

NOTICE  
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2013 IL App (4th) 111007-U  
NO. 4-11-1007  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

**FILED**  
August 22, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
DEONTA JOHNSON,	)	No. 09CF1471
Defendant-Appellant.	)	
	)	Honorable
	)	Timothy J. Steadman,
	)	Judge Presiding.

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JUSTICE APPLETON delivered the judgment of the court.  
Justice Knecht concurred in the judgment.  
Justice Turner dissented.

**ORDER**

- ¶ 1 *Held:* The trial court failed to consider evidence of each of the statutory factors regarding the discretionary transfer of defendant's charge of first-degree murder from juvenile court to adult criminal court, namely, the factor regarding the advantages of treatment within the juvenile justice system, including whether there are facilities or programs, or both, particularly available in the juvenile system.
- ¶ 2 The State filed a petition seeking to have defendant, Deonta Johnson, who was born August 12, 1995, made a ward of the court as a delinquent minor. The petition alleged defendant, along with several other teens, murdered Jerry Newingham and attempted to murder Kevin Wilson. The State moved to have defendant tried as an adult and requested a transfer hearing. After the hearing, the court granted the State's motion.
- ¶ 3 A jury found defendant guilty of first degree murder (720 ILCS 5/9-1(a)(1) (West 2008)) and attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1(a) (West 2008)), for which the trial

court sentenced him to consecutive prison terms of 45 years and 20 years, respectively. Defendant appeals. Because the trial court did not consider evidence regarding the juvenile detention facilities and the available services, programs, and treatment within those facilities as required by the applicable statute, we reverse the trial court's transfer order and remand to juvenile court for further proceedings.

¶ 4

## I. BACKGROUND

¶ 5

### A. The Charges

¶ 6

In September 2009, the State charged defendant and several other persons, including defendant's older half brother, with first degree murder (720 ILCS 5/9-1(a)(1) (West 2008)), attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1(a) (West 2008)), aggravated battery (720 ILCS 5/12-4(a) (West 2008)), robbery (720 ILCS 5/18-1 (West 2008)), and mob action (720 ILCS 5/25-1(a)(1) (West 2008)). The charges arose out of two incidents that took place in Decatur on August 24, 2009, soon after defendant's 14th birthday. In the first incident, a group of teenage boys battered and fatally injured Jerry Newingham near 540 West Sawyer Street. The second incident occurred shortly thereafter, in which they battered and severely injured Kevin Wilson in nearby Garfield Park. Allegedly, defendant was one of the attackers of Newingham and Wilson. Because defendant was 14 at the time of the attacks, the State first filed a petition for delinquency in juvenile court (Macon County case No. 09-JD-280) and then proceeded on a motion for a discretionary transfer to adult criminal court pursuant to section 5-805(3) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/5-805(3) (West 2008)).

¶ 7

### B. The Transfer Hearing

¶ 8

On September 24, 2009, the trial court, the Honorable Scott B. Diamond presiding,

conducted the transfer hearing. Barry Hitchens, the lead detective on the case, testified first for the State. He said that on August 24, 2009, at 4:10 p.m., police officers were dispatched to the 500 block of West Sawyer Street in Decatur in reference to a man down. The officers found Jerry Newingham, approximately 60 years old, unconscious on the ground, the victim of an apparent assault. Approximately an hour later, officers were dispatched to Garfield Park in reference to another man down. The officers found Kevin Wilson unconscious on the ground, also a victim of an apparent assault. Both men suffered life-threatening injuries and, in fact, Newingham later died as a result of the assault.

¶ 9           Witnesses to the first incident told police a group of 10 teenaged boys, ages 14 to 17, were gathered in the street when Newingham, who was riding his bicycle, rode toward the group. Defendant, without provocation, punched the victim in the face, knocking him unconscious and off his bicycle. The group then stomped the victim up to 50 times about the head, face, and body. The group walked away from the area and eventually to Garfield Park where they saw Wilson sitting at a table in the pavilion. Wilson got up to leave as the group approached but defendant's brother, Elliott Murphy, punched him. Wilson staggered and was then punched by defendant. Wilson fell to the ground unconscious. Elliott Murphy jumped on Wilson's head with both feet multiple times, while other members of the group kicked Wilson about the head and body.

