

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

September 26, 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. 95-1701

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

IN THE INTEREST OF JAMES B.,
A CHILD UNDER THE AGE OF 18:

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

JAMES B.,

Respondent-Appellant.

APPEAL from a nonfinal order of the circuit court for Milwaukee County: CHRISTOPHER R. FOLEY, Judge. *Affirmed.*

SULLIVAN, J. James B., a juvenile, appeals from a nonfinal juvenile court order waiving him into adult court for criminal prosecution on one count of substantial battery and one count of battery.¹ He presents two

¹ By order filed August 8, 1995, this court granted James B.'s petition for leave to appeal from the nonfinal order of the juvenile court.

issues for this court's review – whether the juvenile court erroneously exercised its discretion in granting the waiver petition because the court's decision is not supported by the record, and because the court failed to specify factual findings in support of its decision to waive juvenile jurisdiction. This court rejects James B.'s arguments on these issues and affirms the order.²

On March 30, 1995, the State filed a two-count delinquency petition charging James B. with substantial battery and battery. The petition alleged that James B. kicked and “stomped” on a juvenile victim's head while she lay on the ground, and that he punched another juvenile girl in the face.

The State then filed a petition to waive James B. into adult court. After a hearing, the juvenile court granted the petition, finding that the criminal law violations alleged in the delinquency petition occurred on or after James B.'s sixteenth birthday; that there was “prosecutive merit to the charges of Substantial Battery and Battery alleged against” him; and that considering the “clear and convincing” evidential criteria pursuant to § 48.18(5), STATS., “it would be contrary to the best interests of the child and the public to hear the case” in juvenile court.

James B. first argues that the juvenile court erroneously exercised its discretion in granting the waiver petition because its decision is not supported by the record. We disagree.

Whether to grant a waiver petition is a matter within the discretion of the juvenile court and we will not reverse the court's decision absent an erroneous exercise of that discretion. See *D.H. v. State*, 76 Wis.2d 286, 302-303, 251 N.W.2d 196, 205 (1977). “The proper exercise of discretion contemplates an informed determination reached by the demonstrated application of reason to facts and circumstances appearing in the record.” *Id.* at 303, 251 N.W.2d at 205. Subsections 48.18(5) and (6), STATS., set forth the criteria and the process the juvenile court must use in deciding whether to waive a juvenile into adult court:

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

- (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:
- (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. In the absence of evidence to the contrary, the judge shall presume that it would be contrary to the best interests of the child and of the public to hear the case if the child is alleged to have violated any state criminal law on or after the child's 16th birthday and if the court has waived its jurisdiction over the child for a previous violation.

The juvenile court carefully set forth its specific findings in its oral decision at the juvenile hearing. It found that because of James B.'s older age, the juvenile justice system had no services available to him, *see* § 48.18(5)c; that the alleged acts were serious and violent acts resulting in serious bodily harm to one victim, and physical harm to another, *see* § 48.18(5)b; that he had prior adjudications in the juvenile system, and that his personalty, motives, and attitudes reflected unfulfilled potential, *see* § 48.18(5)(a); and that § 48.18(5)(d) did not apply in James B.'s case. The record and the testimony clearly supports the juvenile court's findings pursuant to § 48.18(5), STATS. It properly determined, by clear and convincing evidence, to waive James B. into adult court. The juvenile court properly exercised its discretion in reaching its conclusion. *See D.H.*, 76 Wis.2d at 302-03, 251 N.W.2d at 205.

James B. next argues that the juvenile court erroneously exercised its discretion by failing to set forth its factual findings under the § 48.18(5) criteria. His argument, however, is amorphous and without adequate citation to legal authorities. Accordingly, this court need not address it. *See Barakat v. DHSS*, 191 Wis.2d 770, 787, 530 N.W.2d 392, 398-99 (Ct. App. 1995). Nonetheless, this court notes that the juvenile court did address and make specific findings with respect to the required criteria, and we can locate no erroneous exercise of discretion on the part of the juvenile court. *See D.H.*, 76 Wis.2d at 302-03, 251 N.W.2d at 205.

For the foregoing reasons, we affirm the order of the juvenile court.

By the Court. – Order affirmed.

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