

Circuit Court for Worcester County
Case No. C-23-CR-22-000083

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 170

September Term, 2023

DEVON MURRAY

v.

STATE OF MARYLAND

Wells, C.J.
Graeff,
McDonald, Robert N.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: February 1, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On December 29, 2021, Ocean City police officers stopped a Honda Civic for a traffic violation and smelled the odor of burning cannabis emanating from inside the vehicle. The officers ordered the individuals in the car to alight; appellant Devon Murray was the front seat passenger. One of the officers asked Murray if he could perform a pat down of his person for officer safety and Murray agreed. During the pat down, the officer felt what he perceived to be a handgun and retrieved a loaded Polymer 80 handgun from Murray's waistband.

Murray, aged sixteen at the time, was charged as an adult with transporting or wearing a handgun, possession of more than ten grams of cannabis, possession of psilocybin, and possession of a regulated firearm by a person under twenty-one years of age. Murray filed a motion to transfer his case to the juvenile court under Maryland Code Annotated, Criminal Procedure Article ("CP") section 4-202. A hearing took place in the Circuit Court for Worcester County after which the court denied Murray's transfer request. Murray subsequently entered a not guilty plea based on a stipulated set of facts to possession of a regulated firearm by a person under twenty-one years of age. The court found Murray guilty and sentenced him to five years of incarceration suspending all but 192 days. The court placed Murray on three years' probation.

Murray has appealed and argues that the circuit court abused its discretion in denying his transfer request. We conclude that the court did not abuse its discretion and affirm.

DISCUSSION

THE COURT DID NOT ABUSE ITS DISCRETION IN DENYING MURRAY’S MOTION TO TRANSFER

Murray contends the circuit court erred in denying his motion to transfer jurisdiction of his case to juvenile court. Specifically, he asserts that the court “misapplied” the five factors found in CP § 4-202, which governs such requests. Further, Murray argues the circuit court did not give due weight to his amenability to treatment in the juvenile system, based on his interpretation of the Supreme Court of Maryland’s holding in *Davis v. State*, 474 Md. 439 (2021). The State, not surprisingly, argues the court properly applied the factors, giving due consideration to each one, ultimately determining that Murray should remain in the adult system.

Ordinarily, a circuit court, sitting as a juvenile court, has exclusive, original jurisdiction over a delinquent child, *i.e.*, a person under the age of eighteen who is alleged to have committed an act that would be a crime if committed by an adult. Maryland Code Annotated, Courts and Judicial Proceedings Article (“CJP”) § 3-8A-03; *see also* CJP § 3-8A-01. Where, however, a juvenile is at least sixteen years old and is alleged to have committed certain enumerated crimes, the juvenile court is deprived of jurisdiction, and original jurisdiction over the juvenile lies in the adult court. CJP § 3-8A-03(d); *see also* *Gaines v. State*, 201 Md. App. 1, 10 (2011). In that situation, delinquency proceedings cannot be brought in the juvenile court “unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article[.]” CJP § 3-8A-03(d)(4). Consequently, if appropriate criminal charges are brought against a juvenile in

the circuit court under that court’s original jurisdiction, a juvenile court may obtain jurisdiction over the juvenile only if the circuit court grants a motion under CP § 4-202. Such a transfer is sometimes referred to as a “reverse transfer” or “reverse waiver.” *See Gaines*, 201 Md. App. at 10-11. As noted, a circuit court may transfer jurisdiction to the juvenile court if, among other factors, it “determines by a preponderance of the evidence that a transfer of its jurisdiction is in the interest of the child or society.” CP § 4-202(b)(3).

Before granting or denying a transfer request, the circuit court must consider the five factors outlined in CP § 4-202(d):

In determining whether to transfer jurisdiction under subsection (b) of this section, the court shall consider:

- (1) the age of the child;
- (2) the mental and physical condition of the child;
- (3) the amenability of the child to treatment in an institution, facility, or program available to delinquent children;
- (4) the nature of the alleged crime; and
- (5) the public safety.

In *Davis*, our Supreme Court explained that the five factors “are not in competition with one another,” and that, while they all must be considered, “they are necessarily interrelated and, analytically, they all converge on amenability to treatment.” 474 Md. at 464. The Court reasoned that, while considerations such as public safety are important, the overarching question is whether there is “a program [in the juvenile system] that can provide immediate safety to the public and make recidivism less likely[.]” *Id.* at 465. If so, the Court concluded, “absent some other circumstance, the child should be transferred to . . . the juvenile system.” *Id.* If, on the other hand, there is no program in the juvenile system available to the child that is “competent to address the issues defined” and “from

which the child likely can benefit in a way that will produce better results than anything in the adult system and significantly lessen his danger to the public, a reverse waiver request should be denied[.]” *Id.* at 465-66.

