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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1501**

In the Matter of the Welfare of: A.P.B.

**Filed February 5, 2008  
Affirmed  
Toussaint, Chief Judge**

Douglas County District Court  
File No. J9-07-50071

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Considered and decided by Ross, Presiding Judge; Toussaint, Chief Judge; and  
Muehlberg, Judge.\*

**UNPUBLISHED OPINION**

**TOUSSAINT**, Chief Judge

Appellant A.P.B. challenges the district court's order certifying him to stand trial  
as an adult on one count of attempted first-degree murder. Appellant argues that the

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals  
by appointment pursuant to Minn. Const. art. VI, § 10.

district court abused its discretion when it concluded that his lack of a programming history was not a factor for consideration and placed undue weight on the adequacy of punishment or programming in the EJJ system. Because the district court did not abuse its discretion, we affirm.

## **FACTS**

On an evening in February 2007, appellant shot his stepfather twice at close range with a 9-millimeter handgun outside of their home. Douglas County deputies arrived at the scene and found appellant standing outside the house and his stepfather lying nearby. They observed that the stepfather had suffered a gunshot wound and it was later determined that the bullet had severed the stepfather's spinal cord, resulting in permanent paralysis from the waist down.

Appellant was arrested, transported to the Douglas County Law Enforcement Center, and interviewed. Appellant stated that there had been no physical abuse, sexual abuse, or violence in the home but that his relationship with his stepfather was strained because he disagreed with his stepfather's parenting style. He told investigators that he had decided to kill his stepfather because he did not want his younger siblings to be subjected to his stepfather's parenting style.

As part of his plan, appellant explained that he had driven to his grandfather's house, found the key to his grandfather's gun safe, removed a 9-millimeter handgun, and hid the handgun under the seat in his car. After bowling with his friends, appellant returned home, feigned a car problem, and asked his stepfather to come outside to help. At some point, his stepfather walked back toward the house; appellant followed him, took

the handgun out of his pocket, and shot him twice from approximately eight or ten feet away. Appellant believed that he had killed his stepfather and called 911.

Appellant was charged with one count of attempted first-degree murder under Minn. Stat. § 609.185(a)(1) (2006). The county filed a motion seeking adult certification. Prior to the certification hearing, two licensed psychologists evaluated appellant, and a probation agent conducted a certification study. At the certification hearing in June 2007, the psychologists and the probation agent testified, and their reports were entered into evidence without objection. The court also heard testimony from appellant's stepfather, appellant's mother, and the manager of a residential treatment facility for juveniles with EJJ status.

In July 2007, the district court issued an order certifying appellant as an adult. The court found that appellant failed to show by clear and convincing evidence that public safety would be served by retaining the proceedings in juvenile court.

### **D E C I S I O N**

The district court has considerable discretion in determining whether certification for adult prosecution is appropriate. *In re Welfare of J.L.B.*, 435 N.W.2d 595, 598 (Minn. App. 1989), *review denied* (Minn. Mar. 17, 1989). This court will not reverse a certification decision unless the findings are clearly erroneous, constituting an abuse of discretion. *In re Welfare of U.S.*, 612 N.W.2d 192, 195 (Minn. App. 2000).

Certification is presumed when a child is 16 or 17 years of age at the time of the offense and the offense with which the child is charged carries a presumptive prison term. Minn. Stat. § 260B.125, subd. 3(1)-(2) (2006). Because appellant was 17 years of age at

the time of the offense and the offense with which he was charged carries a presumptive prison term, the presumption of certification applies.

To rebut the presumption of certification, appellant must establish, through clear and convincing evidence, that retaining the proceeding in juvenile court would serve public safety. *Id.* In determining whether public safety is served, the district court must consider the following factors: (1) the seriousness of the alleged offense; (2) the child's culpability; (3) the child's prior record of delinquency; (4) the child's programming history; (5) the adequacy of punishment or programming available in the juvenile justice system; and (6) the dispositional options available for the child. Minn. Stat. § 260B.125, subd. 4(1)-(6) (2006). In weighing these factors, greater weight must be given to the seriousness of the alleged offense and the child's prior record of delinquency. *Id.*, subd. 4.

In assessing the seriousness of the offense, the district court must consider "any aggravating factors recognized by the Sentencing Guidelines, the use of a firearm, and the impact on any victim." Minn. Stat. § 260B.125, subd. 4(1). The district court concluded that the seriousness of the offense weighed in favor of certification based on the following: (1) attempted premeditated murder is "an extremely serious offense"; (2) appellant used a 9-millimeter handgun to shoot his stepfather at close range; (3) the stepfather's paraplegic state has affected him physically, emotionally, and financially; and (4) appellant treated his stepfather with "particular cruelty[]" as [his stepfather] was shot in the safety of his own home, while his wife and children were nearby."

