

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 25, 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. 95-2682

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

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

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

CHAI T.,

Respondent-Appellant.

APPEAL from an order of the circuit court for La Crosse County: DENNIS G. MONTABON, Judge. *Affirmed.*

DYKMAN, J. This is a single-judge appeal decided pursuant to § 752.31(2)(e), STATS. We granted Chai T.'s petition for leave to appeal a trial court order waiving juvenile jurisdiction. Section 808.03(2), STATS. Chai argues that the trial court erroneously exercised its discretion when it waived juvenile jurisdiction. We disagree and, therefore, affirm.

BACKGROUND

A delinquency petition was filed in a La Crosse County trial court on July 10, 1995, alleging that Chai, then a sixteen-year-old juvenile, operated a motor vehicle without the owner's consent as party to the crime, contrary to §§ 939.05 and 943.23(2), STATS. An amended petition was subsequently filed on July 12, alleging that Chai operated a motor vehicle without the owner's consent, gang enhanced, contrary to §§ 939.05, 943.23(2), and 939.625(1)(b)3, STATS. In addition, Chai was alleged to have recklessly endangered safety while armed, gang enhanced, contrary to §§ 941.30(1), 939.63(1)(a)3 and 939.625(1)(b)2, STATS.

The prosecutor filed a petition requesting that the trial court waive juvenile jurisdiction and, after a hearing on the matter, the court did so. Chai appeals.

WAIVER

The decision to waive juvenile jurisdiction is entrusted to the sound discretion of the trial court. *In re J.A.L.*, 162 Wis.2d 940, 960, 471 N.W.2d 493, 501 (1991). We will not reverse a waiver determination unless the record fails to reflect a reasonable basis for the decision or if a statement of the relevant facts or reasons supporting the determination is absent in the record. *Burkes v. Hales*, 165 Wis.2d 585, 590, 478 N.W.2d 37, 39 (Ct. App. 1991).

Section 48.18(5), STATS., supplies the following factors for the trial court to consider in making the waiver determination:

- (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 the circuit court.

The trial court must consider the best interest of the juvenile as paramount in making the waiver determination. *J.A.L.*, 162 Wis.2d at 960, 471 N.W.2d at 501. However, the court has discretion in assigning the weight given to each of the factors set forth in § 48.18(5), STATS. *Id.* A finding against the juvenile on every factor is not required before waiver is warranted under § 48.18. *In re B.B.*, 166 Wis.2d 202, 209, 479 N.W.2d 205, 207-08 (Ct. App. 1991). But the court must state its findings with respect to these factors on the record and, if the court determines that clear and convincing evidence establishes that it would be contrary to the best interest of the child or the public for it to hear the case, the court must enter an order waiving juvenile jurisdiction. Section 48.18(6); *J.A.L.*, 162 Wis.2d at 960, 471 N.W.2d at 501.

Chai argues that the trial court erroneously exercised its discretion in three ways. First, he asserts that the court erred in evaluating his personality and prior record. Second, this mischaracterization caused the court to erroneously consider the adequacy and suitability of the juvenile system. Third,

the court overemphasized the seriousness of the offense because that factor, alone, is not sufficient to uphold the decision to waive juvenile jurisdiction when other factors are improperly considered. We disagree.

Our review of the record shows that the trial court's determination regarding the child's personality and prior record was not based on an erroneous exercise of discretion. Chai's assertion that the court found him previously delinquent on battery, a charge involving serious bodily injury, is unfounded. The court heard testimony from Debra A. Ruosch, a La Crosse County social worker, concerning Chai's prior referrals to the juvenile system. The court's reference to this charge merely acknowledged that his history included an alleged battery which, Ruosch stated, was later dismissed.

Similarly, the record reveals that there was sufficient evidence presented at the waiver hearing to support the trial court's determination that Chai's attitudes and motives warranted waiver. Chai was noncompliant with the terms of his supervision, he ran away once and made other attempts to do so, he failed to attend school, he did not participate in the victim offender reconciliation program or remain in the leadership alternative school program, he violated the home detention program and continued to openly admit his involvement in gang activity to his social worker.

