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IN THE COURT OF APPEALS OF IOWA

SCOTT DONALD MINGUS,)

Petitioner-Appellant,) Filed April 24, 1984

vs.)

STATE OF IOWA,) 4-39
2-69465

Respondent-Appellee.)

Appeal from the Iowa District Court for Black Hawk County - Peter Van Metre, Judge.

Petitioner appeals from the trial court's order denying his application for postconviction relief. AFFIRMED.

Raymond E. Rogers, Assistant Appellate Defender, for petitioner-appellant.

Thomas J. Miller, Attorney General, and Joseph P. Weeg, Assistant Attorney General, for respondent-appellee.

Considered by Donielson, P.J., and Snell and Schlegel, JJ.

PER CURIAM

Petitioner appeals from the trial court's order denying his application for postconviction relief. He claims the juvenile court erred in waiving its jurisdiction over him and thus permitting him to be prosecuted as an adult in criminal court as to certain burglaries committed when he was seventeen years old. We affirm.

Scott Mingus was accused of three burglaries. At the time of the accusations he was seventeen years old; therefore the State filed a petition alleging juvenile delinquency. The State then filed a motion asking the juvenile court to waive its jurisdiction so that Mingus could be tried as an adult in criminal court. After a hearing, the juvenile court waived its jurisdiction, noting Mingus' extensive and serious juvenile record. The court also stated that because of Mingus' proximity to adulthood the juvenile court's dispositional options were too limited to offer much hope of rehabilitation.

Mingus attempted to appeal the juvenile court's waiver order, but the Iowa Supreme Court dismissed that appeal for want of jurisdiction, holding that the order was not an appealable final judgment. Mingus was then prosecuted as an adult in criminal court; he eventually entered a guilty plea to one count of burglary. He was given a suspended sentence and was placed on probation, but the probation was later revoked.

Mingus did not take a direct appeal from his conviction. However, he has now filed an application for postconviction relief challenging the juvenile court's waiver of its jurisdiction. The trial court denied postconviction relief, and Mingus has appealed.

There is a preliminary question raised whether Mingus may even challenge the juvenile court's waiver order since he did not present this issue in any direct appeal other than the appeal that was previously dismissed for lack of jurisdiction. Mingus asserts there was sufficient reason for not pursuing the issue on direct

appeal. See Iowa Code § 663A.8. Assuming without deciding that this issue is properly before us, we conclude that the order waiving juvenile court jurisdiction should be affirmed.

Our review in cases such as this is "limited to a determination of whether the juvenile court abused its discretion in determining whether to waive the juvenile court's jurisdiction." In Interest of T.D., 335 N.W.2d 638, 638 (Iowa Ct. App. 1983). The court may waive jurisdiction if "there are not reasonable prospects for rehabilitating the child" and if "waiver of the court's jurisdiction would be in the best interest of the child or the community." Iowa Code § 232.45(6)(c). In making these determinations, the juvenile court is to consider the following factors:

> a. The nature of the alleged delinquent act and the circumstances under which it was committed.
>
> b. The nature and extent of the child's prior contacts with juvenile authorities, including past efforts of such authorities to treat and rehabilitate the child and the response to such efforts.
>
> c. The programs, facilities and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities and personnel which would be available to the court that would have jurisdiction in the event the juvenile court waives its jurisdiction so that the child can be prosecuted as an adult.

Iowa Code § 232.45(7). In this case, the juvenile court waived its jurisdiction primarily because of Mingus' extensive history of trouble with the law including numerous felonies and misdemeanors in addition to the three burglaries involved in this proceeding. The court also noted that waiver was appropriate because previous attempts at the Boys Training School in Eldora to correct Mingus' anti-social attitudes and criminal actions proved to be ineffective. The court gave little credence to Mingus' professed improvement in behavior within the last few months preceding the waiver hearing, finding that his change in attitude had come about "only when faced with a possible transfer to criminal court." Finally, the

court concluded that since Mingus would reach age eighteen within four months of the date the waiver order was issued, the Eldora facility would be of little value in his rehabilitation since it had not previously accepted or retained juveniles past their eighteenth birthday.

In this appeal, Mingus challenges only the last of the three reasons given to support waiver of jurisdiction; i.e., he claims the court erred in its order because of its mistaken belief that its jurisdiction over him ended on his eighteenth birthday. Mingus asserts that the juvenile court's jurisdiction may extend beyond that time under certain circumstances as outlined in Iowa Code sections 232.8(1) and 232.53. We are not convinced that the court's order misconstrued its statutory power to retain jurisdiction. The waiver order contains the following language:

> The Court further finds that the amount of time left for rehabilitation and treatment of the child in the Juvenile Court is not adequate and that the adult courts have available probationary services which could be extended for a lengthy period of time resulting in a much greater possibility of their being effective.

We construe this language to mean that the court believed that the adult courts had services that could do more for Mingus in the long run than could the juvenile court, even if it could retain jurisdiction over Mingus for a period of time after his eighteenth birthday.

Even if the juvenile court mistakenly believed that it would no longer have jurisdiction over Mingus after he reached age eighteen, we would not be inclined to disturb the court's waiver order. Mingus does not contend that the court should not have considered his extensive history of public offenses or the fact that all prior efforts toward his rehabilitation have failed. See Iowa Code § 232.45(7)(b). It is clear from the order that these were the primary considerations that led the juvenile court to waive its jurisdiction and transfer Mingus to adult criminal court. We are satisfied that these two factors are sufficient in themselves to justify the

waiver order. The record reflects that Mingus has been given numerous opportunities to improve his attitudes and actions and that they have not met with any success. We find no abuse of discretion in the court's waiver order. We therefore affirm.

AFFIRMED.