Appellant concedes that the crime is serious and does not dispute the district court's conclusion on this factor. Further, this court has recognized that there are few more serious offenses than attempted first-degree murder with a firearm. *See In re Welfare of D.T.H.*, 572 N.W.2d 742, 744 (Minn. App. 1997) (“[T]here is no more serious threat to public or community safety than multiple murders with a firearm.”), *review denied* (Minn. Feb. 19, 1998). Thus, the district court did not err in concluding that the seriousness of the offense weighs in favor of certification.

In assessing the juvenile's culpability, the district court must consider “the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Sentencing Guidelines.” Minn. Stat. § 260B.125, subd. 4(2). The district court found that appellant's culpability weighed in favor of certification because appellant: (1) planned out the murder of his stepfather for at least two weeks; (2) acted alone; (3) delayed the murder until after the Midwinter Dance for his own convenience; (4) obtained the 9-millimeter handgun from his grandfather's locked safe; and (5) made no effort to render aid to his stepfather after shooting him.

Appellant concedes that he was solely culpable for the offense. Further, this court has recognized that the highest level of culpability occurs when a juvenile plans and executes an entire offense alone. *D.T.H.*, 572 N.W.2d at 744. Accordingly, the district court did not err in concluding that this factor supports certification.

Along with seriousness of the offense, appellant's prior history of delinquency is given greater weight when evaluating the public safety factors. *See* Minn. Stat. § 260B.125, subd. 4. Although the district court concluded that appellant's lack of a

juvenile record did not weigh in favor of certification, appellant argues that the district court failed to give this factor the proper weight. But the seriousness of the offense and appellant's culpability were two substantial factors that weighed heavily to tip the balance in favor of certification, despite appellant's lack of a prior record. Further, the district court concluded that appellant's lack of a prior record was the only factor that did not favor the presumption of certification. In light of the other factors, we see no indication that the district court improperly weighed appellant's lack of a prior record.

Next, the district court must consider "the child's programming history, including the child's past willingness to participate meaningfully in available programming." Minn. Stat. § 260B.125, subd. 4(4). Here, the district court declined to make a conclusion on this factor "because the juvenile has no programming history prior to this incident."

Appellant argues that the district court erred in not considering this factor. He contends that because both psychologists testified that he would be amenable to treatment, this factor should rebut the presumption of certification. Respondent points out that the plain language of the statute refers to the juvenile's programming history and past willingness to participate in available programming, and therefore any speculation as to appellant's future amenability to treatment is irrelevant. Ultimately, even if the district court had found that appellant's lack of programming history weighed against certification, this would not have been determinative, especially where the seriousness of the offense and appellant's culpability strongly support the presumption of certification.

The statute requires the district court to consider “the adequacy of the punishment or programming available in the juvenile justice system.” Minn. Stat. § 260B.125, subd. 4(5). The district court concluded that this factor weighed in favor of certification. The district court noted: “In the treatment options presented by both doctors, [appellant] would spend a total time confined in ‘hard time’ of around two years, followed by a halfway house and then independent living arrangements prior to turning 21.” The district court concluded that this treatment plan was “woefully inadequate as a punishment” and that “the gravity of this offense and the devastating effects on the victim lead to the inescapable conclusion that justice requires something greater than can be provided in the juvenile system.”

Appellant argues that the district court erroneously made its determination for certification on the basis that 38 months under EJJ was simply not enough time to punish him. But this court has specifically recognized that “[i]nsufficient time for rehabilitation under the juvenile system is an appropriate consideration when determining whether to certify a juvenile.” *In re Welfare of S.J.T.*, 736 N.W.2d 341, 354 (Minn. App. 2007), *review denied* (Minn. Oct. 24, 2007). The probation agent concluded that the juvenile EJJ program “would not provide adequate time periods in measuring successful rehabilitation, community transition, or be adequate in assessing public safety issues.” While the psychologists stated that appellant could be treated in the time frame provided, their conclusions were tenuous. One psychologist stated in his report that this amount of time would be an “absolute minimum” and that the time left in the EJJ setting was “precariously close” to the time needed for treatment. Further, the other psychologist

stated that his conclusion was contingent on the therapist's expertise and appellant's willingness to be treated. Based on this record, the district court did not abuse its discretion.

The statute requires that the district court consider "the dispositional options available for the child." Minn. Stat. § 260B.125, subd. 4(6). The district court concluded that this factor weighed in favor of certification, stating that while there may be some treatment options in the juvenile system, "this Court is not satisfied by clear and convincing evidence that the presumption of certification is rebutted." In reaching this conclusion, the district court relied on the probation agent's opinion that the juvenile dispositions "do not adequately address the long-term safety needs of the community, nor do they sufficiently provide for a proportionate disposition when considering the cold-blooded nature of this offense." Further, the court noted that while one of the psychologists opined that the treatment options "may, arguably, form a rebuttal to the presumption of certification," this is not enough to rebut the presumption by clear and convincing evidence. On this record, the district court did not abuse its discretion.

**Affirmed.**