The trial court's assessment of Chai's pattern of living is also supported by the record. Ruosch testified that Chai's whereabouts were often unknown, even to his parents. For example, although Chai was to stay with a family friend while his parents were out of the country for a one-month vacation, he did not do so and his whereabouts were unknown. While it is true that there is no statement on the record explicitly indicating that Chai desired to live on his own, where, as here, a court looks to the record, considers the facts of the case and draws reasonable inferences, we will not disturb the decision. *See Burkes*, 165 Wis.2d at 590, 478 N.W.2d at 39.

We reject Chai's claim that the trial court failed to exercise its discretion by ignoring displays of violence in Chai's home. The court heard testimony from Dennis Lee Tucker, an employee of the La Crosse Area Hmong Mutual Assistance Association, describing how Chai's younger brother had told him of a violent attack he suffered at the hands of their father. On cross-examination, however, it was revealed that the brother's allegation against the

father was subsequently recanted. From this disputed testimony, the court could rationally conclude that the event did not occur and that the home environment did not mitigate Chai's behavior.

The trial court also properly exercised its discretion when it determined that there was no indication in the record that Chai would respond to future treatment. The court heard testimony from Ruosch of Chai's consistent failure to comply with any of the terms of his supervision and of his openness regarding his continued gang involvement. She later testified about her doubt that Chai would respond to other services within the juvenile system. While this testimony was contested by that of Tucker who believed that other services within the juvenile system would benefit Chai, it was within the discretion of the court to reject the opposing testimony and accept that of Ruosch.

The record also shows that the trial court's decision regarding the appropriateness of services within the juvenile system was not based on an erroneous exercise of discretion. Section 48.18(5)(c), STATS., requires courts to consider the adequacy and suitability of facilities, services and procedures available for treatment of the child and protection of the public within the juvenile system. Chai argues that facilities and alternatives within the juvenile system which were not tried were determined to offer insufficient protection to the public because the court erroneously concluded that Chai had a previous adjudication involving serious bodily injury.

As discussed earlier, the trial court understood that the battery charge was eventually dismissed. And, when the court stated its findings pertaining to the inadequacy of the juvenile system on the record pursuant to § 48.18(6), STATS., it was concerned with the gravity of the offense charged and Chai's proclivity to disregard the conditions of his supervision.

The trial court stated:

[W]e are talking about an offense where the public is immediately and seriously endangered. The offenses charged was against—the offenses charged were against persons and property. They were committed in a violent,

aggressive and in my opinion premeditated and willful manner

....

... [T]here are basically alternatives that haven't been tried I find that the protection of the public cannot be sufficiently assured by those alternatives, and I'm not aware of anything in the juvenile law that says you have to go through every possible disposition prior to waiving an individual, and if there was an indication here that it was likely to be successful the court would give more serious consideration to it. I don't see that indication here, and based on the nature of the conduct, I don't see that it is in the interest of the public that that be tried at this time.

These statements makes abundantly clear that the court did not rely on any erroneous characterization of Chai's background when it considered this factor.

Chai's final claim, that the seriousness of the crime is not sufficient to uphold the waiver decision when the trial court improperly considers other factors, must also fail. As was discussed above, the court did not improperly consider other factors. Dispositive on this point, however, is the court's "discretion in weighing all the factors under [§] 48.18(5), STATS., and in waiving a juvenile into adult court because it is either in the juvenile's or the public's best interests under [§] 48.18(6)." *B.B.*, 166 Wis.2d at 209, 479 N.W.2d at 207. Recognizing this discretion, we have affirmed waivers where the juvenile court found, on all factors considered except one, in favor of retaining jurisdiction and that "based on the seriousness of the offense, it was in the public's best interests to waive jurisdiction." *Id.* We consider the conduct charged, firing a gun in the direction of a crowd of people, sufficiently serious to warrant waiver independent of considerations of other factors.

CONCLUSION

The trial court's decision to waive its juvenile court jurisdiction over Chai was not based upon an erroneous exercise of discretion. The court's evaluation of Chai's personality and prior record is supported by the record. The court's decision that the juvenile system was inadequate to address Chai's behavior and the safety interests of society is not predicated on a mischaracterization of his prior record, but rather, on the serious and apparently deliberate nature of the charged offenses and the likelihood that he will not respond to future treatment. The seriousness of the offense of firing a gun in to a crowd of people cannot be overemphasized and can, alone, warrant waiver under the statute.

By the Court. – Order affirmed.

Not recommended for publication in the official reports. See RULE 809.23(1)(b)4, STATS.