¶ 10           The coroner, Michael E. Day, testified to the extent of the injuries suffered by Newingham, who had arrived at the emergency room with a severe head injury resulting in a subdural hematoma with hemorrhages on both sides of his brain. He also suffered numerous rib fractures and facial injuries caused by a "severe traumatic event" or a "severe beating." He arrived in critical condition and was placed on a ventilator, but he never regained consciousness.

¶ 11 Defendant's supervision officer, Tiffany Taliaferro, testified defendant was on supervision at the time of the incident from case No. 09-JD-54 for the offense of criminal trespass. She was also his supervision officer in case No. 06-JD-139 for the offense of knowing damage to property. She was not aware of any history of violence on defendant's part. Defendant was compliant with his reporting requirements in his 2006 case, but not in his 2009 case. However, no violations of supervision had been filed. For both of his cases, defendant participated in an assessment known as Youth Assessment Screening Instrument (YASI) and was designated as a "medium" risk to reoffend. The common risk factor between the two assessments was defendant's association with delinquent peers. Taliaferro testified she had discussed with defendant about making better choices as to his association with negative influences, including his brother Elliot Murphy.

¶ 12 Milli Hines, a crisis intervention caseworker for the Youth Advocate Program, testified she was familiar with defendant after he had two police referrals: (1) in 2008, defendant was charged with illegal consumption of alcohol by a minor; and (2) in 2009, defendant had issues in the classroom at school. With the first referral, Hines attempted to make contact with defendant and his family, to no avail. With the second referral, defendant's mother insisted there were no problems. Both cases were closed without successful resolution.

¶ 13 The school social worker, Diane McIntosh, testified she had worked with defendant at Stephen Decatur Middle School. She said defendant's attendance was sporadic with numerous unexcused absences, and his behavior was troublesome with several disciplinary actions. McIntosh said she recommended a self-contained program for defendant. This self-contained program meant defendant would remain in one classroom with the same teacher for all subjects rather than moving

from classroom to classroom for different subjects with different teachers. Even in that program, defendant had sporadic attendance or would frequently leave the classroom and walk around the building because he did not want to be in class. In April 2008, defendant was referred to the Special Education Alternative Program (SEAP) outside of Stephen Decatur. According to McIntosh, defendant has a learning disability or mild "mental impairment," meaning he has an intelligence quotient (IQ) below 70.

¶ 14 The SEAP administrator, Jessica Ellison, testified that defendant's attendance was "very sporadic" with a number of unexcused absences. In fact, defendant was more often absent than present. When he was present, he refused to comply with adult direction and refused to comply with the dress code. In one incident, defendant intimidated the classroom teacher, who reported that she felt threatened. Ellison said she spoke with defendant's mother about his behavior. Ellison described defendant's mother as cooperative.

¶ 15 Defendant stipulated to the introduction of three runaway reports: (1) October 20, 2008; (2) March 19, 2009; and (3) May 30, 2009. The State rested. Defendant requested a psychiatric report, so the trial court continued the hearing until that report could be completed.

¶ 16 Dr. Lawrence Jeckel submitted his psychiatric report after his interview of defendant on November 2, 2009. During the interview, defendant denied his involvement or presence at the scene of the incident. He denied being violent, aggressive, or short tempered. He denied running away from home, engaging in theft or vandalism, or threatening authority figures. According to Dr. Jeckel, defendant exhibited no shame, guilt, depression, or remorse. Dr. Jeckel's report concluded as follows:

"Regarding his potential for rehabilitation, [defendant] likely has an

incipient antisocial personality disturbance. Therefore, the prognosis is guarded. There is no good evidence-based treatment for antisocial personality disorder. However, [defendant] is young and should be provided as many psychological and educational resources as possible. Children or adolescents who engage in psychopathic behavior in adolescence can develop insight and accountability regarding their actions at a later age."

