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2011 IL App (3d) 090719-U

Order filed September 29, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois
Plaintiff-Appellee,	)	
	)	Appeal No. 3-09-0719
v.	)	Circuit No. 08-CF-1433
	)	
SHYEIM O. CHAPAI,	)	Honorable
	)	Chris L. Fredericksen and
Defendant-Appellant.	)	Michael E. Brandt,
	)	Judges, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: In a case in which the State sought to transfer a 13-year-old defendant to adult court to be tried for armed robbery, the State failed to present evidence at the transfer hearing on certain factors the juvenile judge was required to consider in reaching its decision. Accordingly, the appellate court held that the record did not support the juvenile judge's transfer decision. The appellate court vacated the transfer order and remanded the cause to juvenile court for further proceedings.

¶ 2 The defendant, Shyeim O. Chapai, was convicted in adult court of armed robbery (720 ILCS 5/18-2(a)(2) (West 2008)), and was sentenced to 21 years of imprisonment, which included a 15-year mandatory enhancement. On appeal, the defendant argues that: (1) the juvenile judge

erred when he transferred the defendant from juvenile court to adult court; (2) the circuit court's imposition of the 15-year sentencing enhancement constituted cruel and unusual punishment and violated the proportionate penalties clause; and (3) the circuit court's imposition of the 15-year sentencing enhancement violated his due process rights. We reverse the circuit court's judgment, vacate the juvenile judge's transfer order, and remand the cause to juvenile court for further proceedings.

¶ 3 FACTS

¶ 4 On October 23, 2008, the State filed a juvenile petition alleging that the defendant committed armed robbery (720 ILCS 5/18-2(a) (West 2008)) in that he was "armed with a dangerous weapon, a .32 caliber handgun," and took $500 from Naresh Koduru while threatening the imminent use of force. The next day, the State filed a motion to transfer the case from juvenile court to adult court.

¶ 5 On November 17, 2008, the juvenile judge held a hearing on the motion to transfer. The State presented evidence that the defendant was 13 years old at the time he and two other juveniles robbed a gas station. One of the other individuals, Danarious Kelly, communicated to the defendant the idea of robbing the gas station, and he provided the gun. On their way to the gas station, a third individual joined with them. Once at the gas station, the defendant pointed the unloaded gun at the gas station clerk and demanded money. The detective to whom the defendant confessed testified that the gun was a black .32 caliber Smith & Wesson revolver. The gun was not loaded, which the defendant knew before the robbery. The State presented a DVD recording from the gas station's surveillance camera, which showed the robbery.

¶ 6 The juvenile judge took judicial notice of the defendant's juvenile case in which he was

placed on probation for retail theft and subsequently violated probation on two occasions. The defendant was on probation at the time of the armed robbery.

¶ 7 Evidence presented at the hearing also indicated that the defendant had been diagnosed with several mental disorders, including mood disorder, attention deficit hyperactivity disorder, and schizoaffective disorder. He was taking numerous medications at the time of the hearing. He was seeing a therapist twice a week and a doctor approximately once per month to review his prescriptions, and he was receiving in-home help for his issues. The defendant also had a history of behavioral problems in school.

¶ 8 The State referred to the defendant's juvenile social history report and presented evidence that the defendant had little to no participation in services while he was in the juvenile system. However, it presented no evidence on any advantages to treatment within the juvenile system, including whether there were services or facilities available within the juvenile system.

¶ 9 The State also presented no evidence on the sentence the defendant would be facing if the case were transferred to adult court.

¶ 10 At the close of the hearing, the juvenile judge granted the State's motion and transferred the case to adult court. In announcing his decision, the juvenile judge recited the factors a court is statutorily mandated to consider pursuant to section 5-805(3)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-805(3)(b) (West 2008)). In part, the juvenile judge stated that he had "considered the adequacy of punishment or services in the juvenile system," and found that "[a] deadly weapon was used." The juvenile judge said nothing with regard to the potential sentence the defendant would face if he was convicted in adult court.

¶ 11 On November 18, 2008, the defendant was charged in adult court with armed robbery

(720 ILCS 5/18-2(a)(2) (West 2008)). On May 15, 2009, after a stipulated bench trial, the circuit court found the defendant guilty of armed robbery. On September 4, 2009, the circuit court sentenced the defendant to 21 years of imprisonment, which included a 15-year mandatory enhancement (720 ILCS 5/18-2(b) (West 2008)). The defendant appealed.

¶ 12 ANALYSIS

¶ 13 The defendant's first argument on appeal is that the juvenile judge erred when he transferred the defendant from juvenile court to adult court.

