

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

AUGUST 6, 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(1), 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. 96-1191

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE INTEREST OF DAVID T.O.,
a person under the age of 18:**

STATE OF WISCONSIN,

Petitioner-Appellant,

v.

DAVID T. O.,

Respondent-Respondent.

APPEAL from an order of the circuit court for Oconto County:
LARRY JESKE, Judge. *Affirmed.*

CANE, P.J. The State appeals the trial court's order denying waiver of juvenile court jurisdiction of the juvenile, David T.O.¹ The State's contention is that the trial court unreasonably exercised its discretion by refusing to waive David into adult court. Because the trial court reasonably exercised its discretion, the order is affirmed.

¹ Petition for leave to appeal the nonfinal order was granted April 26, 1996.

David is charged with nineteen counts of criminal damage to property and one count of recklessly endangering another's safety. Essentially, the State alleges that David and another youth cut the brake lines on nineteen Oconto Falls school buses. The single count of recklessly endangering another's safety alleges that the bus driver of one of these buses was endangered when he drove it. At the waiver hearing, the trial court found that there was prosecutive merit to the charges, but denied the State's petition for waiving David into adult court because he had no prior record and was receptive to future treatment.

Both sides correctly state this court's standard of review for waiver cases. Whether to waive a child into adult court is discretionary with the trial court and, on appeal, this court must review the record to determine whether the trial court exercised its discretion and, if so, whether there are reasons to sustain its discretionary decision. *In re J.A.L.*, 162 Wis.2d 940, 960-61, 471 N.W.2d 493, 501 (1991). At a juvenile waiver hearing, the trial court must apply the specific criteria set forth in § 48.18(5), STATS., and determine whether the State has proved that waiver is in the best interest of the child or the public. *In re C.D.M.*, 125 Wis.2d 170, 176, 370 N.W.2d 287, 290 (Ct. App. 1985); § 48.18(5), STATS.

Here, a review of the record demonstrates that the trial court exercised its discretion and carefully evaluated all the criteria, setting forth its specific findings as to each criterion. The court noted that David has a normal intelligence level and physical maturity. It found that David was responding well to treatment and had the support of his family. David has no prior record. There is no dispute that the crime was serious, premeditated and had the potential for injury or death.

After the trial court considered the statutory criteria, it then proceeded to weigh the criteria and decide whether to waive David into adult court. On appeal, this court must observe that it is for the trial court to determine which factors are most persuasive and the weight to be afforded each of the factors is discretionary with the trial court. *In re G.B.K.*, 126 Wis.2d 253, 259, 376 N.W.2d 385, 389 (Ct. App. 1985). The trial court remarked that the decision to waive was a close call. However, the court explained that two factors had the most impact on its decision not to waive David: the lack of any prior record and David's responsiveness to treatment.

Although the State disagrees with the trial court's decision and argues that the trial court should have given more weight to other factors such as David's age and the seriousness of the offenses, it is for the trial court to determine which factors are most persuasive, not the State. As David correctly points out in his brief, the State is simply attempting to replace the trial court's judgment with its own. Simply because the State does not agree with the factors that the trial court found persuasive does not mean that the trial court misused its discretion. The trial court is entrusted with this responsibility of making these decisions and this court on appeal must affirm the trial court if there is a reasonable basis for the decision on waiver.

Here, the trial court had a reasonable basis to deny waiver. David had no prior offenses and there had never been a delinquency petition filed against him. The trial court found this persuasive and stated, "when I look at the overall track record here, he's never been involved in something of this sort or any criminal activity in the past and there's no real indication that it would happen in the future, if in fact he did it." The court acknowledged that this was a close call, but after weighing and balancing each of the criteria, it concluded that waiving David into adult court was not in his or the public's best interest.

The trial court faithfully followed the requirements of the waiver statute, balanced the arguments for and against waiver and then made a reasoned decision denying waiver based on the relevant facts. This court is satisfied that the trial court exercised its discretion in a reasonable manner and with sufficient reasons. The order denying waiver into adult court is affirmed.

By the Court. – Order affirmed.

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