¶ 17 On December 17, 2009, the hearing on the State's motion for discretionary transfer continued. Defendant presented the testimony of Cynthia Hunt, the school psychologist who performed a psychological evaluation on defendant on January 26, 2009, for the purpose of determining defendant's continued eligibility for special education services. Based on her evaluation, Hunt recommended defendant participate in special education for students with cognitive delays. Hunt equated "cognitive delays" with the more familiar term of "mental retardation." Hunt said special-education eligibility is two-pronged: the student must display (1) significant subaverage intellectual ability and (2) significant subaverage adaptive behaviors. Defendant's overall composite score was a 54, which was below the first percentile for others his age. Defendant's teacher completed a behavioral rating scale of defendant's skills in the areas of (1) communication, (2) community use, (3) functional academics, (4) school/home living, (5) health and safety, (6) leisure, (7) self-care, (8) self-direction, and (9) social attributes. Defendant scored the lowest, with a rating of one, in each of the areas of communication, school/home living, self-direction, and social attributes.

¶ 18 Defendant's special-education teacher, Susan Neisman, testified defendant attended

class 41 days. Of those 41 days, he attended only 12 full days. However, when he attended, he was willing to work. Neisman described him as a "very good student." He earned nothing less than a "C" academically when he was present and completed his work. Neisman said defendant's attitude and composure were "great." He was cooperative, thoughtful, courteous, and nonviolent. His reported goal was to return to Stephen Decatur. Neisman acknowledged there were times when defendant refused to follow directions in terms of the dress code and completing his work.

¶ 19 Laura Schultz testified that she was a parent liaison at Oak Grove School, the school defendant attended prior to Stephen Decatur. Schultz worked with defendant on behavioral issues, as attendance was not a problem. She said defendant was "very respectful" to her. She never felt threatened. She said she never saw defendant "get violent" or "raise his hand at anybody."

¶ 20 Amy Smith, the juvenile supervisor of the Macon County probation department, testified that defendant had two separate terms of supervision with limited services offered. He was ordered to perform community service, which he completed. When asked about the services available to a juvenile through the probation department, Smith said there "could be a variety of services" depending on the need. There are mental-health services, outpatient and residential substance-abuse services, advocacy and mentoring services, and community services. The probation department refers juveniles to agencies such as Heritage Behavioral Health Center, Youth Advocate Program, Big Brother Big Sister, and ABC Counseling. Smith said her department relies on the YASI to evaluate the juvenile's need for services. On cross-examination, Smith said she was not aware that defendant had been referred to Youth Advocate Program twice. She acknowledged that based upon defendant's YASI screening test, he was a medium risk to reoffend.

¶ 21 Defendant's mother, Shonda Horges, described defendant as a "good son." She said

he follows the rules at home; he does not lie, nor is he disrespectful. She admitted he had issues at school, but she was not aware of his truancy. She said she has never known defendant to be violent, in a fight, or have a temper. Horges admitted defendant had run away from home before in order to avoid the rules in the home, but he was always at Horges' aunt's house and always returned home.

¶ 22 On cross-examination, Horges said defendant told her he had nothing to do with Newingham's death and he was not even there at the time of the incident. She was sure defendant was not guilty because the "type of child [she] raised would not pick on no elderly person." Defendant rested.

¶ 23 After considering counsels' closing arguments, the trial court took the matter under advisement, and on December 23, 2009, announced its decision in open court. The court made the following findings:

"One, the minor was 14 years of age, having been born August 12, 1995.

That the incidents occurred on or about August 24, 2009.

That the minor is charged with four counts of first-degree murder with respect to the deceased, Jerry Newingham.

That the minor is charged with attempted first-degree murder, aggravated battery, robbery, mob action, two counts, with respect to Kevin Wilson.

That all other co-defendants are 15 years of age or older and are charged with four counts of first-degree murder, one count of attempted first-degree murder, one count of aggravated battery, one

count of robbery, and two counts of mob action.

That Jerry Newingham, a male over the age of 60, was riding his bicycle and for no explainable reason the group of minors surrounded him. That this minor, [defendant], allegedly hit Mr. Newingham in the face which knocked him off his bike and the other minors then stomped Mr. Newingham to death.