We review whether the circuit court erred in denying appellant’s request to transfer his case to juvenile court under an abuse of discretion standard. *Rohrbaugh v. State*, 257 Md. App. 638, 662 (2023). A court abuses its discretion “where no reasonable person would take the view adopted by the court, or when the court acts without reference to [] guiding rules or principles.” *State v. Robertson*, 463 Md. 342, 364 (2019); *Alexis v. State*, 437 Md. 457, 478 (2014) (citations omitted).

Murray asserts that the court abused its discretion in not considering his amenability to treatment in light of *Davis*. In his brief, Murray focuses on the fact that his former Department of Juvenile Services (DJS) case manager, Brandon Bertha, testified at the waiver hearing that Murray had successfully completed a DJS program called “Woodbourne,” and upon his release from that program, Murray and his family were generally amenable to receiving assistance. Further, Murray successfully completed probation, which included substance abuse treatment.

At the waiver hearing, the court received thirteen exhibits from the defense, three of which are of significance in our analysis: Dr. Kimberly DeBerry’s psychological assessment (Exhibit 1); the transfer waiver report prepared by DJS (Exhibit 2); and a staffing report detailing what DJS facilities Murray could use to address his needs (Exhibit 3). The court also heard testimony from Bertha, who helped draft the waiver report, as well

as closing argument from Murray’s counsel. Murray’s counsel emphasized the significance of *Davis* and how Murray’s needs, as articulated by Dr. DeBerry in her psychological report, could best be met by DJS at one of two Youth Centers located in Western Maryland.¹ Counsel also argued that Murray’s needs could not be met either in the Worcester County Detention Center or within the Maryland Department of Public Safety and Correctional Services. After closing arguments, the court took the matter under advisement.

Several days later, the court delivered an oral ruling covering over forty transcribed pages. In rendering its decision, the court reviewed Dr. DeBerry’s psychological report, noting her diagnoses and treatment recommendations. The court then focused on the waiver report which addressed CP § 4-202(d)’s five factors. In so doing, the court separately analyzed each factor.

Factor One: The Age of the Juvenile

The court found that Murray was seventeen at the time of the hearing, December 12, 2022. But, the court noted, Murray would “be 18 years of age in 40 days,” or on January 21, 2023.

Factor Two: Mental and Physical Health of the Juvenile

At the time of the hearing, Murray stood five-foot-four inches tall and weighed 140 pounds. According to the waiver report and the court’s observations, he appeared to be in good physical health. As for Murray’s mental health, the court noted Dr. DeBerry

¹ Backbone Mountain Youth Center and Green Ridge Youth Center.

diagnosed Murray as having the following mental health issues:

- unspecified disruptive impulse control and conduct disorder
- recurrent, mild major depressive disorder
- moderate cannabis use disorder
- attention deficit hyperactivity disorder
- specific learning disorder with impairment in reading and mathematics
- parent/child relational problems
- academic/educational problems
- “other specified problems related to psychosocial circumstance.”

The court also noted the treatment Murray received at his prior placement, Woodbourne, had focused on his mental health. The DJS recommended placement at the Youth Centers would focus on Murray’s mental health, educational deficits, and relationship issues with peers and parents.

Factor Three: Amenability of the Juvenile to Treatment

When considering Murray’s amenability to treatment, the court cited *Davis*, and recounted the facts in that case (which contrasted with the facts here), *Davis*’s procedural history, and the court’s interpretation of *Davis*’s holdings. We agree with the State that the court was “laser focused” on what “amenability to treatment means” and whether Murray demonstrated that he was amenable to treatment at one of DJS’s Youth Centers.

Again, the Court needs to make an assessment of whether it is likely that you would benefit from a DJS program better than you would from anything likely to be available in the adult system. And, not or, but and, would that reduce the likelihood of recidivism and make you a more

productive, law-abiding person. Those quality assessments that can be based on evidence of how these programs or kinds of programs have worked with other children from actual data or from reliable studies.

Although the court did not say so explicitly, the court was also assessing Murray's prior success in meeting other treatment goals that DJS previously recommended.

