

## ARKANSAS COURT OF APPEALS

DIVISION I  
No. CACR10-293

KENDRICK BARTON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** February 16, 2011

APPEAL FROM THE NEVADA  
COUNTY CIRCUIT COURT  
[NO. CR-2009-106-2]

HONORABLE DUNCAN M.  
CULPEPPER, JUDGE

AFFIRMED

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### JOHN MAUZY PITTMAN, Judge

In 2004, when he was fifteen years old, appellant committed acts that would constitute first-degree murder and residential burglary. In 2007, he was adjudicated delinquent and committed under the Extended Juvenile Jurisdiction Act<sup>1</sup> to the Department of Youth Services, where he received rehabilitative services until shortly before his twenty-first birthday. After a review hearing on October 29, 2009, the trial court found that public safety required imposition of an adult sentence and that such sentence was appropriate, ordering that appellant be incarcerated in the Arkansas Department of Correction for a term of twenty years. Appellant argues on appeal that the trial court erred in imposing an adult sentence and in admitting evidence of appellant's prior delinquency adjudication for assault in 2002. We

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<sup>1</sup>Act 1192 of 1999, now codified at Ark. Code Ann. § 9-27-501 *et seq.* (Repl. 2009).

affirm.

The purpose of the review hearing, mandated by Ark. Code Ann. § 9-27-507(e)(1) (Repl. 2009), was for the trial court to determine whether to release the juvenile, amend or add any juvenile disposition, or to impose an adult sentence. In order for an adult sentence to be imposed, the State is required to prove by a preponderance of the evidence that imposition of an adult sentence is appropriate and required for public safety. Ark. Code Ann. § 9-27-507(e)(3). The trial court, in deciding this issue, must consider the experience of the juvenile before and after the disposition, including compliance with court orders; the nature of the offenses and the manner in which they were committed; the recommendations of the professionals who have worked with the juvenile; the protection of public safety; the juvenile's opportunities for and efforts toward rehabilitation; and victim-impact evidence. Ark. Code Ann. § 9-27-507(e)(2).

Appellant argues that the evidence unequivocally demonstrates that he was rehabilitated and that it was therefore error to sentence him as an adult. We do not agree that the evidence of appellant's rehabilitation is as conclusive as he asserts it to be. The professionals opined that appellant was rehabilitated, and it is on this evidence that appellant primarily relies. However, appellant's residential case manager acknowledged that appellant's rehabilitation efforts were not without major infractions even after he had completed his case goals, including angry incidents with other inmates, and that appellant also committed minor rule infractions month after month with regularity, including infractions in February 2009. Furthermore, on cross-

examination, she admitted that other participants in the program were able to go for an entire month without an infraction. The program director of the rehabilitation facility testified that some people were able to complete the entire program without a single infraction. Finally, there was evidence that a supervised aftercare plan with outpatient services was recommended for appellant but that such services would only be available for one month at most because appellant would turn twenty-one in November 2009.

Appellant argues that a rehabilitated juvenile cannot be sentenced as an adult merely because his offense was a serious one. However, the question of rehabilitation is not to be determined in isolation, but must be assessed in light of the other factors listed in § 9-27-507(e)(2). Perhaps appellant's imperfect efforts at controlling his impulsive, physically aggressive, antisocial behavior would be adequate rehabilitation if his crime had not been so heinous. Here, however, appellant had as a juvenile taken part in the premeditated planning and execution of a home-invasion burglary by five armed youths, during the course of which they entered the home of an eighty-two-year-old man, awakened him in his bed and pistol-whipped him, then shot him without provocation before ransacking his home. Before the burglars left, one of them returned to the victim's bedroom and shot him a second time. The victim was found dead in his bed with bullet wounds to his back and hip, a roll of duct tape lying beside his body.

We think that a person participating in a crime as shockingly cruel and senseless as this must be very successful indeed in his rehabilitation efforts before it can be said that he has

been rehabilitated to the extent that the public will not be endangered by his release. Given the evidence of the consistent pattern of rule-breaking exhibited by appellant in his rehabilitation program, the unavailability of the recommended aftercare program due to his age, the unavailability of any equivalent aftercare program through adult probation, and the magnitude of the crime, we cannot say that the trial court clearly erred in finding that imposition of an adult sentence was appropriate and required for public safety.

Finally, appellant raises a constitutional issue in his argument that the trial court erred in admitting records of appellant's prior adjudication of delinquency for assault. We do not address this issue because, even if this evidence was erroneously admitted, appellant was clearly not prejudiced. Appellant's proclivity for physical aggression had been discussed at length during the course of the hearing, and the evidence of his relatively trivial prior juvenile offense was eclipsed by the facts of the murder and burglary for which he was here sentenced to such an extent that no possible prejudice could have resulted. *See Gullett v. State*, 18 Ark. App. 97, 711 S.W.2d 836 (1986).

Affirmed.

HART and MARTIN, JJ., agree.