¶ 14 In relevant part, section 5-805(3)(a) of the Act (705 ILCS 405/5-805(3)(a) (West 2008)) provides that a minor who is 13 years old who commits a criminal act may be tried as an adult if, as a matter of discretion, the juvenile judge determines that there is probable cause to believe that the minor committed the crime and that it is not in the public's best interests to proceed under the Act. In making this determination, the juvenile judge must consider, *inter alia*:

> "(i) the age of the minor;
>
> (ii) the history of the minor, including:
>
> > (A) any previous delinquent or criminal history of the minor,
> >
> > (B) any previous abuse or neglect history of the minor, and
> >
> > (C) any mental health, physical, or educational history of the minor or combination of these factors;
>
> (iii) the circumstances of the offense, including:
>
> > (A) the seriousness of the offense,
> >
> > (B) whether the minor is charged through accountability,
> >
> > (C) whether there is evidence the offense was committed in an

aggressive and premeditated manner,

(D) whether there is evidence the offense caused serious bodily harm,

(E) whether there is evidence the minor possessed a deadly weapon;

(iv) the advantages of treatment within the juvenile justice system including whether there are facilities or programs, or both, particularly available in the juvenile system;

(v) whether the security of the public requires sentencing under Chapter V of the Unified Code of Corrections:

(A) the minor's history of services, including the minor's willingness to participate meaningfully in available services;

(B) whether there is a reasonable likelihood that the minor can be rehabilitated before the expiration of the juvenile court's jurisdiction;

(C) the adequacy of the punishment or services.

In considering these factors, the court shall give greater weight to the seriousness of the alleged offense and the minor's prior record of delinquency than to the other

factors listed in this subsection." 705 ILCS 405/5-805(3)(b) (West 2008).

¶ 15 A juvenile judge must consider relevant statutory and nonstatutory factors in reaching his decision on a transfer motion, including the sentence the defendant would face if tried as an

adult. *People v. Clark*, 119 Ill. 2d 1, 14-15 (1987); *People v. Moore*, 2011 IL App (3d) 090993, ¶ 20. "[T]he mere recitation in the record that all statutory factors have been considered is not enough to affirm an order transferring a minor to criminal court. Rather, there must be sufficient evidence in the record as to each statutory factor to support the transfer order." *Clark*, 119 Ill. 2d at 18. We review the juvenile judge's decision to transfer the defendant from juvenile court to adult court for an abuse of discretion. See *People v. Morgan*, 197 Ill. 2d 404, 422-23 (2001); see also *Moore*, 2011 IL App (3d) 090993, ¶ 21.

¶ 16 Our review of the record reveals that there was no evidence presented on several factors the juvenile judge was required to consider. First, the record reveals that the State presented no evidence on "the advantages of treatment within the juvenile justice system including whether there are facilities or programs, or both, particularly available in the juvenile system" (705 ILCS 405/5-805(3)(b)(iv) (West 2008)). While the State presented the file from the defendant's retail theft juvenile case and presented evidence that the defendant did not meaningfully participate in services when he was in the juvenile system, the State did not present any evidence on the services, facilities, and programs that would be available to the defendant in the juvenile system. Thus, the record does not support the juvenile judge's statement that he "considered the adequacy of punishment or services in the juvenile system." See *Moore*, 2011 IL App (3d) 090993, ¶ 22.

¶ 17 Second, there was no evidence to support the juvenile judge's finding that the gun was a deadly weapon. While the Act does not define "deadly weapon," at common law, the State can prove the existence of a deadly or dangerous weapon "by presenting evidence that the gun was loaded and operable, or by presenting evidence that it was used or capable of being used as a club or bludgeon." *People v. Ross*, 229 Ill. 2d 255, 276 (2008). The only evidence presented at

the hearing with regard to the gun used by the defendant was that it was unloaded and that it was a .32 caliber Smith & Wesson revolver. Thus, the juvenile judge's finding that the gun was a deadly weapon is not supported by the evidence presented at the hearing. *Moore*, 2011 IL App (3d) 090993, ¶ 24.

¶ 18 Third, there was no evidence presented on the sentence the defendant would face if the case was transferred to adult court. There was absolutely no mention at the hearing that the defendant would face a sentencing range of 6 to 30 years (720 ILCS 5/18-2(b); 730 ILCS 5/5-8-1(a)(3) (West 2008)) and a mandatory enhancement of 15 years (720 ILCS 5/18-2(b) (West 2008)), making his potential sentence between 21 and 45 years. Pursuant to *Clark*, the juvenile judge erred by not considering the defendant's potential sentence. *Clark*, 119 Ill. 2d at 14-15; see also *Moore*, 2011 IL App (3d) 090993, ¶ 27.

¶ 19 Due to the lack of evidence presented on certain factors at the hearing, the record in this case does not support the juvenile judge's transfer decision. Accordingly, we hold that the juvenile judge abused his discretion when he transferred the case from juvenile court to adult court.

¶ 20 Our resolution of the discretionary transfer issue obviates the need to address the defendant's two constitutional arguments.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, we reverse the judgment of the circuit court of Peoria County, vacate the juvenile judge's transfer order, and remand the cause to juvenile court for further proceedings.

¶ 23 Reversed and vacated; cause remanded.