

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**APRIL 24, 1996**

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 96-0109**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

**In the Interest of Brian S.,  
A Person Under the Age of 18:**

**STATE OF WISCONSIN,**

**Petitioner-Respondent,**

**v.**

**BRIAN S.,**

**Respondent-Appellant.**

APPEAL from an order of the circuit court for Kenosha County:  
MARY K. WAGNER-MALLOY, Judge. *Affirmed.*

ANDERSON, P.J. Brian S. appeals from a nonfinal order whereby the juvenile court waived juvenile jurisdiction. We conclude that the juvenile court's order was supported by clear and convincing evidence that it was contrary to the best interests of the child and the public to retain juvenile court jurisdiction. Accordingly, we affirm.

A petition for determination of status – alleged delinquent child – was filed in the interest of Brian. The petition alleged that Brian, in concert with others, intentionally damaged property by means of explosives, contrary to § 943.02(1)(c), STATS. According to an investigator of the Twin Lakes Police Department, he was called to an incident where a telephone junction box had been heavily damaged by explosives. One of the boys involved in the incident gave a statement to the investigator that he and other boys, including Brian, made the bomb in Brian's garage.

The State petitioned the juvenile court for waiver of jurisdiction. A waiver hearing was held. The juvenile court subsequently granted the State's petition for waiver. Brian appealed. We granted his request to appeal the nonfinal order.

Waiver of jurisdiction under § 48.18, STATS.,<sup>1</sup> is within the sound discretion of the juvenile court. *J.A.L. v. State*, 162 Wis.2d 940, 960, 471 N.W.2d 493, 501 (1991). The juvenile court also has discretion as to the weight it affords each of the criteria under § 48.18(5). *Id.* When reviewing a juvenile court's exercise of discretion, we first look to the record to see if discretion was in fact exercised. Then we look for reasons to sustain the court's discretionary decision. *Id.* at 961, 471 N.W.2d at 501.

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<sup>1</sup> All references in this opinion are to the 1993-94 version of the statutes. Relevant portions of § 48.18, STATS., have been repealed and recreated with an effective date of July 1, 1996. See 1995 Wis. Act 77, §§ 87-99, 629 and 9400.

Pursuant to § 48.18(5), STATS., the juvenile court shall base its decision whether to waive jurisdiction on the following criteria:

- (a) The personality and prior record of the child, including whether the child is mentally ill or developmentally disabled, whether the court has previously waived its jurisdiction over the child, whether the child 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 child's motives and attitudes, the child's physical and mental maturity, the child'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 child and protection of the public within the juvenile justice system and, where applicable, the mental health system and the suitability of the child for placement in the youthful offender program under s. 48.537 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 circuit court.

Subsection (6) of the statute goes on to state that after considering the above stated criteria, the judge shall state his or her findings with respect to the criteria on the record and "if the judge determines on the record that it is established by

clear and convincing evidence that it would be contrary to the best interest of the child or of the public to hear the case, the judge shall enter an order waiving jurisdiction ....”

At the waiver hearing, John Deneka, a social worker with the Kenosha County Department of Social Services, testified regarding his preparation of a waiver report for Brian's case. He stated that he recommended waiver. He based his recommendation on the fact that Brian was in need of long-term supervisory care. He stated:

I think this kind of offense requires a higher level of ... policing than I'm able to afford. ... [T]here are some definite issues that he needs to attend to that I'm not sure I can get to within a year's period of time. So, I--Brian, I think, has run out of time and I have run out of resources, I mean the department, in terms of how to provide a high level probation in Twin Lakes.

After hearing the evidence, the court stated that it was “required to consider [§] 48.18 [, STATS.] in determining whether or not waiver [was] appropriate.” The court went on to conclude that Brian was not mentally ill or developmentally disabled. He had been previously found delinquent in one adjudication and “a couple of informals.” The court listed possible motives for Brian's behavior and that his pattern of living had been dependent on his parents. The court stated that his prior offenses involved property crimes and possession of marijuana. It then stated:

This is a serious offense. This is aggressive, willful, premeditated, against property, but also in nature against community because of what was bombed.

Are there services or facilities that can treat the child and protect the public? Based on the nature of the Class B felony, Mr. Deneka's statement about the significant period of time that supervision is required, I don't think juvenile court services are appropriate at this point.

....

The Court will find by clear and convincing evidence that it's not in the best interests of [Brian] nor the community for the circuit court with juvenile jurisdiction to hear this matter. It'll be referred to the district attorney for appropriate criminal proceedings.

After reviewing the record, we conclude that the juvenile court's decision to waive jurisdiction was reasonable and based on clear and convincing evidence in the record.

*By the Court.* – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.