

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

September 12, 1995

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. 95-1396

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT I

IN THE INTEREST OF RONALD T.,  
A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

**Petitioner-Respondent,**

v.

RONALD T.,

**Respondent-Appellant.**

APPEAL from an order of the circuit court for Milwaukee County:  
THOMAS P. DONEGAN, Judge. *Affirmed.*

FINE, J. Ronald T. appeals from the trial court's order waiving the jurisdiction of the Children's Court. See § 48.18, STATS.<sup>1</sup> He argues that the trial

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<sup>1</sup> At the time of the offense, § 48.18, STATS. (1991-92), as amended by 1993 Act 98, provided:

**Jurisdiction for criminal proceedings for children 14 or older; waiver hearing**

(1) (a) A child or district attorney may apply to the court to waive its

(..continued)

jurisdiction under this chapter in any of the following situations:

1. If the child is alleged to have attempted to violate s. 940.01 on or after the child's 14th birthday or is alleged to have violated s. 161.41(1), 940.01, 940.02, 940.05, 940.06, 940.225(1), 940.305, 940.31 or 943.10(2) on or after the child's 14th birthday.
  2. If the child is alleged to have committed, on or after the child's 14th birthday, a violation, at the request of or for the benefit of a criminal gang, as defined in s. 939.22(9), that would constitute a felony under ch. 161 or under chs. 939 to 948 if committed by an adult.
  3. If the child is alleged to have violated any state criminal law, other than s. 940.20(1) or 946.43 while placed in a secured correctional facility, on or after the child's 16th birthday.
- (b) The judge may also initiate a petition for waiver in any of the situations described in par. (a) if the judge disqualifies himself or herself from any future proceedings on the case.
- (2) The waiver hearing shall be brought on by filing a petition alleging delinquency drafted under s. 48.255 and a petition for waiver of jurisdiction which shall contain a brief statement of the facts supporting the request for waiver. The petition for waiver of jurisdiction shall be filed prior to the plea hearing.
- (3) (a) The child shall be represented by counsel at the waiver hearing. Written notice of the time, place and purpose of the hearing shall be given to the child, any parent, guardian or legal custodian, and counsel at least 3 days prior to the hearing. The notice shall contain a statement of the requirements of s. 48.29 (2) with regard to substitution of the judge. Where parents entitled to notice have the same address, notice to one constitutes notice to the other. Counsel for the child shall have access to the social records and other reports consistent with s. 48.293.
- (b) The child has the right to present testimony on his or her own behalf including expert testimony and has the right to cross-examine witnesses at the hearing.
- (c) The child does not have the right to a jury at a hearing under this section.
- (4) The judge shall determine whether the matter has prosecutive merit before proceeding to determine if it should waive its jurisdiction.
- (5) If prosecutive merit is found, the judge, after taking relevant testimony which the district attorney shall present and considering other relevant evidence, shall base its decision whether to waive jurisdiction on the following criteria:

court placed too much emphasis on the seriousness of the crime: armed and masked robbery. We affirm.

(..continued)

- (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.
  - (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.
- (6) After considering the criteria under sub. (5), the judge shall state his or her finding 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 interests of the child or of the public to hear the case, the judge shall enter an order waiving jurisdiction and referring the matter to the district attorney for appropriate criminal proceedings in the circuit court, and the circuit court thereafter has exclusive jurisdiction.
- (8) When waiver is granted, the child, if held in secure custody, shall be transferred to an appropriate officer or adult facility and shall be eligible for bail in accordance with chs. 968 and 969.
- (9) If waiver is granted, sub. (1) does not restrict the authority of the district attorney to charge the offense he or she deems is appropriate and does not restrict the authority of any court or jury to convict the child in regard to any offense.

1993 Act 244 has made changes to § 48.18, STATS., effective January 1, 1995.

The delinquency petition lodged against Ronald T. charged him with committing an armed and masked robbery, as party to a crime, on August 23, 1994, when Ronald T. was just several weeks past his seventeenth birthday. See §§ 943.32(1)(b) & (2) and 939.05, STATS. At the time this crime was charged, Ronald T. was in the custody of the Department of Health and Social Services at the Ethan Allen School in Wales, Wisconsin, for the crimes of armed robbery and operating a motor vehicle without the owner's consent, which were committed in September of 1994.

On May 22, 1995, the trial court held a hearing on the waiver petition. The only person to testify at the hearing was Douglas Pozner, a social worker at the Ethan Allen School. Pozner gave the trial court general background information about Ronald T., the specifics of which are not material to this appeal because Ronald T. does not contend that the trial court did not consider the appropriate statutory factors.<sup>2</sup> Rather, Ronald T.'s sole argument on appeal is that the trial court gave too much emphasis to the seriousness of the crimes.

A determination of whether to waive Children's Court jurisdiction is within the trial court's discretion, and will not be overturned on appeal if that decision has a "reasonable basis." *State v. C.W.*, 142 Wis.2d 763, 766-767, 419 N.W.2d 327, 328-329 (Ct. App. 1987). Further, a trial court may waive jurisdiction of the Children's Court over a juvenile if it determines that the seriousness-of-the-offense criterion requires waiver even though waiver would not be in the best interests of the juvenile. *B.B. v. State*, 166 Wis.2d 202, 210, 479 N.W.2d 205, 208 (Ct. App. 1991). Ronald T. has not demonstrated that the trial court erroneously exercised its discretion.

*By the Court.* — Order affirmed.

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

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<sup>2</sup> Ronald T. comments in his brief, without further argument or development, that the trial court's consideration of these factors was " cursory." We disagree. The transcript of the trial court's oral decision reflects the trial court's careful consideration of all the factors and application of those factors to Ronald T.'s circumstances.