That about one hour later the same group of minors, including this minor, [defendant], moved to a park where they attacked another adult severely beating him. A group of young people surrounded the beating and watched as the beating took place.

That in 06-JD-139, the minor plead guilty to two counts of criminal damage to property, a Class 4 felony, and was placed on supervision.

That in 09-JD-54, the minor plead guilty to one count of criminal trespass to real property, a Class B misdemeanor.

That the first supervision was successfully completed, and this current incident occurred while he was on the second supervision.

That the court has considered testimony of witnesses and read the report of Dr. Lawrence Jeckel, a board certified physician in psychology. There was no abuse or neglect history of the minor, and he lived with his parents.

That the minor had been in Stephen Decatur Middle School

but had been moved to a special education program.

That the minor may have been mildly retarded, but he was able to communicate.

That he exhibited aggressive conduct in school.

That he had many absences from school which his mother testified she was unaware of.

That the offenses could not be any less serious as he is charged with murder.

That the People have represented he will be charged as a principal in the murder case but an accountability instruction may be given, and that in the other case with Kevin Wilson, he will be tried in accountability theory.

\* \* \*

That the evidence suggested the incidents were committed in an aggressive and premeditated manner.

That the second incident happened about an hour after the first incident.

That there was evidence of serious bodily harm which this minor inflicted.

That the minor did not possess a deadly weapon, but the minor had others for support to help inflict injury.

Mr. Newingham and Mr. Wilson would have no opportunity

to defend themselves.

There are no advantages to treatment within the juvenile system as the juvenile system is not capable of dealing with such a serious offender.

That the security of the public does require sentencing under Chapter V of the Unified Code of Corrections.

That the minor and his parents have declined services previously.

That there is not a reasonable likelihood that the minor can be rehabilitated before the expiration of the juvenile court's jurisdiction which would be about seven years.

That the adequacy of the punishment under the Juvenile Court Act is insufficient and the public needs to be protected from the minor.

That the court has given greater weight to the seriousness of the offenses and the fact that he was on supervision for the second time at the time of the offense.

Finally, that there is probable cause to believe that the allegations in the motion are true and that it is not in the best interest of the public to proceed under Article V of the Juvenile Court Act.

Wherefore, the court will permit the prosecution under the criminal laws. Case is transferred to the adult docket."

¶ 24 The same day, the State charged defendant with first degree murder, attempt (first degree murder), aggravated battery, robbery, and mob action. Each count, except for the mob-action count, alleged defendant was guilty as a principal and under a theory of accountability. At defendant's jury trial, the State proceeded only on four counts of murder of Newingham and the attempt murder of Wilson. The jury found defendant guilty. The trial court sentenced defendant to 45 years for murder to be served consecutive to a sentence of 20 years for attempt (murder). This appeal followed.

¶ 25

## II. ANALYSIS

¶ 26 Defendant argues the trial court failed to comply with the statutory requirements for the discretionary transfer of his case to adult criminal court. Namely, defendant contends the court failed to consider the statutory factors regarding (1) the potential punishment defendant would face should he be sentenced as an adult, and (2) the types of treatment and rehabilitative services available for defendant in the juvenile system.

¶ 27 Section 5-805 of the Juvenile Court Act (705 ILCS 405/5-805 (West 2008)) governs transfers from juvenile court to criminal court. At issue in this case is subsection 3, which sets forth the requirements for discretionary transfers. 705 ILCS 405/5-805(3) (West 2008). A discretionary transfer may occur depending on the defendant's age, the best interests of the public, and only after the trial court's consideration of certain criteria. The United States Supreme Court required courts to consider certain criteria in order to comply with the constitutional mandate of procedural due process. *Kent v. United States*, 383 U.S. 541, 557 (1966). Our legislature amended the statute to comply with the Supreme Court's directive. See *People v. Taylor*, 76 Ill. 2d 289, 299 (1979) (the statute was amended in October 1973 to "closely parallel[]" the *Kent* decision).

