

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 9, 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. 95-2726

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

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

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

GERALD D. T.,

Respondent-Appellant.

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

SULLIVAN, J. Gerald T., a juvenile, appeals from a nonfinal order waving him into adult court. He argues that the juvenile court erroneously exercised its discretion in granting the State's petition to waive him into adult court because he alleges that it failed "to consider the best interests of the juvenile as paramount" in reaching its conclusion. The juvenile court properly

considered and weighed all of the relevant factors; thus, it properly exercised its discretion. Hence, this court affirms.¹

As alleged in the delinquency petition filed by the State, on the night of July 11, 1995, Gerald T. committed two counts of first-degree sexual assault, as a party to a crime, while using a dangerous weapon, and while concealing his identity, contrary to §§ 940.225(1)(b), 939.05, 939.63, and 939.641; and two counts of armed robbery – threat of force, as a party to a crime, while concealing his identity, contrary to §§ 943.32(1)(b) & (2), 939.05, and 939.641. The petition alleged that Gerald T. and two other juveniles were in Martin Luther King Park when they spotted the juvenile victim and her boyfriend. They approached the couple, wearing bandannas over their faces and brandishing a handgun; they stole the couple's property and then demanded that the victims take off their clothes; they then forced the juvenile victim to perform oral sex on all three accomplices; and then Gerald T. and one of his accomplices forced her to have intercourse with them. The three juveniles then left the couple in the park. The petition also alleged that earlier in the night, the juveniles robbed another victim at gunpoint while wearing the bandannas.

After being apprehended by the police, both Gerald T. and another accomplice gave incriminating statements about their involvement in the crimes. The State then separately filed delinquency petitions against each of the juveniles and petitions to waive them into adult court. After reviewing the evidence, including a waiver study and a psychological profile, and on hearing testimony from both State and defense witnesses, the juvenile court granted the waiver petition on September 27, 1995. Gerald T. petitioned this court for leave to appeal from the nonfinal order waiving him into adult court. This court granted the petition on October 5, 1995.

Whether to waive jurisdiction over a juvenile under § 48.18, STATS., is a matter within the sound discretion of the juvenile court. *J.A.L. v. State*, 162 Wis.2d 940, 960, 471 N.W.2d 493, 501 (1991). Section 48.18(5), STATS., provides the factors the juvenile court is to consider, and while the court has the discretion to decide how much weight to accord each factor, the “best interest of the child” is the paramount consideration. *Id.* The juvenile court is to:

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

[S]tate 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 for the juvenile court to hear the case, the judge must enter an order waiving jurisdiction and referring the matter to the district attorney for appropriate criminal proceedings in the criminal court.

Id. (citation omitted); *see also* § 48.18(6), STATS. “Furthermore, although the juvenile court is directed to give its primary or foremost weight to the child's interests; it has the discretion in weighing all the factors under sec. 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 interest under sec. 48.18(6).” *B.B. v. State*, 166 Wis.2d 202, 209, 479 N.W.2d 205, 207 (Ct. App. 1991).

Further, “[a]n appellate court will reverse a juvenile court's waiver determination *if and only if* the record does not reflect a reasonable basis for the determination or a statement of the relevant facts or reasons motivating the determination is not carefully delineated in the record.” *J.A.L.*, 162 Wis.2d at 961, 471 N.W.2d at 501 (emphasis added).

Section 48.18(5), STATS., delineates the factors the juvenile court must consider:

- (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.

Gerald T. concedes that the juvenile court considered all of the above factors in reaching its determination to waive its jurisdiction; however, he argues that the juvenile court failed to consider the “best interest of the child” as paramount. The record belies his argument.

At several points in its decision, the juvenile court discussed Gerald T.'s need for treatment and concluded that it was “dramatic.” Further, the juvenile court concluded that possibly the juvenile system provided better and “more intensive” treatment methods. While the court never evoked the talismanic phrase “in the best interests of the child,” the record is clear that the court considered Gerald T.'s interests before reaching its decision. Nonetheless, after properly considering and weighing all of the factors under § 48.18(5), STATS., the juvenile court concluded that the evidence favored waiver. *B.B.*, 166 Wis.2d at 209, 479 N.W.2d at 207. Gerald T. has not shown this court how the juvenile court erroneously exercised its discretion; thus, this court will not reverse.

By the Court. – Order affirmed.

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