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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1924**

In the Matter of the Welfare of: M. D. E., Child.

**Filed April 21, 2009
Affirmed
Klaphake, Judge**

Kandiyohi County District Court
File No. 34-JV-08-328

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Amy J. Isenor, 415 Southwest Sixth Street, P.O. Box 1126, Willmar, MN 56201 (for respondent State of Minnesota)

Lawrence Hammerling, Chief Appellate Public Defender, Susan J. Andrews, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant M.D.E.)

Considered and decided by Toussaint, Chief Judge; Klaphake, Judge; and Harten, Judge.*

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant M.D.E. challenges the district court's order certifying him to be tried as an adult on a charge of second-degree murder. Because appellant failed to rebut the presumptive certification by clear and convincing evidence, we affirm.

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

DECISION

In a certification proceeding, we review the district court's findings for clear error and its decision for an abuse of discretion. *In re Welfare of U.S.*, 612 N.W.2d 192, 194-95 (Minn. App. 2000). Because appellant was 17 years old at the time of the offense and the offense is one that would result in a presumptive prison commitment under the sentencing guidelines, it is presumed that the proceeding will be certified for adult prosecution. Minn. Stat. § 260B.125, subd. 3 (2008). The child has the burden of rebutting this presumption "by demonstrating by clear and convincing evidence that retaining the proceeding in the juvenile court serves public safety." *Id.* If the child does not rebut the presumption, the court must certify the proceedings. *Id.*

Appellant failed to present evidence to support his contention that public safety would be served if he remained in the juvenile system. The offense charged is serious and appellant has a steady history of juvenile offenses, including both misdemeanors and a felony adjudication. Appellant participated in limited programming at Prairie Lakes Youth Program (PLYP) after his arrest; according to PLYP records, appellant "has not done well," "has had several problems with the program and has had consequences for his thinking and actions," and "has had an above average amount of consequences." Dr. Nadolny, who prepared the Forensic Psychological Report, gave an unfavorable opinion about appellant's probability for success in programming or treatment. Both Nadolny and John Petron, who prepared the certification study, agreed that Extended Juvenile Jurisdiction (EJJ) would not provide enough time to treat or punish appellant. Finally, even Steve Hammer, Associate Warden of Red Wing Correctional Facility, who opined

that “nothing in [appellant’s] profile disqualified him from being admitted to the Red Wing facility,” preferred a longer period of time than three years to rehabilitate an offender who committed a loss-of-life offense. Appellant provided no clear and convincing information to rebut this information or to demonstrate that public safety would be served by retention in the juvenile system. We therefore affirm the district court’s order.

Affirmed.