If mental health is the primary concern for you, then the Court also observes that you had previously been through what was a more intense mental health program. You were committed for seven months. You then were in an aftercare program, and you did everything that you were supposed to do from what I understand. And so if amenability to treatment simply means that treatment is available and that Mr. Murray is a good candidate to engage and successfully complete the treatment, it would be a different evaluation.

But if the treatment has nothing to do with the issue—the core issue here, which I find it does not, they do not, then it's never going to address the public safety concerns or the concern of recidivism. And in fact, if history is a fair predictor, Mr. Murray, you having gone through a mental health program designed by the Department of Juvenile Services with a goal of being designed to mitigate future risks to public safety and support your specific treatment needs, having been through that, having been through after care, having been through community supervision through the Department of Juvenile Services, that program failed. I'll say it. He [Bertha] wouldn't say it. I'll say it. I don't know why, but just because a person can go through treatment that doesn't mean that the treatment is necessarily going to impact or affect the possibility of recidivism.

(Paragraph break introduced).

Factor Four: Nature of the Alleged Crime

As previously mentioned, Murray was the front seat passenger in a car that was driving the wrong way down a street in Ocean City. Upon stopping the vehicle, the officers noted the odor of burning cannabis coming from inside it. A subsequent consensual search of Murray yielded a loaded handgun in his waistband. Inside the car, the police also found

a burnt cannabis cigarette, a backpack with fake “motion picture” currency, a stun gun on the backseat with another passenger, a scale, a quantity of cannabis and psilocybin “edibles.”

Factor Five: The Public Safety

This factor, in combination with the two previous factors, is where the court spent much of its time assessing the likelihood that Murray would be amenable to treatment. The court noted that Murray had previously been adjudicated delinquent for conspiracy to commit robbery and had a separate delinquency finding of conspiracy to rob; both charges were adjudicated in Montgomery County. Murray was placed on probation in each case, and committed to a diagnostic center for evaluation, but ultimately was released into the community with a GPS monitor attached to his ankle. Murray violated his probation by cutting off his ankle monitor. As a result, he was placed into the Woodbourne Program, which the court noted, Murray successfully completed.

Significantly, however, the court found that a little over three months after he successfully completed Woodbourne, Murray was arrested on the underlying gun and drug charges in this case. Addressing Murray’s amenability to treatment, the current charges, and public safety the court said:

And following your discharge from supervision, Mr. Murray, just about immediately you find yourself accused of committing a new crime. And the facts that are alleged in the statement of probable cause state that you had a loaded regulated firearm on your person in a public place, meaning the roads of Worcester County and Ocean City, at or near New Year’s Eve.

And I do not find that the program suggested by the Department of Juvenile Services will adequately address the risk of recidivism. It might—

those programs might address your particular needs. Intensive level of education so that you can get your GED and maybe move on to take college courses. Addressing any mental health concerns that are necessary through individual therapy, family therapy for reunification, maybe therapy regarding the lack of a father figure for you. Establishment of a mentor in your life so that you have someone that you can look up to. But having been through an intensive program and having been committed for seven months, that program clearly did not stick because within, again, a very brief period of time you found yourself accused of committing a new offense, a very serious offense. That was within 99 days.

Murray’s argument that the court over-emphasized the potential for recidivism, in our view, is tempered by the court’s careful consideration of all the factors in CP § 4-202(d). Significantly, the court seemed to understand that the statutory factors converged on Murray’s amenability to treatment, as *Davis* instructs. Further, our reading of the hearing transcript shows also that the court was concerned with whether DJS could meet Murray’s needs, and, as *Davis* says, “provide immediate safety to the public and make recidivism less likely[.]” *Id.* at 465.

The court concluded that because (1) Murray was within days of turning eighteen,² (2) he had two past adjudications for serious offenses both of which were robberies, (3) he had absconded from one of his placements for armed robbery by cutting off an ankle monitor, and (4) he had completed his last DJS placement roughly 100 days before he found himself in Ocean City facing these charges, DJS could not adequately address the court’s public safety concerns through Murray’s participation at an unsecured Youth Centers facility nor could the DJS program make it less likely that Murray would not

² We fully understand that the DJS programs would have been available to Murray until he turned twenty-one.

commit another crime. Far from discounting the possibility of Murray’s amenability to treatment, the record reflects that the court considered that along with the other statutory factors and reached a reasoned decision based on the evidence presented. We conclude the court’s decision was not so “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable,” to constitute an abuse of discretion. *See Woodlin v. State*, 484 Md. 253, 277 (2023). Consequently, we affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR WORCESTER COUNTY AFFIRMED.
APPELLANT TO PAY THE COSTS.**