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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1329**

In the Matter of the Welfare of: M. C. Q., Child

**Filed February 11, 2013
Affirmed
Collins, Judge***

Hennepin County District Court
File No. 27-JV-12-2682

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Elizabeth Johnston, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Bridget Sabo, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and
Collins, Judge.

UNPUBLISHED OPINION

COLLINS, Judge

Appellant challenges the district court's order designating him as an extended-jurisdiction juvenile (EJJ). We affirm.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

Shortly after midnight on March 18, 2012, a juvenile male approached three women as they were walking in a parking lot in Minneapolis. He pushed one of the women with his hands and body, took her clutch purse, and fled. Based on information describing the juvenile male's physical characteristics, his clothing, and the direction of his flight, officers apprehended 17-year-old appellant M.Q. several blocks from the scene. The three women identified M.Q. as the assailant. The state subsequently filed a petition in juvenile court, alleging that M.Q. is delinquent by reason of committing simple robbery, a felony under Minn. Stat. § 609.24 (2010). The state moved for designation of the case as an EJJ prosecution.

On June 26, 2012, a hearing was held to determine whether M.Q. would be designated as an EJJ. Two exhibits were entered by stipulation: (1) a psychological evaluation completed by Bruce Renken, Ph.D., on May 17, 2012, and (2) an EJJ study by investigating probation officer Kate Linden dated May 18, 2012. Both also testified at the hearing.

Dr. Renken conducted a clinical interview of M.Q. and interviewed M.Q.'s foster father.¹ Dr. Renken also reviewed M.Q.'s previous psychological evaluations and records of the police, social services, residential treatment facilities, and the courts. Dr. Renken noted that M.Q. was regularly physically abused and exposed to multiple incidents of physical domestic abuse in his biological-family home. After outlining several behavioral incidents, foster-care placements, and M.Q.'s medical and psychiatric

¹ M.Q. is a ward of the state and is placed in long-term foster care.

history, Dr. Renken opined that M.Q. is at moderate-to-high risk for serious violent and criminal behavior. Dr. Renken also stated that, “[w]hile the current charge is serious, [M.Q.] appears to be on a path toward improved psychosocial functioning and appears motivated to use resources available to him to build appropriate skills for an independent and responsible lifestyle.” Dr. Renken concluded that M.Q. “will be impacted significantly by further programming in the juvenile correctional system, and that this will in turn significantly reduce his level of risk to public safety.”

In the EJJ study, Linden reported on M.Q.’s criminal history, previous residential services, child-protection history, education, employment, peers, and M.Q.’s chemical and mental-health history. Linden, applying the factors district courts consider and addressing public safety implications, recommended that M.Q. be designated as an EJJ.

On July 2, 2012, after analyzing each of the six factors set forth in Minn. Stat. § 260B.125, subd. 4 (2010), finding that five of the six factors weighed in favor of EJJ designation, and concluding that public safety would be served, the district court ordered M.Q. “designated EJJ for one count of Felony Simple Robbery.” This appeal followed.

D E C I S I O N

M.Q. argues that the state failed to prove by clear and convincing evidence that his designation as an EJJ would serve public safety. In an EJJ prosecution, if a juvenile is adjudicated delinquent for the alleged offense, both an adult criminal sentence and a juvenile disposition are imposed. *In re Welfare of D.M.D., Jr.*, 607 N.W.2d 432, 434 (Minn. 2000). “The adult sentence is stayed on the condition that the juvenile does not

violate the terms of the disposition or commit a new offense.” *Id.* An EJJ designation extends the juvenile court’s jurisdiction until the juvenile reaches the age of 21. *Id.*

A district court shall designate a juvenile as an EJJ if the state proves by clear and convincing evidence that the designation will serve public safety. Minn. Stat. § 260B.130, subd. 2 (2010). The clear-and-convincing-evidence standard “requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt.” *Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978). The district court considers the following six factors when determining whether an EJJ prosecution would serve public safety:

- (1) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Sentencing Guidelines, the use of a firearm, and the impact on any victim;
- (2) the culpability of the child in committing the alleged offense, including the level of the child’s participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Sentencing Guidelines;
- (3) the child’s prior record of delinquency;
- (4) the child’s programming history, including the child’s past willingness to participate meaningfully in available programming;
- (5) the adequacy of the punishment or programming available in the juvenile justice system; and
- (6) the dispositional options available for the child.

Minn. Stat. § 260B.125, subd. 4. The seriousness of the alleged offense and the juvenile’s prior record are given more weight than the other factors. *Id.* We review a district court’s designation of a juvenile as an EJJ for clear error. *D.M.D.*, 607 N .W.2d at 437.

