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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CR-16-1103

COSTELLO DEVONTE BYRD
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered: January 10, 2018

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT
[NO. 46CR-14-534]

HONORABLE CARLTON D. JONES,
JUDGE

AFFIRMED

BART F. VIRDEN, Judge

Appellant, Costello Devonte Byrd, appeals the Circuit Court of Miller County's order denying his motion to transfer his case to the juvenile division of circuit court. We affirm.

In 2014, Byrd and a codefendant, Byron Jamarr Flowers, were charged with raping a child, R.S., who was under the age of fourteen.¹ The events were alleged to have occurred in 2009 and 2010. While the case was pending in the Miller County Circuit Court, Byrd filed a motion to transfer it to the juvenile division. On December 10, 2015, the court held a juvenile-transfer hearing, after which it issued a letter order denying the motion.

¹Flowers's appeal from the circuit court's denial of his motion for juvenile transfer was affirmed in *Flowers v. State*, 2017 Ark. App. 468, 528 S.W.3d 851.

Byrd was twenty years old when the charges were first brought against him in this case. The acts were alleged to have occurred when the victim was between the ages of three and six years old and when Byrd was between the ages of twelve and fifteen years old. The victim alleged that Byrd and Flowers repeatedly raped her vaginally and anally, causing her to bleed. A sexual-assault examination revealed four well-healed injuries to her vaginal area that were consistent with her accounts of the rapes. The first time Byrd filed a juvenile-transfer motion, he was twenty years old. By the time Byrd filed his amended juvenile-transfer motion, he had already turned twenty-one. At the transfer hearing, an employee of the Division of Youth Services testified that there are no programs or facilities available to individuals who have reached the age of twenty-one. Scott Tanner, a juvenile ombudsman, testified that the juvenile court loses jurisdiction when an individual reaches the age of twenty-one. He also testified that there are juvenile programs available to Byrd that would be beneficial, but due to his age “the court would have to thread the needle on whether there’s adequate time for those services to be rendered.” Byrd’s stepmother, Sylvia Allen, testified that she had to wake him for work and that she did his laundry. Allen also testified that Byrd paid his car note and insurance every month, that he worked full-time, and that Byrd abided the curfew she and his father had set. Byrd testified that he had worked in the same job for a year and a half and that he had recently been named employee of the month. Byrd recounted that he was a good student in high school and had considered himself a mentor to others in his group. Byrd stated that he was saving money to move out of his parents’ home and that he considered himself a mature adult.

Arkansas Code Annotated section 9-27-318(g) (Repl. 2015) sets forth the factors the circuit court must consider and make written findings on at a transfer hearing:

- (1) the seriousness of the alleged offense and whether the protection of society requires prosecution in the criminal division of circuit court;
- (2) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
- (3) whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted;
- (4) the culpability of the juvenile, including the level of planning and participation in the alleged offense;
- (5) the previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence;
- (6) the sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living, or desire to be treated as an adult;
- (7) whether there are facilities or programs available to the judge of the juvenile division of circuit court that are likely to rehabilitate the juvenile before the expiration of the juvenile's twenty-first birthday;
- (8) whether the juvenile acted alone or was part of a group in the commission of the alleged offense;
- (9) written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and
- (10) any other factors deemed relevant by the judge.

Flowers, 2017 Ark. App. 468, at 4, 528 S.W.3d at 853. Proof need not be introduced on each factor. *Nichols v. State*, 2015 Ark. App. 397, at 5, 466 S.W.3d 431, 433. The circuit court does not have to give equal weight to each factor. *R.G.W. v. State*, 2014 Ark. App. 545, at 2–3, 444 S.W.3d 376, 377. The movant bears the burden of proving the necessity of transfer from the criminal division to the juvenile division of circuit court. *See Nichols*, 2015 Ark. App. 397, at 3, 466 S.W.3d 431, 432.

