

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

February 13, 1997

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. 96-3079

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**In the Interest of Aaron S.W.,
a Person Under the Age of 18:**

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

AARON S.W.,

Respondent-Appellant.

APPEAL from an order of the circuit court for La Crosse County:
JOHN J. PERLICH, Judge. *Affirmed.*

EICH, C.J.¹ Aaron S.W., a juvenile born on July 8, 1980, appeals from an order waiving him into adult criminal court to face charges of intimidation of a witness and physical abuse to a child. He argues that the juvenile court erroneously exercised its discretion when it ruled that the State

¹ This appeal is decided by one judge pursuant to § 752.31(2)(e), STATS.

had met its burden to prove that it would be contrary to his best interests, or the interests of the public, to retain jurisdiction over the offenses.

We believe discretion was appropriately exercised and affirm the order.

Before juvenile court jurisdiction may be waived, the court must be satisfied that the State has proved, by clear and convincing evidence, that it is contrary to the best interests of both the minor and the public to retain jurisdiction. Section 938.18(6) (formerly § 48.18(6)), STATS. It is a determination resting within the court's sound discretion, *State v. C.W.*, 142 Wis.2d 763, 766-67, 419 N.W.2d 327, 328-29 (Ct. App. 1987), upon consideration of the criteria set forth in § 938.18.² The court is not required to make specific findings with respect to each factor, and it has discretion to assign such weight as it sees fit to each factor it considers. *J.A.L. v. State*, 162 Wis.2d 940, 960, 471 N.W.2d 493, 501 (1991); *B.B. v. State*, 166 Wis.2d 202, 209-10, 479 N.W.2d 205, 207-08 (Ct. App. 1991).

We will uphold the 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. *B.B.*, 166 Wis.2d at 207, 479 N.W.2d at 207. A discretionary decision is not tested by some subjective standard, or even by our own sense of what might be a "right" or "wrong" decision in the case, but rather

² Those criteria are:

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.

Section 938.18(5)(a), STATS.

will stand unless it can be said that no reasonable judge, acting on the same facts and underlying law, could reach the same conclusion. *State v. Jeske*, 197 Wis.2d 905, 913, 541 N.W.2d 225, 228 (Ct. App. 1995).

In addition to considering the factors set forth in § 938.18(5), STATS., the court must consider the interests of the minor and the public. Prior to the recent amendments to the juvenile code, the court was required to give primary weight to the minor's interests. See *B.B.*, 166 Wis.2d at 207, 479 N.W.2d at 207. Under the law now applicable, however, the court must give *equal* weight to protecting the public from juvenile crime, holding the juvenile accountable for his or her acts and the juvenile's treatment needs. Section 938.01, STATS.

Aaron argues that the trial court failed to weigh the statutory factors—specifically that it failed to "properly consider" (1) his "personality and prior record," and (2) the adequacy and suitability of services and facilities available for treating him in the juvenile system. He also contends that the court gave undue weight to the seriousness of the charges.

The trial court began by noting that waiver does not mean "washing your hands" of the individual, because rehabilitation is an aim of the adult correctional system just as it is in the juvenile system. The court then took up each of the statutory factors in turn, noting that Aaron had no prior record, was not mentally ill or developmentally disabled, had not been waived into adult court in the past and had a "mental and physical maturity" similar to others of his age and a "pattern of living" similar to that of "a typical 16-year-old with no prior offenses."

The court then discussed the nature and seriousness of the offense, which it said "cannot be minimized."

We are not talking about two kids fighting in the school yard about whether or not somebody was safe or out.

We are talking about serious injury being inflicted as a result of serious criminal offenses. And we are

talking about a sophisticated type of crime since basically what it involved was protecting a drug dealer. The seriousness of that cannot be minimized. It obviously was very violent, it was aggressive, it was premeditated and willful.

Then, considering Aaron's "motive and attitude," the court stated that, despite the best efforts of his parents and counselors, he "cross[ed] a line" in committing the offense. According to the court, despite all the encouragement—and despite his obviously serious drug and alcohol problems—Aaron was "totally unmotivated" to help himself or even assist others to that end. The court went on to note that his lack of motivation and his habit of minimizing the seriousness of his actions and his problems continued through his arrest and detention. The court commented on Aaron's bored and detached demeanor during the proceedings and the conclusions of his own psychologist that he would view remaining in juvenile court as "getting off."

The court then discussed Aaron's continued lack of motivation to help himself, despite the considerable efforts of his parents and counselors to change his habits and attitudes. According to the court, Aaron has shown "no motivation to change and no motivation to participate actively in any kind of program that might be available in any system." The court went on to state its belief that the adult system has "a larger array of programs" in which Aaron could be required to participate—to his benefit. The court concluded:

[T]he first thing that has to happen is we have to get his attention. And I believe leaving him in the juvenile system will not do that. His refusal to accept the seriousness of the offense, the seriousness of the drug and alcohol problem that got him to that offense, would make anything in the juvenile system meaningless and inappropriate for him. There is no suitable alternative in the juvenile system. There is in the adult system.

I'm satisfied by clear and convincing evidence that it would be contrary to both his best interests and the interests of the public to maintain [juvenile] jurisdiction.

I'm satisfied that the serious juvenile offender program, even considering the adult Intensive Sanctions Program, even considering that, require that he be waived into adult court.

Challenging the court's determination, Aaron points first to testimony indicating that he was not the same as other sixteen-year-olds but was immature and suffering from "poor self-esteem." He also emphasizes his lack of any criminal or juvenile record and points to testimony that many of the "motivational" problems mentioned by the court are the result of his low self-esteem and emotional immaturity, and that he has a continuing need for treatment in this regard.

He then points to evidence he believes mitigates the seriousness of the offense—in particular, the fact that the others involved in the incident were not much younger than he and that the incident was not premeditated. Finally, he complains that the court did not devote adequate discussion to detailing the types of "services ... available in the adult system that would better serve [his] best interests" and those of the public.

The essence of Aaron's argument on this appeal is that the record contains evidence that would support a contrary result: denial of the waiver petition. That may be. It usually is in such cases—indeed in most all cases coming to court.

But our task on appeal is not to substitute our judgment for that of the trial court in situations such as this. We are wisely barred from doing so. We say "wisely so" because, as the supreme court has repeatedly stated, a major reason circuit courts are given discretionary authority over matters that involve evaluation of the circumstances and often-competing facts that arise in the course of a hearing or trial is that the circuit judge, being "on-the-spot," is in a much better position to understand and evaluate testimony and evidence—including the demeanor of the witnesses—than is an appellate court working from a cold trial transcript. *Schultz v. Darlington Mut. Ins. Co.*, 181 Wis.2d 646, 657, 511 N.W.2d 879, 883 (1994).

We have quoted at length from the trial court's decision because we think it is, as the State suggests in its brief, a "textbook example" of an appropriate exercise of discretion. There is absolutely no question that the court exercised discretion. Nor is there any question that the court considered the statutory factors, as the law requires it to. There may be evidence in the record that might lead another judge to conclude otherwise with respect to one or more of the criteria—or to give greater or lesser weight to various criteria than did the judge in this case—but this is beside the point. The decision reached by the trial court in the exercise of its discretion was plainly one a reasonable judge could reach. As such, we may not overturn it.

By the Court.—Order affirmed.

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