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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CR-18-504

Opinion Delivered: February 20, 2019

ANDRIS MCCLENDON APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, FIRST DIVISION
V.	[NO. 60CR-17-1570]
STATE OF ARKANSAS	HONORABLE LEON N. JOHNSON, JUDGE
APPELLEE	REMANDED WITH INSTRUCTIONS

DAVID M. GLOVER, Judge

In May 2017, Andris McClendon was charged in the Pulaski County Circuit Court with one count of battery in the first degree by means of a firearm. In July 2017, he filed a motion to transfer his case to the juvenile division. After a hearing, the circuit court denied the motion to transfer. McClendon appeals the denial of his motion, arguing the circuit court failed to comply with the requirements in Arkansas Code Annotated section 9-27-318(h)(1) (Repl. 2015) to make written findings of fact on each of the ten factors set forth in Arkansas Code Annotated section 9-27-318(g), and the order denying his motion to transfer should be remanded for the circuit court to comply with section 9-27-318(h)(1). We remand to the circuit court for further findings.

Detective Roy Williams of the Little Rock Police Department was the State's only witness at the transfer hearing. He testified that on April 9, 2017, he responded to a report

of a double shooting at approximately 11:00 a.m. in the area of 27th and Washington. According to Williams, two people had suffered gunshot wounds, but neither were at the scene when he arrived; although most witnesses only heard the gunshots, one individual stated he had seen two black males (one with a small afro and the other with dreadlocks) run to a light blue Toyota Camry, drive away, hit another vehicle, and then abandon the vehicle. Williams also spoke to an individual on 29th Street who advised he had seen three black males together (one with dreadlocks), and one of the males had placed some guns in his barbeque grill; two firearms were located in the grill. McClendon was located by patrol officers at a church in the 4300 block of West 29th, where he had told people inside he had been shot.

Detective Williams interviewed Jaylen Hussian, one of the persons who had been shot, at Arkansas Children's Hospital (Children's), at which time Hussian informed him the person who shot him was also at Children's and was named Andris. When asked why he thought appellant had shot him, Hussian said he had gone to school with appellant in the past. He said he saw McClendon and one of McClendon's friends (who had dreadlocks) sitting on the porch of a residence, and they had begun shooting at him.

Detective Williams initially encountered McClendon at Children's. McClendon waived his rights and spoke to Williams, claiming the shooting was in self-defense. McClendon told Williams he had been in the area with his friend Little Greg; they were sitting on the front porch of a residence; they heard gunshots, looked up, and saw Jaylen Hussian; they assumed Hussian was shooting at them; Little Greg began shooting toward Hussian, and he began to shoot, too; they ran to the Camry; as they were trying to get into

the vehicle, he was shot in the foot; they ran the vehicle into a parked car and then got out and ran off; he had a revolver with him but dropped it. McClendon said he did not see Hussian with a gun, but he just assumed Hussian was shooting because he was the only one in the area when they heard the shots. Williams did not allege McClendon had fired all the shots in the altercation; he also stated there appeared to be bullet holes in the Camry, but he noted that the vehicle was stolen, and the bullet holes were not necessarily from the shooting at issue. However, the shell casings found at the scene matched the .45 caliber and 10mm Glock firearms recovered from the grill. Williams testified McClendon was affiliated with the gang Murder Mob, which is affiliated with Highland Park Piru and was in the area where the shooting occurred; however, he also stated there were no incident reports connecting McClendon directly to either gang.

Scott Tanner, the coordinator of the Juvenile Ombudsmen Division of the Public Defender Commission, testified for the defense, detailing the various programs available to McClendon if his case were transferred to juvenile court, including the possibility of extended juvenile jurisdiction (EJJ). Tanner also explained if McClendon's case was transferred to juvenile court, he would be assessed to determine the programs that would best fit his needs. He also explained that if a juvenile is committed to the Division of Youth Services (DYS), the juvenile is locked down and not free to leave the residential setting; however, in a group-home setting, there is no lock down.

Adriana Brown, McClendon's mother, testified that McClendon is the baby of the family; he is childish, silly, and outgoing, but very respectful; he does not have a father figure and wants to take care of his mother; he is intelligent and attends school at the Hamilton

Learning Academy; he was working several jobs to pay for his ankle monitoring because Brown could not afford to pay for it; he had completed the Christian Angels Support program; and he suffers from depression. The defense presented letters from McClendon's teacher, assistant principal, and social worker at Hamilton Learning Academy, stating he had a respectful and positive attitude, was eager to help, and was a model student, as well as a certificate noting he was a nominee for intern of the year in the Little Rock Department of Community Programs 2017 Summer Youth Employment Opportunity.

Arkansas Code Annotated section 9-27-318(g) provides:

> (g) In the transfer hearing, the court shall consider all of the following factors:
>
> (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.