Section 5-805(3) of the Juvenile Court Act provides as follows:

"(a) If a petition alleges commission by a minor 13 years of age or over of an act that constitutes a crime under the laws of this State and, on motion of the State's Attorney to permit prosecution of the minor under the criminal laws, a Juvenile Judge assigned by the Chief Judge of the Circuit to hear and determine those motions, after hearing but before commencement of the trial, finds that there is probable cause to believe that the allegations in the motion are true and that it is not in the best interests of the public to proceed under this Act, the court may enter an order permitting prosecution under the criminal laws.

(b) In making its determination on the motion to permit prosecution under the criminal laws, the court shall consider among other matters:

- (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) (West 2008).

¶ 29 In this case, defendant challenges the legal adequacy of the transfer hearing. "Central to determining the legal adequacy of defendant's transfer hearing is an understanding of the purpose and operation of \*\*\* the transfer provision of the [Juvenile Court] Act." *People v. Clark*, 119 Ill. 2d 1, 11 (1987). A trial court's decision to transfer jurisdiction "requires faithful adherence to the statutory requirements governing the transfer proceeding in light of the purpose of those requirements." *Clark*, 119 Ill. 2d at 12. Indeed, the purpose of a transfer proceeding is to determine, based upon certain criteria, whether the defendant's best interests could be achieved by rehabilitation

in the juvenile system or whether that potential rehabilitation is outweighed by society's interests in being protected from defendant's criminal activity or dangerousness. *Clark*, 119 Ill. 2d at 12.

¶ 30 In *Clark*, a 14-year-old juvenile was convicted of two murders. The trial court had granted the State's motion to transfer. *Clark*, 119 Ill. 2d at 4. After his trial, the defendant appealed the transfer. The appellate court affirmed and defendant appealed to the supreme court. See *People v. Clark*, 144 Ill. App. 3d 420, 431-32 (1986). The supreme court considered the legal adequacy of the defendant's transfer hearing, looking to the criteria set forth in the statute. (We note the version of the statute at issue in *Clark* is, in substance, similar to the version at issue in the case before us though the numbering and wording varies.) The court first remarked on the legislature's intent that the juvenile court judge balance the competing interests between the juvenile offender and society. With interest, the court noted that the legislature had already balanced those competing interests on its own when it provided that a 15-year-old who commits murder is automatically transferred to adult court. *Clark*, 119 Ill. 2d at 13; see also 705 ILCS 405/5-805(2)(a) (West 2008). However, the defendant in *Clark*, like defendant here, was only 14 years of age at the time he committed the offense. Thus, he was a juvenile "whom the legislature intended to benefit from the judicial balancing required by the transfer provision." *Clark*, 119 Ill. 2d at 13-14.

¶ 31 When analyzing the judicial balancing performed by the trial court in the defendant's transfer hearing in *Clark*, the court noted it would not disturb the trial court's decision unless that decision was the result of an abuse of discretion. *Clark*, 119 Ill. 2d at 14. Ultimately, the court found the trial court had abused its discretion in transferring the defendant from juvenile court to the criminal court. *Clark*, 119 Ill. 2d at 14. The court found the "critical nonstatutory element" was the fact the defendant was facing a mandatory sentence of natural life in prison. *Clark*, 119 Ill. 2d at 14.

In essence, the trial court had to choose between two extremes: incarceration until the defendant was 21 (only 7 years) under the Juvenile Court Act or incarceration for life without parole under the Criminal Code of 1961 (Criminal Code). *Clark*, 119 Ill. 2d at 15. The court noted it appeared these two sentencing variations were not considered by the trial court before it ordered the case transferred. In other words, there was no indication in the record that the trial court had weighed or balanced the interests of the defendant against society's interest of security, given that the defendant would be sentenced to a term of natural life in prison. *Clark*, 119 Ill. 2d at 16. Additionally, the supreme court found the transfer hearing was inadequate because the trial court did not consider the defendant's history as it related to his potential for rehabilitation or the availability of rehabilitative services under the Juvenile Court Act. *Clark*, 119 Ill. 2d at 16.

