and they will be upheld if the circuit court explained its way to a rational decision based on the facts and the law. The court is to waive juvenile jurisdiction if retaining it would not be in either the juvenile's or the public's best interests. Here, the court made appropriate findings based on the facts presented to it on what type of supervision would be available to T.H. if it retained juvenile jurisdiction, which is required by the statute, and determined that it would not be in the public's interests to do so because he could not be supervised long enough to address his treatment needs. That was a reasonable decision based on the facts and correctly interpreting the law, and the court of appeals appropriately upheld it. T.H. simply does not like the result. This Court should deny the petition.

STATEMENT OF THE FACTS

On October 10, 2022, Barron County Sheriff's Deputy Dustin Strenke responded to a report of a one-car rollover crash and found the car upside down with several gravely injured passengers, some trapped in the vehicle. (R. 12:4.) M.M.D., age 14, was rushed to the hospital and was expected to lose an arm or lose function in it. (R. 12:4.) E.M.S.G., age 14, died of her injuries, and two days later W.K.B., age 15, did as well. (R. 12:4.) T.H., age 16 and the driver, had minor injuries and told Strenke that he did not have a driver's license. (R. 12:4.) He said he sped up over some train tracks to try to launch the vehicle over the tracks and "catch some air." (R. 12:5; 13:2; 55:231.) The car hit the dip going roughly 100 miles per hour and T.H. lost control when the car landed.

(R. 12:5; 55:28, 144.) He also informed Strenke that he smoked marijuana multiple times a day. (R. 12:5.)

The State subsequently filed a delinquency petition charging T.H. with two counts of second-degree reckless homicide, one count of second-degree reckless injury, and three counts of second-degree recklessly endangering safety. (R. 12:3.) It also filed a petition to waive T.H. into adult court. (R. 13.) On October 26, T.H. was placed at the Rawhide Boys Ranch, where he remained until the waiver hearing on January 12, 2023, roughly two weeks before his 17th birthday. (R. 22; 55:58, 63.)

The court found prosecutive merit from the face of the petition and moved on to the waiver criteria. (R. 55:15–16.) After multiple witnesses from T.H.'s prior minor contacts with DHS and the juvenile and adult supervision systems testified, the court found that Rawhide was a good placement for T.H., and it would be in his best interest to remain there. (R. 55:253.) It said it needed to address, however, what possible dispositions would be available in the juvenile system and for how long, given T.H.'s age and his need for services. (R. 55:253–54.) It noted that a Serious Juvenile Offender order (SJO) would not be appropriate because a court could not find that the only other appropriate placement for him was a correctional facility. (R. 55:257.) Since the only available option in the juvenile system would be a standard disposition order that would only provide services until T.H. graduated from high school, which was within the next year and a half at most, the court found it was in the best interest of the public to have the case proceed in adult court because the juvenile system simply would not have enough time to appropriately address his needs. (R. 55:259–61.) It thus granted the State's waiver petition. (R. 55:261.)

T.H. appealed, contending that the circuit court erred in considering what dispositions would be available and appropriate if he remained in the juvenile system, and that it

erred in finding that he could not be subject to a stayed SJO. The court of appeals disagreed and affirmed. T.H. petitions for review.

ARGUMENT

There is no open legal question to be addressed here. Whether to waive juvenile jurisdiction is a discretionary decision for the juvenile court. *J.A.L. v. State*, 162 Wis. 2d 940, 960, 471 N.W.2d 493 (1991). Accordingly, a lower court's discretionary decision to waive juvenile jurisdiction will be upheld if it is "made and based upon the facts appearing in the record and in reliance on the appropriate and applicable law." *Prahl v. Brosamle*, 142 Wis. 2d 658, 667, 420 N.W.2d 372 (Ct. App. 1987) (citation omitted).

T.H. requests that this Court take this case to "prohibit circuit courts from making dispositional findings at a waiver hearing." (Pet. 11.) That is not what happened here, and at any rate he requests something this Court cannot do. Wisconsin Stat. § 938.18(5)(c) requires the circuit court to consider what types of juvenile disposition would be appropriate for the juvenile when making its decision. Wisconsin Stat. § 938.18(5)(c) expressly states that the circuit court is required to consider whether the treatment resources and services available in the juvenile system are both adequate and suitable to meet the juvenile's needs. It further requires circuit courts to determine "the suitability of the juvenile for placement in the serious juvenile offender program" when making its waiver decision. *Id.*

Here, the court believed T.H. receiving full treatment for his mental health issues and his drug use was in the public's best interests, and that he required more than a year and a half of treatment to address his needs, which was all that a standard juvenile disposition would afford. It further found that based on T.H.'s lack of assaultive behavior or property crimes, no court could make a finding that he was

dangerous and thus that the only other appropriate placement would be a confined correctional facility, so he would be inappropriate for any SJO disposition that would allow him to be under supervision and treatment for longer, stayed or not. In other words, the circuit court properly recognized that discretion “does not confer upon the Juvenile Court a license for arbitrary procedure.” *State v. F.R.W.*, 61 Wis. 2d 193, 203, 212 N.W.2d 130 (1973) (citation omitted). The circuit court was not “making dispositional findings,” (Pet. 11); it was considering everything it had heard about T.H.’s needs and background to determine whether there were “[adequate] and [suitable] . . . facilities, services and procedures available for treatment of the juvenile and protection of the public within the juvenile justice system” and his “suitability . . . for placement in the serious juvenile offender program.” Wis. Stat. § 938.18(5)(c).

T.H. fails to explain how a circuit court could possibly consider that factor, as required under the statute, without evaluating whether the juvenile would be appropriate for an SJO order. Obviously, a court cannot assess the juvenile’s “suitability” for the SJO program without considering whether his behavior and past history would make him eligible for an SJO disposition. More importantly, this Court cannot write these words out of the statute to reach T.H.’s preferred result. Taking this case to address this issue would be futile; T.H.’s remedy, if any, lies with the Legislature.

T.H.’s only other arguments are a series of policy arguments about why he believes he’d be better off in the juvenile system. (Pet. 17–20.) That decision is not this Court’s to make—it is one left to the sound discretion of the circuit court who heard the testimony and evidence about T.H.’s needs and the programs available. The court of appeals appropriately recognized this and performed its function of reviewing the circuit court’s decision for error correction. It found none to be corrected. No law development will be

accomplished by taking this case just to consider whether T.H., specifically, should remain in juvenile court.

There is no legal issue of statewide importance nor any novel legal question raised by this case. It is thus inappropriate for this Court's review. T.H.'s petition should be denied.

CONCLUSION

This Court should deny T.H.'s Petition for Review.

Dated this 13th day of November 2023.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

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FORM AND LENGTH CERTIFICATION

I hereby certify that this petition or response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a petition or response produced with a proportional serif font. The length of this petition or response is 1364 words.

Dated this 13th day of November 2023.

Electronically signed by:

Lisa E.F. Kumfer
LISA E.F. KUMFER
Assistant Attorney General

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Supreme Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 13th day of November 2023.

Electronically signed by:

Lisa E.F. Kumfer
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