

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

March 14, 1996

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. 95-2604

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN THE INTEREST OF JOSEPH C. C.,
A CHILD UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

JOSEPH C. C.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Sauk County:
ROBERT F. CURTIN, Judge. *Affirmed.*

SUNDBY, J.¹ Joseph C.C. appeals from an order entered September 20, 1995, by the juvenile court of Sauk County waiving jurisdiction over him. A hearing was held September 6, 1995, on the State's amended

¹ This appeal is decided by one judge pursuant to § 752.31(2)(e), STATS. "We" and "our" refer to the court.

petition for waiver. At that hearing, the State relied on the amended petition to establish prosecutive merit as to each of the five counts alleged. The State's waiver petition was based upon an amended petition for determination of Joseph's status as a delinquent child filed August 7, 1995. This petition alleged five counts: burglary, kidnapping, attempted homicide, infliction of great bodily harm, and mutilation.

All of these counts arose out of a single incident which began on July 29, 1995, involving a juvenile, T.F.P. He told the story that Joseph kidnapped him from his home, took him to Joseph's home where Joseph broke both of his legs by twisting and jumping on them. Joseph admitted the basic facts related by the juvenile, except that he claimed that after he threw T.F.P. on Joseph's bed, he "blinked out" and when he awoke, T.F.P. was laying on the floor complaining about his legs.

T.F.P.'s injuries required surgery. Both legs were broken above the knee; one knee was broken; the left lower leg was broken; and the right ankle was broken. According to the treating doctor, approximately one-third of T.F.P.'s blood had drained into his legs and he was severely dehydrated. The doctor informed the police that T.F.P.'s injuries were life threatening.

Joseph presents two issues: (1) Did the petition for determination of status establish prosecutive merit for all counts alleged therein? (2) Did the trial court rely on clearly erroneous findings in reaching its waiver decision? We conclude that the State was not required to prove that each count of the petition had prosecutive merit, and that the evidence was sufficient to establish prosecutive merit for the counts alleging that Joseph intentionally caused T.F.P. great bodily harm and intentionally mutilated T.F.P. Therefore, we conclude that the petition for determination of status established prosecutive merit.

Joseph accepts that the trial court placed the weight of its waiver decision "squarely upon the seriousness of the offenses *as shown by the their statutory classifications*" (Emphasis added.) He notes that the trial court erroneously concluded that Joseph was accused of a class A felony life imprisonment offense, but that attempted first-degree intentional homicide is not a class A felony. We determine, however, that the seriousness of the acts of intentionally causing great bodily harm and mutilation support the trial court's

decision to waive its jurisdiction over Joseph so that he could be tried as an adult. Therefore, the trial court's statement that Joseph was accused of a class A felony--attempted first-degree intentional homicide--is irrelevant to our conclusion that the trial court did not erroneously exercise its discretion.

Joseph further argues that the trial court erroneously concluded that Joseph would never get to Lincoln Hills if he were kept in the juvenile system because "by the time we go through all of the machinery and have a trial on all the factors ... and get processed[,] he would be eighteen by that time." Joseph notes that under § 48.366, STATS., the juvenile court could enter an order extending its jurisdiction to age twenty-five for a delinquent act in violation of § 940.01, STATS. As we have pointed out, we find that the seriousness of the acts of intentionally causing great bodily harm and mutilation support waiver of the juvenile court's jurisdiction. Therefore, we need not consider the consequences of or the dispositions available to the trial court if it found Joseph guilty of attempted first-degree homicide.

Further, the transcript of the waiver hearing shows that the trial court was convinced that Joseph was so dangerous that retaining him in the juvenile justice system was contrary to his best interest and the best interest of the public. The court's principal consideration was Joseph's violent acts, not how the law might classify those acts. The court stated that it could not imagine a more serious set of circumstances:

[T]aking a boy, a thirteen-year-old boy, from his bed, helping him to one's residence, ending up breaking his legs ...[,] punching him in the face and choking him ... I just don't know how you can ... get much more serious with respect to injuries to an individual and particularly to a thirteen-year-old boy.

Perhaps under a precise scenario, Joseph could have been retained in the juvenile justice system until at least age twenty-one, but we conclude that the seriousness of Joseph's offenses, regardless of the secure correctional facilities available in the juvenile justice system, justified the juvenile court's waiver of its jurisdiction over Joseph. See *In re D.H.*, 76 Wis.2d 286, 308, 251 N.W.2d 196, 207 (1977).

For these reasons, we affirm the order waiving the juvenile court's jurisdiction over the delinquent.

By the Court. – Order affirmed.

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