Regarding the first factor, offense seriousness, the district court found that the alleged offense is serious relative to public safety. Courts presume that factual allegations in a delinquency petition are true for the purposes of certification. *In re Welfare of D.W.*, 731 N.W.2d 828, 834 (Minn. App. 2007). While M.Q. characterizes the incident as “simple purse-snatching” that only “minimally” involved a person, it is alleged that M.Q. pushed the victim with his hands and body, “ripped” her purse away, and fled. Linden’s EJJ study termed the offense “very serious” and Dr. Renken described it as “serious.” Although M.Q. correctly argues that he did not use a weapon or verbally threaten the victim, we nonetheless readily conclude that the district court did not clearly err in assessing the seriousness of the offense relative to public safety.

In considering the second factor, culpability, the district court found that M.Q. “was the sole actor and was identified by the victim and her two companions as the sole offender soon after the accident.” M.Q. argues the district court erred by failing to consider mitigating factors, namely, M.Q.’s family history of violence. Courts are required to consider the “existence of any mitigating factors recognized by the Minnesota Sentencing Guidelines.” Minn. R. Juv. Delinq. P. 19.05(B). In addition to certain enumerated mitigating factors, the guidelines recognize “[o]ther substantial grounds exist [that] tend to excuse or mitigate the offender’s culpability, although not amounting to a defense.” Minn. Sent. Guidelines 2.D.2.a.(5) (Supp. 2011). The district court’s acknowledgment of M.Q.’s tumultuous home life in its findings shows it was aware of, and implies that it considered, the abuses suffered by M.Q. and the domestic violence to which he was exposed. M.Q. appears to argue that the application of any mitigating

factor would nullify the culpability factor; but that would have us read “mitigating” as “exonerating.” The argument is unpersuasive, and we conclude the district court did not clearly err by weighing this factor in favor of designating M.Q. as an EJJ.

As to the third factor, the juvenile’s prior delinquency record, we consider whether the antisocial behavior is ingrained and appears to be escalating. *In re Welfare of H.S.H.*, 609 N.W.2d 259, 263 (Minn. App. 2000). The district court noted M.Q.’s “moderate record of delinquency” dating from 2007, including four property crimes, two crimes against persons, and “other misdemeanor crimes [that were] dismissed with restitution reserved in exchange for dismissal.” The district court observed that M.Q. “started out his contacts with the juvenile system as a low level petty offender and has, over the years, added person crimes in increasing levels of severity.” The district court found this factor slightly favored EJJ designation. M.Q. argues that he “did not assault or in any other way physically harm” the victim here. But this court has held “[s]imple robbery is basically a theft accomplished by means of an assaultive act.” *State v. Stanifer*, 382 N.W.2d 213, 220 (Minn. App. 1986). The district court did not clearly err when it determined that M.Q.’s prior record of delinquency favors EJJ.

Assessing the fourth factor, placement and programming history, the district court detailed at length M.Q.’s foster-home and other out-of-home placements and concluded this factor also favors designating M.Q. as an EJJ. The district court observed that M.Q. has a pattern of commencing programming, doing well for a few months, and then reoffending. Although M.Q. contends that short-term residential treatment would best serve public safety, such bare contention does not demonstrate clear error in the district

court's designation of M.Q. as an EJJ. The record, particularly Dr. Renken's report and Linden's EJJ study, reveals M.Q.'s problematic history with programming. Even as he has matured and developed apparent leadership skills, M.Q. has significantly misbehaved while in placement, including assaulting peers, pushing counselors, and stealing a car. The district court's finding that this factor weighs in favor of designating M.Q. as an EJJ is not clearly erroneous.

The fifth and sixth factors examine the adequacy of punishment or programming and the dispositional options available. Insufficient time for rehabilitation under the juvenile system is an appropriate consideration when determining whether to certify a juvenile. *In re Welfare of S.J.T.*, 736 N.W.2d 341, 354 (Minn. App. 2007), *review denied* (Minn. Oct. 24, 2007). The district court found M.Q. "needs intensive supervision probation . . . well beyond his nineteenth birthday" and noted that it is standard for a juvenile court to place a juvenile on probation for two years for a felony-level disposition, which is more than double the time possible here because of M.Q.'s age. The court did not clearly err in concluding that the fifth factor also favors EJJ designation. Addressing the dispositional options available, the district court discussed M.Q.'s suitability for the Hennepin County Home School STAMP Plus program, and M.Q.'s history in various levels of structured-living settings, before reasonably concluding that the sixth factor weighs against designating M.Q. as an EJJ.

Finally, M.Q. argues that this case should follow *In re Welfare of B.N.S.*, 647 N.W.2d 40 (Minn. App. 2002), in which this court reversed an EJJ designation. We disagree. In *B.N.S.*, the district court "failed to address at the hearing or in its written

order whether there [was] clear and convincing evidence that public safety will be served by the EJJ designation.” *Id.* at 44. Whereas here, amply supported by the record, the district court explicitly concluded the state proved by clear and convincing evidence that designating M.Q. as an EJJ “is necessary to serve public safety” and “that the interests of public safety are served by retaining [M.Q.] under extended juvenile jurisdiction.”

Affirmed.