¶ 32 The supreme court noted that the statute in effect at the time required the trial courts to consider "'whether there are facilities particularly available to the Juvenile Court for the treatment and rehabilitation of the minor.'" *Clark*, 119 Ill. 2d at 16 (quoting Ill. Rev. Stat. 1983, ch. 37, ¶¶ 702-7(3)(a)(5)). We note the applicable version of the statute in this case provides similarly that the trial courts should consider "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). The trial court should consider the availability and effectiveness of treatment and rehabilitative facilities in the juvenile system in light of the defendant's personal and social history. *Clark*, 119 Ill. 2d at 16-17. Consideration of the defendant's history should include factors related to his mental health, school performance, family support, and criminal history. *Clark*, 119 Ill. 2d at 17. Stressing the importance of the statutory factors, the court stated:

"We believe that *People v. M.D.*[, 101 Ill. 2d 73, 83-84, 88 (1984) (transfer proceeding was adequate where sufficient evidence was presented on all six statutory factors),] and *People v. Taylor*[, 76 Ill. 2d at 300 (court affirmed transfer order where judge considered each factor),] are controlling and require that the juvenile judge receive sufficient evidence on all statutory factors, including the minor's history and the availability of suitable treatment or rehabilitative services. Where the record fails to support the juvenile judge's recitation that all statutory factors were considered, there is an abuse of discretion." *Clark*, 119 Ill. 2d at 18.

¶ 33 The supreme court held the transfer hearing in *Clark* was legally inadequate, since the record suggested the trial court was primarily concerned with only the seriousness of the allegations against the defendant. *Clark*, 119 Ill. 2d at 20-21. The hearing did not comport with the statute because of the trial court's "failure to consider defendant's history, the availability of rehabilitative services, and defendant's amenability to those services found to exist." *Clark*, 119 Ill. 2d at 21.

¶ 34 We gain from the *Clark* decision the importance of the trial court's consideration of *each* of the statutory factors. The supreme court instructs that the mere recitation in the record that all statutory factors were considered is insufficient to satisfy this burden. "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.

¶ 35 The supreme court later reiterated, citing *Clark*, that "[a] juvenile judge also must

receive and evaluate information concerning the type of facilities available for the treatment or rehabilitation of the minor, and must evaluate the likely effectiveness of those facilities in light of the history and present circumstances of the minor." *People v. Morgan*, 197 Ill. 2d 404, 428-29 (2001). However, in *Morgan*, unlike *Clark*, the State presented evidence of each of the statutory factors, including evidence concerning the type of facilities available for the defendant's treatment or rehabilitation and the likelihood of success given the defendant's history and present circumstances. *Morgan*, 197 Ill. 2d at 429. The court held there was sufficient evidence to establish that the defendant's interests did not outweigh society's interests and affirmed the transfer order. *Morgan*, 197 Ill. 2d at 431.

¶ 36 Our review of the record indicates the trial court failed to meaningfully address several statutory factors as well as the "critical nonstatutory element" of the potential sentence defendant would receive as an adult. We are concerned about the court's failure to consider evidence on the available services within the juvenile system and defendant's potential for rehabilitation should he engage in those services. In its oral pronouncement, the court indeed mentioned each of the listed statutory factors. With regard to the advantages of treatment within the juvenile justice system, the court merely found "[t]here were no advantages to treatment within the juvenile system as the juvenile system is not capable of dealing with such a serious offender."

¶ 37 Though Amy Smith, the juvenile supervisor with the Macon County probation department, testified as to the variety of programs and services offered through her department, it was unclear how that evidence related to defendant in this case should he remain within the juvenile court system. Defendant was charged with first-degree murder, a nonprobationable offense. See 705 ILCS 405/5-750(2) (West 2008). As such, the trial court was required to commit defendant to the

Department of Juvenile Justice (DJJ) until his 21st birthday. No evidence was presented as to what types of facilities, programs, or services were available within the DJJ or how the programs specified by Smith, within the probation department, serve the juvenile system for the purposes of treatment and rehabilitation, or *if* they do. Our review of the record indicates the court did not consider any evidence as to the services provided within any of the DJJ facilities, as none was presented. Without evidence regarding the types of DJJ facilities, and services within those facilities, that would be available for defendant's treatment or potential rehabilitation, the court could not effectively determine "[t]here were no advantages to treatment within the juvenile system."

