

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 27, 2002

Cornelia G. Clark
Clerk of Court of Appeals

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.

**Appeal No. 01-2566
STATE OF WISCONSIN**

Cir. Ct. No. 01-JV-270

**IN COURT OF APPEALS
DISTRICT II**

IN THE INTEREST OF SHELDON R.:

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

SHELDON R.,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Waukesha County:
RALPH M. RAMIREZ, Judge. *Affirmed.*

¶1 NETTESHEIM, P.J.¹ Sheldon R. appeals from a juvenile court order waiving juvenile court jurisdiction and referring the matter to the district

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

attorney for further criminal proceedings in adult court. Sheldon also appeals a subsequent order denying reconsideration of the original order.² We hold that the juvenile court did not err in the exercise of its discretion waiving its jurisdiction. We affirm the orders.

¶2 Because our standard of appellate review largely governs this case, we address this factor at some length before we address the facts and the juvenile court's decision. The waiver of juvenile court jurisdiction lies within the sound discretion of the juvenile court. *B.B. v. State*, 166 Wis. 2d 202, 207, 479 N.W.2d 205 (Ct. App. 1991). We will uphold a discretionary determination if the record reflects that the juvenile court exercised its discretion and there was a reasonable basis for the decision. *Id.* Stated in the converse, we will reverse a juvenile court's waiver determination if and only if the record does not reflect a reasonable basis for the determination or a statement of the relevant facts or reasons motivating the determination is not carefully delineated in the record. *J.A.L. v. State*, 162 Wis. 2d 940, 961, 471 N.W.2d 493 (1991). The juvenile court has discretion as to the weight it affords each of the criteria under the waiver statute in deciding whether to waive jurisdiction.³ *Id.* at 960. In the exercise of its discretion, a court may reach a conclusion which another court might not reach, but the decision must be one which a reasonable court could arrive at by considering the relevant law, the facts, and a process of logical reasoning.

² This matter is before us on Sheldon's petition for leave to appeal nonfinal orders. We granted the petition by our order of September 28, 2001.

³ In *J.A.L. v. State*, 162 Wis. 2d 940, 471 N.W.2d 493 (1991), the supreme court was addressing the former waiver statute then set out in the children's code, WIS. STAT. § 48.18 (1990-91). The current waiver statute is set out in WIS. STAT. § 938.18. Despite the differences in the two statutes, we deem the standard of review statements by the supreme court in *J.A.L.* as still binding law.

Hartung v. Hartung, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). Thus, when a reviewing court and the trial court have differing views on the question, the trial court's exercise of discretion is sometimes referred to as a limited right to be wrong. *State v. Jeske*, 197 Wis. 2d 905, 913, 541 N.W.2d 225 (Ct. App. 1995).

¶3 Assuming the juvenile court has exercised its discretion, we will look for reasons to sustain that determination. *J.A.L.*, 162 Wis. 2d at 961. Not all of the relevant factors need be resolved against the juvenile, and this court cannot make a mathematical calculation as to the weight to be given by the juvenile court or this court as to each factor. *D.H. v. State*, 76 Wis. 2d 286, 310, 251 N.W.2d 196 (1977). Even where the juvenile court has determined that waiver is not in the best interests of the child, the court may still order waiver in the proper exercise of its discretion. *B.B.*, 166 Wis. 2d at 209.

¶4 In the accompanying footnote, we recite the language of WIS. STAT. § 938.18(5), which sets out the criteria that a juvenile court must consider on a waiver question.⁴ After considering this criteria, the juvenile court must state its

⁴ WISCONSIN STAT. § 938.18(5) states:

If prosecutive merit is found, the court shall base its decision whether to waive jurisdiction on the following criteria:

(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.

(continued)

findings and determine if the State has established 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 hear the case, thus warranting a referral of the matter to the district attorney for appropriate proceedings in adult court. Sec. 938.18(6).

¶5 In this case, the delinquency petition alleged five felony counts relating to Sheldon's alleged delivery of cocaine, including conspiracy to deliver cocaine.⁵ The money involved in the transactions ranged from \$50 to \$200. However, discussions between the undercover officer and Sheldon or his conspirators proposed transactions involving thousands of dollars. The offenses

(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 willful 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.

