COURT OF APPEALS
DECISION
DATED AND RELEASED

November 9, 1995

NOTICE

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.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

Nos. 95-1769
95-1770

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN THE INTEREST OF DORIAN H.,
A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

DORIAN H.,

Respondent-Appellant.

APPEAL from orders of the circuit court for Rock County: JOHN H. LUSSOW, Judge. *Affirmed*.

EICH, C.J.[1] Dorian H., a minor, appeals from orders of the juvenile court waiving him into circuit court to face several criminal charges, including: (1) battery and disorderly conduct; (2) intentionally causing bodily

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

harm; and (3) acting with a criminal gang with intent to assist criminal conduct by gang members. The first charge stems from an incident in which he is alleged to have beaten another juvenile, while the remaining charges stem from a separate incident in which he is alleged, in conjunction with several other juveniles, to have physically attacked a schoolmate.[2] He argues that waiver is not supported by the evidence in that the probation officer's testimony as to available juvenile court programs and services was non-specific, and that the juvenile court otherwise erroneously exercised its discretion in waiving jurisdiction.

We affirm the orders.

Dorian H. argues first that the testimony of his probation officer, Thomas Siebert, relating to the adequacy of juvenile court services and programs, failed to "evaluate specific facilities or programs," but instead testified generally as to the adequacy or inadequacy of various alternatives "without addressing why a specific alternative might not be appropriate." Contrasting Siebert's testimony with that of his mother and school social worker "that [he] needed structure in his life, and would positively respond to future treatment," Dorian H. argues that the court could order waiver only if it had simply "rubber stamped" the district attorney's waiver request, rather than exercising discretion in the matter. We disagree.

Section 48.18(5), STATS., sets forth at considerable length the criteria for waiver of juvenile court jurisdiction.[3] As may be seen, the court is to

---

[2] The charges stemming from the separate incidents were the subject of separate waiver petitions, and we consolidated them for purposes of this appeal.

[3] The criteria are listed as follows in § 48.18(5):

> (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

consider, among (many) other things, "[t]he adequacy and suitability of facilities, services and procedures available for treatment of the child and protection of the public within the juvenile justice system ...." Section 48.18(5)(c).

But the court is not required to "resolve every statutory waiver criterion against the child" in order to waive jurisdiction; rather, the statute "requires only that the court consider the listed criteria and state its findings on the record." ***Interest of G.B.K.***, 126 Wis.2d 253, 256, 376 N.W.2d 385, 388 (Ct. App. 1985). It is a broader process, for, under the statute,

> the juvenile court [has] authority to waive its jurisdiction if it appears by clear and convincing evidence that it would be contrary to the public's best interests for the child to remain in the juvenile system. Although in its analysis on whether to waive the child into adult court, the juvenile court begins with the child's best interests as its chief concern, it is still permitted

(..continued)

> 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.

> after evaluating all [the statutory] factors to conclude that the public's interests are best served by waiving its jurisdiction.

Interest of B.B., 166 Wis.2d 202, 210, 479 N.W.2d 205, 208 (Ct. App. 1991).

Under these cases, the fact that Siebert's testimony did not go into detail, considering and either approving or rejecting each and every option, possibility or program that might exist in the system, does not by itself undermine the juvenile's court's decision. As indicated, the ultimate question is whether the court appropriately exercised its discretion in deciding the issue.

Dorian H. agrees that whether to waive juvenile jurisdiction in a given case is left to the sound discretion of the juvenile court, and we will uphold a waiver decision if the record reflects that the juvenile court exercised its discretion and there is a reasonable basis in fact and law for its decision. ***Interest of Curtis W.***, 192 Wis.2d 719, 726, 531 N.W.2d 633, 635 (Ct. App. 1995).