The circuit court shall make written findings on all the factors set forth in subsection (g) of this section. Ark. Code Ann. § 9-27-318(h)(1). However, the State is not required to introduce proof of each factor, and the circuit court does not have to give equal weight to each factor. *Flowers v. State*, 2017 Ark. App. 468, 528 S.W.3d 851. The movant bears the burden of proving the necessity of transfer from the criminal division to the juvenile division of circuit court. *Id.* On appeal, we will not reverse a circuit court's decision denying a motion to transfer unless it is clearly erroneous; 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.* The appellate courts will not reweigh the evidence presented to the circuit court. *Id.*

The order denying McClendon's motion to transfer was prepared by defendant's counsel and stated in its entirety:

Upon motion of the Defendant to transfer this case to the Juvenile Division of Circuit Court, the Court has considered all the factors listed in Ark. Code Ann. § 9-27-318 and § 9-27-503 and makes the following findings:

1. The underlying offense, Battery in the First Degree, is a serious offense.

2. The alleged offense was committed in an aggressive manner.

3. The alleged offense was committed against a person, specifically a minor.

4. That there are facilities or programs available, but the Court is not sure they are likely to rehabilitate.

> After consideration of these factors, the Court denies the Defendant's Motion to Transfer to the Juvenile Division of Circuit Court.

The circuit court made written findings regarding only four of the factors listed in section 9-27-318(g). On appeal, McClendon argues the circuit court's failure to make written findings on all ten factors requires the case to be remanded to the circuit court. We agree.

Prior to 2003, Arkansas Code Annotated section 9-27-318(g) provided, "In making the decision to retain jurisdiction or to transfer the case, the court shall make written findings and consider all of the following factors. . . ." In *Beulah v. State*, 344 Ark. 528, 42 S.W.3d 461 (2001), the appellant argued the circuit court erred in not making written findings on all the enumerated statutory factors. In concluding there was no error, our supreme court held the plain language of the statute only required the circuit court to consider all the factors and make written findings, not make written findings of all the factors, as the extent of the written findings was not specified.

In 2003, arguably in direct response to the supreme court's holding in *Beulah*, the legislature added subsection (h)(1) to Arkansas Code Annotated section 9-27-318, making it mandatory for the circuit court to make written findings on *all* the factors set forth in subsection (g).

Citing *B.D. v. State*, 2015 Ark. App. 160, 457 S.W.3d 294, the State argues McClendon has waived his argument because it was not raised to the circuit court. However, the case relied on in *B.D.—Box v. State*, 71 Ark. App. 403, 30 S.W.3d 754

(2000)—is a pre-2003 case, when the statute did not mandate the circuit court to make written findings on all ten factors.

Our court has recently, on its own accord, raised the issue of whether the circuit court made written findings on all ten factors required to be considered in a juvenile-transfer hearing, even if the issue was not raised to the circuit court. In *Gilliam v. State*, 2016 Ark. App. 297, our court remanded for the circuit court to make written findings instead of simply check-marking boxes on a form. In *Brown v. State*, 2015 Ark. App. 570, our court remanded the denial of a juvenile-transfer motion due to the failure to make any written findings, holding that check marks on a form did not constitute written findings.

In *Harris v. State*, 2015 Ark. App. 565, our court remanded for a lack of findings, as the circuit court only check-marked boxes instead of making findings on each factor. In that case, our court, citing *Beulah*, *supra*, stated that the circuit court was not required to make written findings with regard to all the factors. However, when the case returned to our court in *Harris v. State*, 2016 Ark. App. 293, 493 S.W.3d 808, in which the denial of appellant's motion to transfer was affirmed, we noted in a footnote that it was mistakenly asserted in our first opinion, citing *Beulah*, *supra*, that the circuit court was not required to make written findings on all the statutory factors; however, the current statute now required written findings on all factors.

The State further argues this is a case of invited error, as other factors were discussed at the transfer hearing that were not included in the order, and McClendon cannot now benefit from his counsel's failure to prepare a proper order. We disagree. The statute requires written findings to be made in decisions regarding juvenile-transfer hearings, and

in order to perform a proper review, our court needs these statutorily mandated findings to aid in our understanding of the information considered by the circuit court at the transfer hearing. *See, e.g.*, *Schwartz v. Lobbs*, 2016 Ark. App. 242, 491 S.W.3d 161; *Wadley v. Wadley*, 2012 Ark. App. 208, 395 S.W.3d 411. The statute requires the circuit court to make written findings of fact on all ten factors, and it is the responsibility of the circuit court to ensure written findings on all ten factors are made. We therefore remand this case with instructions for the circuit court to make written findings on all ten factors enumerated in the juvenile-transfer statute.

Remanded with instructions.

HARRISON and KLAPPENBACH, JJ., agree.

William R. Simpson, Jr., Public Defender, by: *Clint Miller*, Deputy Public Defender, for appellant.

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