⁵ A sixth count alleged a tax stamp violation.

carried substantial adult prison sentences.⁶ The offenses also implicated Sheldon's mother, an adult brother, and two other adults who were also charged in adult court with crimes relating to these events.

¶6 Sheldon stipulated to the prosecutive merit of the charges. *See* WIS. STAT. § 938.18(4)(a). Therefore, the contested issue was whether the State had established by clear and convincing evidence that it would be contrary to the best interests of Sheldon and the public to retain juvenile court jurisdiction. Sec. 938.18(6).

¶7 In its bench ruling, the juvenile court noted the testimony of the investigating officer that he had never before seen a juvenile of Sheldon's age involved with the delivery of cocaine in the amounts indicated in the petition. The court further noted that Sheldon was involved in the running of a fortified drug house. The court described the criminal operation as sophisticated, profit motivated, and beyond the usual involvement of most juvenile offenders. The court stated that Sheldon was not a drug addict, but rather a drug dealer. Acknowledging that it was obligated to take Sheldon's individual concerns into consideration, the court also noted the debilitating effect that sophisticated drug dealing has on a community. It is obvious from these remarks that the juvenile court was principally concerned with the seriousness of the offenses pursuant to

⁶ Citing to *C.W. v. State*, 142 Wis. 2d 763, 419 N.W.2d 327 (Ct. App. 1987), Sheldon argues that it is improper in a waiver case to speculate about possible adult criminal penalties. In *C.W.*, the juvenile court had denied waiver, speculating that an adult court penalty would be too lenient. *Id.* at 766. The court of appeals held that such speculation was improper, noting that the potential for leniency in the adult court was not included in the statutory factors bearing on a waiver determination. *Id.* at 768. Here, however, the juvenile court did not speculate about possible leniency in the adult court. Neither do we. Instead, the possible adult criminal sanctions speak to the "type and seriousness of the offense," a relevant factor bearing on waiver pursuant to WIS. STAT. § 938.18(5)(b).

WIS. STAT. § 938.18(5)(b). In addition, the court noted that Sheldon was just shy of his seventeenth birthday, leaving the juvenile court insufficient time to address Sheldon's needs pursuant to § 938.18(5)(c). Finally, the court noted that the other persons involved in the criminal operation were charged in adult court, producing the desirability of disposing of all matters in one adult forum pursuant to § 938.18(5)(d).

¶8 In reaching its waiver decision, the juvenile court also looked at the factors in Sheldon's favor. Most importantly, the court noted the recommendation against waiver made by the social worker for the Waukesha County Department of Health and Human Services. *See* WIS. STAT. § 938.18(2m). However, in registering its disagreement with the social worker's assessment of the seriousness of Sheldon's alleged offenses, the court explained why it was rejecting the Department's recommendation.

¶9 In addition, the juvenile court acknowledged that Sheldon's mother and other adults were actors in the criminal enterprise and played a role in getting Sheldon involved and that Sheldon was currently living with his father, providing an opportunity for Sheldon to alter his lifestyle. The court also acknowledged Sheldon's relatively minor prior contacts with the legal system and that Sheldon's record did not reveal any previous delinquency adjudications or waivers of juvenile court jurisdiction. But despite these factors, the court concluded that the seriousness of the offenses warranted a waiver of jurisdiction.

¶10 In summary, the juvenile court balanced the factors both in favor of and against the waiver question and provided a reasonable basis for its conclusion that waiver was appropriate. *B.B.*, 166 Wis. 2d at 207. In the final analysis, the court chose to place more emphasis on the seriousness of Sheldon's conduct, the

inability of the juvenile court system to address Sheldon's longer-term needs, and the desirability of disposing of all the proceedings against all the actors in the adult criminal court. This was within the court's prerogatives under *J.A.L. J.A.L.*, 162 Wis. 2d at 960. While another judge might have reached a different conclusion, the court here properly considered the relevant facts and law and engaged in a logical reasoning process. See *Hartung*, 102 Wis. 2d at 66.

¶11 We affirm the waiver order and the later order denying reconsideration.

By the Court.—Orders affirmed.

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

