

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
ERIE COUNTY

State of Ohio

Court of Appeals No. E-10-044

Appellee

Trial Court No. 2009-CR-230

v.

Hubert E. Morgan, IV

**DECISION AND JUDGMENT**

Appellant

Decided: April 27, 2012

\* \* \* \* \*

Dean Holman, Special Prosecuting Attorney, and  
Matthew Kern, Assistant Special Prosecuting Attorney,  
for appellee.

Nancy L. Jennings, for appellant.

\* \* \* \* \*

**PIETRYKOWSKI, J.**

{¶ 1} Defendant-appellant, Hubert Morgan, IV, appeals the September 7, 2010 judgment of the Erie County Court of Common Pleas which, following no contest pleas to aggravated robbery, escape, and assault of a peace officer, sentenced appellant to a

total of seven years of imprisonment. Because we find that the Erie County Court of Common Pleas, Juvenile Division, did not abuse its discretion when it relinquished jurisdiction over appellant transferring him to the general division of the court for criminal prosecution as an adult, we affirm.

{¶ 2} The relevant facts are as follows. Appellant was charged in the juvenile court with aggravated robbery, a first degree felony if committed by an adult, escape, a third degree felony if committed by an adult, assault on a peace officer, a fourth degree felony if committed by an adult, and resisting arrest, a first degree misdemeanor if committed by an adult.

{¶ 3} The charges stem from an incident on August 26, 2008, when appellant was in court on a probation violation. According to the written reports and testimony at the bindover hearing, appellant, upset with the judge for remanding him to the Ohio Department of Youth Services (“DYS”), stated to the court that he would not go, that he would resist. Appellant was pounding on the table and yelling at the judge. Appellant then jumped up and tried to push away from the table. A deputy positioned behind him attempted to grab appellant’s upper body; he was only able to grab appellant’s arm. Appellant tried to remove the deputy’s weapon from its holster by tugging at it four or five times. Eventually, the deputy was able to break away from appellant and executed a “dry-stun” on appellant with his taser. Appellant immediately became compliant and was taken into custody.

{¶ 4} Appellant was 17 at the time of the offenses. The state of Ohio requested that the cases be transferred to the general division. Appellant waived the right to have a hearing on the probable cause requirement under R.C. 2152.12(B)(2) and proceeded to a hearing on whether appellant was amenable to the “care or rehabilitation” within the juvenile system. R.C. 2152.12(B)(3). The hearing proceeded over March 31, and May 28, 2009, and, in addition to testimony of the deputies involved in the August 2008 incident, two doctors, who conducted mental examinations pursuant to R.C. 2152.12(C), testified as to their findings. Appellant’s probation officer also testified.

{¶ 5} On May 29, 2009, the juvenile court entered its findings and judgment entry granting the state’s request to transfer jurisdiction. Following transfer to the general division, appellant entered no contest pleas to the charges and was sentenced to seven years of imprisonment for aggravated robbery, 17 months of imprisonment for escape, and 17 months of imprisonment for assault of a peace officer. The sentence was ordered to be served concurrently and consecutive to a seven-year sentence in Cuyahoga County. The misdemeanor resisting arrest charge was dismissed. This appeal followed.

{¶ 6} Appellant raises the following assignment of error for our review:

I. The judge’s decision to bind appellant over from the juvenile court was against the sufficiency of the evidence.

{¶ 7} At the outset we note that although appellant advances a sufficiency of the evidence argument, the correct standard for reviewing a juvenile court’s decision to relinquish jurisdiction over a child is an abuse of discretion standard. *State v. Luna*, 6th

Dist. No. L-05-1245, 2006-Ohio-5907, ¶ 20, citing *State v. Watson*, 47 Ohio St.3d 93, 95, 547 N.E.2d 1181 (1989). Thus, we must determine whether the court's decision was unreasonable, arbitrary, or unconscionable. *State v. Adams*, 62 Ohio St.2d 151, 157-158, 404 N.E.2d 144 (1980).

{¶ 8} Juv.R. 30 and R.C. 2152.12 set forth the procedures the juvenile court is required to follow when considering the discretionary transfer of a child to be tried as an adult. Under R.C. 2152.12(B) four requirements must be met. First, the complaint must allege that the child is delinquent by committing an act that would be a felony if committed by an adult. Next, the juvenile court must find that the child was 14 years of age or older at the time of the act. R.C. 2152.12(B)(1). The court then must determine that there was probable cause that the child committed the act charged. R.C. 2151.12(B)(2). Finally, there must be a determination that the child is not amenable to the care or rehabilitation within the juvenile justice system. R.C. 2152.12(B)(3).