In ***Burkes v. Hales***, 165 Wis.2d 585, 590-91, 478 N.W.2d 37, 39 (Ct. App. 1991), we discussed at some length the scope of our review of a trial court's discretionary act:

A court exercises discretion when it considers the facts of record and reasons its way to a rational, legally sound conclusion. It is "a process of reasoning" in which the facts and applicable law are considered in arriving at "a conclusion based on logic and founded on proper legal standards." Thus, to determine whether the trial court properly exercised its discretion in a particular matter, we look first to the court's on-the-record explanation of the reasons underlying its decision. And where the record shows that the court looked to and considered the facts of the case and reasoned its way to a conclusion that is (a) one a reasonable judge could reach and (b) consistent with

> applicable law, we will affirm the decision even if it is not one with which we ourselves would agree.
>
> It need not be a lengthy process. While reasons must be stated, they need not be exhaustive. It is enough that they indicate to the reviewing court that the trial court "undert[ook] a reasonable inquiry and examination of the facts" and "the record shows that there is a reasonable basis for the ... court's determination." Indeed, "[b]ecause the exercise of discretion is so essential to the trial court's functioning, we generally look for reasons to sustain discretionary decisions."

(Citations and footnote omitted.)

In this case, the trial court, after hearing the evidence, explained its decision as follows:

> I've heard a lot of testimony here today about involvement with gangs. There's been some question as to whether this is big-city-type gang or wannabe-type activity. But what we are finding in this state is that the wannabe activity is far more dangerous than what we might want to compare with cities. Kids are out to prove themselves. And I've heard testimony about fraternization here and the wanting, the desire, to belong to a group. Unfortunately, I'm not convinced that the motives of this grouping are in the best interests of the juveniles or the community.
>
> I recognize his mother has really tried very hard to work with him, but she's also indicated to this court that she's at her wit's end.
>
> Now, if I look at the adequacy and suitability of the facilities and services available, basically the

> testimony I've got is that corrections would probably be capable of dealing with this gang type of thing. And, frankly, I don't think that's cost effective, and I really don't think in this case, in view of Dorian's background, that corrections, juvenile corrections would be suitable treatment for him at all. I'm familiar with the various treatment programs in the juvenile justice system. We've certainly tried the community based stuff, and ... I'm honestly at my wit's end to think of anything that would be adequate or suitable.
>
> This gang business is a community problem, and I guess it's got to be dealt with here. This is ... these allegations are very serious. And I think that the state has a strong case against Dorian and his friends. And I mean the most recent incident, of course, is the most serious. We're not talking about skipping school and stealing candy anymore. We're talking about big league criminal activity, an attack against another human being, and that's really of great concern to the court. So I don't think there's adequate or suitable facilities or services available for treatment within the system which will also assure protection of the public.
>
> So I find clear and convincing evidence [that] it would be contrary to the best interests of the juvenile and the public to hear the case in juvenile court.

The record before the court details Dorian H.'s gang-related activities and the severity of the conduct for which the charges were issued. It also contains, as we have indicated, evidence on his prior record and the general adequacy/inadequacy of juvenile court facilities and services to deal with his conduct. In ***Curtis W.***, we upheld the trial court's exercise of discretion to waive jurisdiction where it was apparent from the record that the court, in so deciding, considered the intentional and aggravated nature of the offense, the juvenile's prior record, his disregard for the law and "lack of commitment to rehabilitation," the lack of success in his prior contacts with the juvenile system,

and the fact that the maximum time period available for his treatment in the juvenile system was "`not long enough.'" ***Interest of Curtis W.***, 192 Wis.2d 719, 726, 531 N.W.2d 633, 635 (Ct. App. 1995).

The juvenile court's explanation of its reasons for ordering Dorian H.'s waiver in this case is no less reasoned, no less based on the facts of record, and no less specific in its consideration of the § 48.18(5) criteria than was the ***Curtis W.*** court, and we reach the same result here. The court did not erroneously exercise its discretion in waiving jurisdiction over Dorian H.

By the Court.—Orders affirmed.

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