¶ 38 The trial court did not meaningfully consider each of the statutory factors, and thus, could not effectively strike a balance between the advantages and treatment options within the juvenile system as compared to the adult criminal system. Given defendant's history (two nonviolent offenses) and the level of his mental capabilities, coupled with Dr. Jeckel's recommendation that defendant was "young and should be provided as many psychological and educational resources as possible," we find that the trial court should have examined the types of services available in each of the respective systems in order to adequately and thoroughly determine the advantages and disadvantages of each, as well as determine which system could best balance the competing interests between defendant and society. Here, the court recited the factors in its oral pronouncement; however, we conclude the court abused its discretion by finding in a conclusory manner that there were no advantages to treatment within the juvenile system when there is no evidence in the record to support the same. See *Clark*, 119 Ill. 2d at 18 (mere recitation in the record that the statutory factors were considered is not enough to affirm, as there must be sufficient evidence as to each). Finding an abuse of discretion, we vacate the trial court's decision and remand for further

proceedings consistent with this court's order.

¶ 39 In light of our decision, it is not necessary to address defendant's remaining contentions of error related to his trial and sentence.

¶ 40 III. CONCLUSION

¶ 41 For the foregoing reasons we reverse the trial court's judgment. The order transferring defendant for trial as an adult under the Criminal Code is vacated, and the cause is remanded to juvenile court for further proceedings

¶ 42 Reversed and vacated; cause remanded with directions.

¶ 43 JUSTICE TURNER, dissenting.

¶ 44 I respectfully dissent and would affirm the trial court's transfer of the minor defendant to the criminal court under section 5-805(3) of the Juvenile Court Act (705 ILCS 405/5-805(3) (West 2008)). In reversing the trial court's transfer, the majority finds the trial court did not consider (1) any evidence as to the services provided within any of the DJJ facilities because none was presented and (2) the potential sentence defendant would receive as an adult. *Supra* ¶¶ 36-37. As to both points, the majority's analysis relies on our supreme court's decision in *Clark*, 119 Ill. 2d 1, 518 N.E.2d 138.

¶ 45 In finding the transfer hearing deficient in *Clark*, our supreme court noted the hearing in that case was a stark contrast to the extensive hearings generally held on a State's transfer motion and cited several cases supporting that observation. *Clark*, 119 Ill. 2d at 19-20, 518 N.E.2d at 146-47. One of the cases the supreme court cited with approval was this court's decision in *People v. Liggett*, 90 Ill. App. 3d 663, 413 N.E.2d 534 (1980). *Clark*, 119 Ill. 2d at 20, 518 N.E.2d at 146. One of the issues in *Liggett* was the trial court's consideration of the former version of section 5-805(3)(b)(iv) of the Juvenile Court Act (705 ILCS 405/5-805(3)(b)(iv) (West 2008)), which required the court to consider "whether in aid of defendant's rehabilitation, there were 'facilities particularly available to the juvenile court.'" *Liggett*, 90 Ill. App. 3d at 667, 413 N.E.2d at 537-38 (quoting Ill. Rev. Stat 1979, ch. 37, ¶ 702-7(3)(a)(5)). This court found this issue was essentially irrelevant under the facts of the case because the minor would be incarcerated in the juvenile division of the Department of Corrections, regardless of the laws under which he was adjudicated. *Liggett*, 90 Ill. App. 3d at 668, 413 N.E.2d at 538.