{¶ 9} In making an amenability determination, the juvenile court is required to consider several statutory factors for and against the transfer of the case to the general division. R.C. 2152.12(D) and (E). R.C. 2152.12(D) provides these factors in favor of a transfer:

- (1) The victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act.

(2) The physical or psychological harm suffered by the victim due to the alleged act of the child was exacerbated because of the physical or psychological vulnerability or the age of the victim.

(3) The child's relationship with the victim facilitated the act charged.

(4) The child allegedly committed the act charged for hire or as a part of a gang or other organized criminal activity.

(5) The child had a firearm on or about the child's person or under the child's control at the time of the act charged, the act charged is not a violation of section 2923.12 of the Revised Code, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm.

(6) At the time of the act charged, the child was awaiting adjudication or disposition as a delinquent child, was under a community control sanction, or was on parole for a prior delinquent child adjudication or conviction.

(7) The results of any previous juvenile sanctions and programs indicate that rehabilitation of the child will not occur in the juvenile system.

(8) The child is emotionally, physically, or psychologically mature enough for the transfer.

(9) There is not sufficient time to rehabilitate the child within the juvenile system.

{¶ 10} R.C. 2152.12(E) provides factors to consider against a transfer:

(1) The victim induced or facilitated the act charged.

(2) The child acted under provocation in allegedly committing the act charged.

(3) The child was not the principal actor in the act charged, or, at the time of the act charged, the child was under the negative influence or coercion of another person.

(4) The child did not cause physical harm to any person or property, or have reasonable cause to believe that harm of that nature would occur, in allegedly committing the act charged.

(5) The child previously has not been adjudicated a delinquent child.

(6) The child is not emotionally, physically, or psychologically mature enough for the transfer.

(7) The child has a mental illness or is a mentally retarded person.

(8) There is sufficient time to rehabilitate the child within the juvenile system and the level of security available in the juvenile system provides a reasonable assurance of public safety.

If the juvenile court transfers the case, it relinquishes jurisdiction with respect to the delinquent acts alleged in the complaint.

{¶ 11} In appellant's sole assignment of error, he spends the majority of his argument disputing the juvenile court's findings under R.C. 2152.12(D)(1) and (7). Appellant first disputes the court's finding that the victims of the act suffered physical or psychological harm.

{¶ 12} R.C. 2152.12(D)(1) provides the aggravating factor that "[t]he victim of the act charged suffered physical or psychological harm, or serious economic harm, as a result of the alleged act." In its decision, the juvenile court noted that the statute does not define physical or psychological harm; it does not state that it has to be serious harm. Accordingly, the court's finding that the deputy who hyper-extended his elbow suffered physical harm was not in error. Further, the court acted within its discretion in finding that the deputy who testified that he was deeply troubled by the incident and had difficulty sleeping suffered psychological harm.

{¶ 13} Appellant next disputes the juvenile court's finding that, under R.C. 2152.12(D)(7), prior results of sanctions and programs in the juvenile system provide that rehabilitation will not occur in the juvenile system. Appellant bases his argument on the testimony and reports regarding appellant's two mental examinations. The doctors agreed that appellant was immature and not suitable for a transfer to the general division although they differed as to the likelihood of successful rehabilitation in the juvenile system.

{¶ 14} In a lengthy discussion, the court noted that no documentation had been provided as to appellant's progress in DYS, what treatments were being provided, and the

proposed treatment protocol that would result in appellant's likely rehabilitation within the three years prior to his 21st birthday. Upon review, we conclude that the juvenile court's finding was not an abuse of discretion.

{¶ 15} In its judgment entry, the court methodically addressed each factor in R.C. 2152.12 (D) and (E) and specifically found that, as to factors in support of a transfer, the victims suffered physical or psychological harm, R.C. 2152.12(D)(1), appellant was on probation at the time of the act charged, R.C. 2152.12(D)(6), the results of prior juvenile sanctions and programs indicate that rehabilitation will not occur in the juvenile system, R.C. 2152.12(D)(7), appellant is mature enough for a transfer, R.C. 2152.12(D)(8), and there is not sufficient time to rehabilitate appellant in the juvenile system, R.C. 2152.12(D)(9). As to the factors against transfer, the court found that appellant has a mental illness, R.C. 2152.12(E)(7).

{¶ 16} After carefully reviewing the hearing transcript and the juvenile court's 24 page judgment entry, we cannot say the court abused its discretion in granting the state's motion for discretionary bindover. Accordingly, appellant's assignment of error is not well-taken.

{¶ 17} On consideration whereof, we find that substantial justice was done the party complaining and the judgment of the Erie County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, J.

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JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

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JUDGE

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