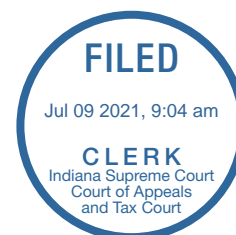


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

D.W.,
Appellant-Defendant,

v.

State of Indiana
Appellee-Plaintiff.

July 9, 2021

Court of Appeals Case No.
20A-JV-1811

Appeal from the Madison Circuit
Court

The Honorable G. George Pancol,
Judge

Trial Court Cause No.
48C02-2002-JD-71

Najam, Judge.

Statement of the Case

- [1] D.W. appeals the juvenile court’s order waiving him into adult court following the State’s petition alleging him to be a delinquent. D.W. presents a single issue for our review, namely, whether the juvenile court abused its discretion when it waived him into adult court.
- [2] We affirm.

Facts and Procedural History

- [3] In 2012, when D.W. was only ten years old, the Indiana Department of Child Services (“DCS”) substantiated an allegation that D.W. had molested a five-year-old child. In 2016, DCS substantiated reports that D.W. had molested “multiple victims,” including his younger brother. Appellant’s App. Vol. 2 at 43. The State filed a delinquency petition alleging that D.W. had committed acts that would be two counts of Level 3 felony rape and three counts of Level 3 felony child molesting if committed by an adult. D.W. entered into a plea agreement whereby he admitted to one count of child molesting, and the State dismissed the remaining charges.
- [4] From February 2017 until June 2018, D.W. was placed at Wernle Youth and Family Services (“Wernle”) “for residential treatment.” *Id.* at 38. From June until October 2018, D.W. was moved to a “less restrictive” placement at Polaris Group Home (“Polaris”). *Id.* D.W. “struggled” while at Polaris. *Id.* Ultimately, the State filed a petition to modify D.W.’s placement and alleged that he had violated several rules at Polaris, including failure to attend school

and testing positive for THC. D.W. was then placed at the Marion County Juvenile Detention Center.

[5] On January 17, 2019, D.W. was returned to Wernle, where he stayed until December 4, when he was returned to his mother's care on a "trial home visit." *Id.* While living with his mother, D.H., in Anderson, D.W. received outpatient treatment for his "history of substance abuse" and history as a "perpetrator of physical/sexual abuse." *Id.* Also living in the home were D.W.'s five-year-old half brother and D.H.'s partner and her two young children, M.S., age ten, and Ma.S. age four. DCS had a safety plan in place, whereby D.W. was prohibited from spending any unsupervised time with the children, and they were to keep their doors locked at night.

[6] In January 2020, DCS received a report that D.W., who was then seventeen years old, had molested M.S., but the investigating Anderson Police Department officer was unable to substantiate the report following a forensic interview with M.S. on January 30. Approximately two weeks later, M.S. again told her mother that D.W. had molested her. During a second forensic interview with M.S. on February 14, M.S. reported that D.W. had committed "multiple sexual acts" against her over the course of several weeks. *Id.* at 21. M.S. stated that D.W. had forced her to perform oral sex on him and that D.W. had penetrated both her anus and her vagina with his penis. M.S. also stated that D.W. showed her pornography.

[7] On February 25, the State filed a delinquency petition alleging that D.W. had committed acts that would be four counts of Level 3 felony child molesting, two counts of Level 4 child molesting, and one count of Level 6 felony display of harmful matter to a minor, if committed by an adult. On March 3, the State filed a motion for waiver of juvenile jurisdiction. Following a hearing, the juvenile court found that probable cause existed that D.W. had committed the acts as alleged. The court also stated that it had “not found from the evidence that it would be in the best interests of the child and welfare of the community for [D.W.] to remain within the juvenile justice system.” *Id.* at 126. Thus, the court ordered that D.W. be waived into adult court. This interlocutory appeal ensued.

Discussion and Decision

[8] D.W. appeals the court’s order waiving him into adult court. The State sought waiver to adult court pursuant to Indiana Code Section 31-30-3-5 (2020), which provides, in relevant part:

[The juvenile] court shall, upon motion of the prosecuting attorney and after full investigation and hearing, waive jurisdiction if it finds that:

(1) the child is charged with an act that, if committed by an adult, would be:

(A) a Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony, except a felony defined by IC 35-48-4;

(2) there is probable cause to believe that the child has committed the act; and

(3) the child was at least sixteen (16) years of age when the act charged was allegedly committed;

unless it would be in the best interests of the child and of the safety and welfare of the community for the child to remain within the juvenile justice system.

We review a juvenile court's decision to waive its jurisdiction for an abuse of discretion. *Moore v. State*, 723 N.E.2d 442, 445 (Ind. Ct. App. 2000). Proof of the three elements outlined in Indiana Code Section 31-30-3-5 creates a presumption in favor of waiver. *State v. D.R.*, 119 N.E.3d 1060, 1065 (Ind. Ct. App. 2019), *trans. denied*. The burden then shifts to the juvenile to present evidence and prove that it is in his best interests and in the interest of the safety and welfare of the community for him to remain in the juvenile justice system. *Moore*, 723 N.E.2d at 446.

[9] On appeal, D.W. acknowledges that the State presented sufficient evidence to prove the three elements required to establish the presumption in favor of waiver.¹ D.W. contends, however, that he presented sufficient evidence to rebut that presumption. Thus, he maintains that the juvenile court abused its discretion when it waived him into adult court. We cannot agree.

¹ The waiver hearing was not recorded. Accordingly, D.W. submitted, and the juvenile court certified, a statement of the evidence pursuant to Indiana Appellate Rule 31.

[10] In support of his contention that remaining in the juvenile justice system is in his best interests, D.W. asserts that he presented “undisputed evidence” that, if he were “sent to adult prison, [he] would likely be brutalized by older inmates and further traumatized.” Appellant’s Br. at 8. And in support of his contention that the community’s best interests would also be served by keeping him in the juvenile justice system, D.W. asserts that he “was evaluated and determined to have a low risk of reoffending.” *Id.* at 10. D.W. cites his probation officer’s report of preliminary inquiry, which states that he “scored in the LOW risk category” using the “JDAI Detention Tool,”² which meant that he “scored to detain.” Appellant’s App. Vol. 2 at 15.

[11] However, the probation officer’s preliminary inquiry report also states that D.W. “scored as a high risk on the IYAS[,]” which is the Indiana Youth Assessment System. *Id.* That report describes in detail D.W.’s long history of “sexually maladaptive behavior,” including “sexual contact with or sexual abuse against approximately 20 people, the majority of which were the same age as he or younger.” *Id.* In a waiver report prepared a few weeks before the hearing, the probation officer stated that, “[b]ehaviorally, [D.W.] has had some struggles with appropriate boundaries, especially related to a female resident that was (4) years younger than [D.W.] At times, [D.W.] also struggles

² JDAI stands for the Juvenile Detention Alternatives Initiative.

accepting feedback and redirection from staff; he will minimize his actions and fail to take responsibility.” *Id.* at 45.

[12] D.W.’s argument on appeal amounts to a request that we reweigh the evidence, which we cannot do. We hold that D.W. did not present sufficient evidence to prove that it is in the best interests of him and the safety and welfare of the community for him to remain in the juvenile justice system. *See Moore*, 723 N.E.2d at 446. Given D.W.’s history of sexually abusing multiple children since 2012, which has continued despite treatment, including inpatient treatment, we cannot say that the juvenile court abused its discretion when it waived D.W. into adult court.

[13] Affirmed.

Pyle, J., and Tavitas, J., concur.