The court found that most of the statutory factors weighed against granting Byrd's motion to transfer. As to the first factor, the seriousness of the offense, the court correctly

found that rape, a Class Y felony, is serious—the only offense in Arkansas that carries a greater potential sentence is capital murder. Here, the court noted that the alleged rape was of a young child and involved a continuous course of abuse. As to the second factor, whether the offense was committed in an aggressive, violent, premeditated, or willful manner, the court found that rape is a crime of force and violence and that there was evidence that the acts were willful and premeditated. As to the third factor, the court found that, by its statutory definition, rape is a crime committed against a person, not property. Fourth, as to the culpability of each defendant, the court found that there was evidence that both Byrd and Flowers fully participated in sexually assaulting the victim rather than acting as bystanders or lookouts. The fifth factor, the juvenile’s previous history, revealed that Byrd had no contact with the criminal-justice system in the past. Sixth, regarding the sophistication or maturity of the juvenile, the court found that there was no evidence of any psychological or behavioral disorder, Byrd had graduated high school, worked full-time, and though he lived with his parents, he is saving money to obtain a home of his own. Seventh, the court noted that there are no programs or facilities available to rehabilitate Byrd due to his age—he turned twenty before filing his motion to transfer and would turn twenty-two in two months. Eighth, regarding whether the juvenile acted alone or as part of a group, the court noted that there was evidence that Byrd sometimes acted alone in sexually assaulting the victim and sometimes acted together with Flowers. As to the ninth consideration, any written reports or other materials relating to the juvenile’s mental, physical, educational, and social history, no such reports were introduced. Finally, as to the tenth factor in which the court may consider any other evidence deemed relevant by the

judge, the court stated that it did not make any inquiry beyond the evidence presented by the parties. After considering all ten factors, the court found that the following weighed against transfer: the seriousness of the offense, the age of the defendants, the lack of any programs or facilities available to rehabilitate them, and the level of maturity shown by the defendants. The court accordingly denied the motion to transfer. Byrd did not appeal the order.

The State later filed a second amended information, adding three counts of rape. Byrd filed an amended motion to transfer in which he also sought extended juvenile jurisdiction, arguing that the State's subsequent amendment of the charges to include additional counts of rape meant that he had been denied a fair juvenile-transfer hearing in the first instance. He asked the court to either transfer the case to the juvenile division and grant extended juvenile jurisdiction or dismiss the case.

Though Byrd did not appeal from the original order denying his motion to transfer, the circuit court took "judicial notice of all pleadings, testimony, and argument presented in support of, and in opposition to, [Byrd's] original transfer motion." The court then denied the amended motion to transfer for the same reasons stated in its previous order. *See Beck v. State*, 317 Ark. 154, 163, 876 S.W.2d 561, 566 (1994) (court may take judicial notice of its own case file).

On appeal, Byrd challenges the circuit court's finding that he was sophisticated or mature enough at the time of the alleged crimes or at the time of the hearing to be tried as an adult. We will not reverse a circuit court's decision denying a motion to transfer unless it is clearly erroneous. *Nichols*, 2015 Ark. App. 397, at 4, 466 S.W.3d at 432. A finding is

clearly erroneous when, after reviewing the evidence, the appellate court is left with a firm and definite conviction that a mistake was made. *Id.* After reviewing the record and the court's findings, we affirm because the court's decision regarding transfer was not clearly erroneous. As required, the court considered and made findings on each factor, and its findings were supported by the evidence. As we have held many times, appellate courts will not reweigh the evidence presented to the circuit court. *See Clem v. State*, 351 Ark. 112, 116, 90 S.W.3d 428, 429–30 (2002).

Here, the circuit court clearly considered the statutory factors, and there was substantial evidence to support the finding that Byrd was mature such that juvenile transfer was not warranted. We find no error.

Affirmed.

GLOVER and BROWN, JJ., agree.

Robert M. "Robby" Golden, for appellant.

Leslie Rutledge, Att'y Gen., by: *Michael A. Hylden*, Ass't Att'y Gen., for appellee.