

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR09-211

A.I., A MINOR

APPELLANT

V.

STATE OF ARKANSAS

APPELLEES

Opinion Delivered JANUARY 27, 2010

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. CR-08-337C]

HONORABLE JAY T. FINCH, JUDGE

AFFIRMED

RITA W. GRUBER, Judge

A.I. was charged in the Benton County Circuit Court with aggravated robbery, felony kidnapping, felony fleeing on foot with serious physical injury, and criminal use of a prohibited weapon. The charges stem from an incident in which A.I. and six other teenagers allegedly robbed a Wendy's restaurant in Rogers. *See J.S. v. State*, 2009 Ark. App. 710 (affirming denial of motion to transfer of one of A.I.'s co-defendants). A.I. was seventeen at the time of the alleged crimes. After a hearing, the circuit court denied A.I.'s motion to transfer his case to the juvenile division of circuit court. He appeals. We affirm the circuit court's order.

For his first point on appeal, A.I. contends that the circuit court applied the wrong burden of proof in deciding whether to transfer his case: the court used a clear-and-convincing burden of proof, and A.I. contends the proper burden was proof by a

preponderance of the evidence. Specifically, A.I. claims that he sought to transfer his case to the juvenile division of circuit court under the extended juvenile jurisdiction designation. While A.I. agrees that the burden of proof in a transfer hearing is generally by clear and convincing evidence, *see* Ark. Code Ann. § 9-27-318(h)(2) (Repl. 2008), he argues that, where one is requesting transfer to the juvenile division of circuit court under the extended juvenile jurisdiction (“EJJ”) designation, the party requesting the designation has the burden to prove only “by a preponderance of the evidence that such a designation is warranted.” Ark. Code Ann. § 9-27-503(b) (Supp. 2008).

A.I. admits that he did not raise this argument in the circuit court but contends that his argument is preserved for our review because it falls within two of the four exceptions to the contemporaneous-objection rule known as the *Wicks* exceptions. *Thomas v. State*, 370 Ark. 70, 74, 257 S.W.3d 92, 96–97 (2007)(citing *Wicks v. State*, 270 Ark. 781, 606 S.W.2d 366 (1980)). A.I.’s co-defendant, J.S., made a similar argument to this court, which we decided in *J.S. v. State*, 2009 Ark. App. 710. In *J.S.*, we held that neither of the *Wicks* exceptions was applicable and that the circuit court did not make an error that it needed to correct by using the clear and convincing burden of proof in deciding whether to transfer J.S.’s case to the juvenile division of circuit court. We held that, in order for J.S.’s case to have been eligible for an EJJ designation, “the circuit court must have made a finding by clear and convincing evidence that the case should have been transferred to the juvenile division.” *Id.* at 5–6. The circuit court made no such finding in J.S.’s case. The circuit court also made

no such finding in A.I.'s case but rather denied A.I.'s motion to transfer. A.I. presents the same arguments to this court already presented by J.S. We find no reason to revisit the issue.

For his second point on appeal, A.I. contends that, under either burden of proof, the court erred in denying his request for transfer to the juvenile division under the EJJ designation. In deciding whether to grant or deny a transfer request, the circuit court must consider and make written findings on each of ten statutory factors set forth in Ark. Code Ann. § 9-27-318(g). Ark. Code Ann. § 9-27-318(g)-(h) (Repl. 2008).¹ While A.I. does not point specifically to any one of the ten factors he thinks was improperly considered by the court in its decision not to transfer, he argues that he did not “murder or rape anyone,” he “made a mistake in mid-adolescence,” and he was amenable to rehabilitation. We review transfer cases for clear error and will not reverse a circuit court’s order denying transfer unless it was clearly erroneous. *Lofton v. State*, 2009 Ark. 341, at 4.

In this case, the circuit court discussed and made written findings on each of the ten statutory factors. The court was not required to give equal weight to each factor but was entitled to use its discretion in deciding the weight to be afforded to each factor. *Id.* The court did find that there were rehabilitation facilities available on the juvenile level for A.I. However, the court also found that the alleged offenses were serious; that the alleged crimes

¹These factors are identical to the factors used by the court in deciding whether to grant a request for extended juvenile jurisdiction. See Ark. Code Ann. § 9-27-503(c). However, as we have already indicated, the court must have granted A.I.'s motion to transfer to the juvenile division in order to grant an EJJ designation.

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were committed in an aggressive, willful, or premeditated manner; that the offenses were against persons rather than property; that A.I. suggested his co-defendants not return to the restaurant, but then he returned anyway; that A.I. evaded capture in a “most sophisticated manner and was slow to cooperate”; and that A.I. participated in planning the offense and went to the restaurant twice on the night of the alleged crime, once before returning to commit the alleged offense. We are not left with a definite and firm conviction that the circuit court made a mistake. We therefore affirm the denial of A.I.’s motion to transfer his case to the circuit court’s juvenile division.

GLOVER and BROWN, JJ., agree.