¶ 46 At the time of the offense in *Liggett*, section 5-8-6(c) of the Unified Code of

Corrections (Unified Code) (Ill. Rev. Stat. 1979, ch. 38, ¶ 1005-8-6(c)) provided that, "when an offender under 17 years of age is sentenced to imprisonment, he [shall] be committed to the juvenile division of the Department of Corrections where the juvenile will remain until the juvenile's 21st birthday, provided that after the juvenile's 17th birthday, the court may order the juvenile transferred to the adult division of the Department of Corrections." *Liggett*, 90 Ill. App. 3d at 667-68, 413 N.E.2d at 538. Section 705-10 of the Juvenile Court Act (Ill. Rev. Stat. 1979, ch. 37, ¶ 705-10) then required a juvenile committed to the Department of Corrections under the Juvenile Court Act be committed to the juvenile division of that department. *Liggett*, 90 Ill. App. 3d at 668, 413 N.E.2d at 538. Thus, this court concluded, that "if commitment to the Department of Corrections was to be the ultimate disposition of the minor, the availability of facilities for rehabilitation would be the same regardless of whether he had been dealt with by juvenile or criminal proceedings." *Liggett*, 90 Ill. App. 3d at 668, 413 N.E.2d at 538. In ruling upon the motion for leave to prosecute, the trial court indicated commitment to the Department of Corrections would likely be required even if the proceedings were under the Juvenile Court Act, and this court found that determination was within the trial court's discretion as the evidence was strong the minor was presently dangerous and in need of incarceration. *Liggett*, 90 Ill. App. 3d at 668, 413 N.E.2d at 538. Thus, this court concluded that, while the professional witnesses preferred the Department of Corrections not be the entity to furnish the minor's incarceration, no evidence supported any viable alternative. *Liggett*, 90 Ill. App. 3d at 668, 413 N.E.2d at 538. Additionally, I note that, while a probation officer, psychologist, and psychiatrist all addressed the defendant's characteristics and rehabilitative potential in *Liggett*, no evidence was presented about the specific treatment and rehabilitation options for the defendant in the juvenile division of the Department of Corrections. See *Liggett*, 90 Ill. App. 3d at 666-67, 413

N.E.2d at 536-37.

¶ 47 Moreover, in analyzing the same factor addressed in *Liggett*, our supreme court has also recognized that, "if the respondent is transferred to the adult criminal courts and sentenced to imprisonment, he will still be confined in the juvenile division of the Department of Corrections until the age of 21, unless transferred to adult institutions at an earlier time after a hearing." *People v. M.D.*, 101 Ill. 2d 73, 86-87, 461 N.E.2d 367, 374 (1984).

¶ 48 Section 5-8-6(c) of the Unified Code (730 ILCS 5/5-8-6(c) (West 2008)) still provides a person convicted under criminal law who is under 17 years of age be committed to DJJ for a definite term with the possibility of the trial court transferring the minor to the Department of Corrections after his or her 17th birthday. Moreover, if defendant was found to have committed first degree murder under the Juvenile Court Act, the trial court was required to commit defendant to DJJ until his 21st birthday. 705 ILCS 405/5-750(2) (West 2008). Thus, like in *Liggett*, no "advantages of treatment within the juvenile justice system" existed in this case because defendant's sentence would be incarceration in DJJ regardless of whether he was adjudicated under the Juvenile Court Act or criminal law. Accordingly, under the facts of this case, any evidence on treatment and rehabilitation options would be superfluous as no real alternative exists.

¶ 49 As to the "critical nonstatutory element" of defendant's potential adult sentence that was noted in *Clark*, the supreme court did not indicate that element was "critical" in all cases as it emphasized the "extreme" choice between incarceration until 21 years old and natural life in prison. *Clark*, 119 Ill. 2d at 14-15, 518 N.E.2d at 144. Unlike *Clark*, a sentence of natural life in prison was not mandatory in this case. A difference of 7 years in DJJ or a minimum of 26 years' imprisonment is not "extreme" when compared to the sentence differential in *Clark*. Moreover, the trial court noted

the seriousness of the allegations against defendant, and thus, it was aware defendant could receive a lengthy prison sentence if defendant was convicted as an adult. See *People v. Beck*, 190 Ill. App. 3d 748, 762, 546 N.E.2d 1127, 1136 (1989).

¶ 50 For the reasons stated, I find defendant's transfer hearing was sufficient and the trial court did not abuse its discretion by granting the State's motion to transfer. Accordingly, the trial court's transfer of defendant to criminal court should be affirmed. Since the majority reverses the transfer order and remands the cause for further proceedings, I decline to address the other issues raised by defendant.