

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MAXIMILLIAN L. LLOYD,

Defendant-Appellee.

UNPUBLISHED

May 22, 1998

No. 194593

Oakland Circuit Court

LC No. 94-135670 FC

Before: Fitzgerald, P.J., and Holbrook, Jr. and Cavanagh, JJ.

PER CURIAM.

A jury convicted defendant of conspiracy to commit armed robbery, MCL 750.157a; MSA 28.354(1), second-degree murder, MCL 750.317; MSA 28.549, assault with intent to rob while armed, MCL 750.89; MSA 28.284, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2).¹ At the time of the offense, defendant was sixteen years old and, therefore, he was tried as an adult pursuant to MCL 600.606; MSA 27A.606. After conducting a juvenile sentencing hearing pursuant to MCL 769.1(3); MSA 28.1072(3) and MCR 6.931(A), the trial court determined that defendant should be sentenced as a juvenile. The prosecutor now appeals that determination as of right. We affirm.

At a juvenile sentencing hearing, the prosecutor has the burden of proving by a preponderance of the evidence that the best interests of the juvenile and the public would be served by sentencing the juvenile as an adult offender. *People v Cheeks*, 216 Mich App 470, 475; 549 NW2d 584 (1996); MCR 6.931(E)(2). At the time defendant was sentenced, MCL 769.1(3); MSA 28.1072(3) and MCR 6.931(E)(3) required the court to consider six criteria in determining whether to sentence a juvenile as a juvenile or adult offender. In making that determination, the court must “make complete, detailed findings with respect to each of the requisite factors[.]” *People v Hazzard*, 206 Mich App 658, 660-661; 522 NW2d 910 (1994). The court must attempt to weigh the relevant factors in a meaningful way and no single criterion, such as the seriousness of the offense, may be given preeminence over the others. *People v Perry*, 218 Mich App 520, 542; 554 NW2d 362 (1996).

Review of a trial court's decision to sentence a minor as a juvenile or as an adult is bifurcated. First, the trial court's factual findings supporting its determination regarding each individual factor are reviewed under the clearly erroneous standard. Factual findings are clearly erroneous if, after review of the record, this Court is left with a definite and firm conviction that a mistake has been made. Second, the ultimate decision whether to sentence the minor as a juvenile or as an adult is reviewed for an abuse of discretion. *People v Launsbury*, 217 Mich App 358, 362; 551 NW2d 460 (1996).

Here, the trial court stated that it reviewed the six statutory criteria and made specific findings of fact with regard to the first three factors, MCR 6.931(E)(3)(a)-(c). The court found that defendant had three prior misdemeanor adjudications and one prior felony adjudication as a juvenile, that defendant had average intelligence, and that defendant was raised in a chaotic and dysfunctional home which, according to the delinquency services worker's report, caused him to turn to gang involvement. The offenses were very serious and defendant, who was a willing participant, was armed with a weapon, although the weapon was unloaded. The court further found that defendant did not shoot the deceased, did not actively participate in the attempted robbery of the deceased's son, and expressed remorse for his actions. The court impliedly concluded that defendant was amenable to treatment, given that this was his first time in residential placement and that he had functioned well at Children's Village over the past two years.² These findings are supported by the evidence and are not clearly erroneous.

The court did not make explicit findings as to the last three factors, MCR 6.931(E)(3)(d)-(f), but instead emphasized the recommendations of the probation officer and delinquency services worker and the endorsement thereof by the officer in charge. That evidence and the testimony weighed in favor of the trial court's decision to sentence defendant as a juvenile. The probation officer and delinquency services worker determined that defendant was more likely to be rehabilitated by the treatment offered by the juvenile system because it was compulsory, geared toward juveniles, and included family involvement. Also, if defendant took advantage of that treatment, as he had been doing, and internalized the changes that had already begun, he was unlikely to present a danger to the public if released at age twenty-one. Given defendant's potential for rehabilitation through the juvenile system, the probation officer and delinquency services worker agreed that it was in the best interest of the public welfare and protection of public security that he be sentenced as a juvenile. The evidence presented in support of the prosecutor's position was that the sentencing guidelines recommended a minimum adult sentence of ten to twenty-five years, treatment programs were available in the adult system, and defendant would present a risk to society if he were not rehabilitated by age twenty-one, in which case his incarceration could be continued if he were in the adult system. Given that the court has the option of placing a minor offender in the juvenile system even in cases where a particular sentence is mandated for an adult offender convicted of the same crimes, *People v Valentin*, 220 Mich App 401, 411 n 5; 559 NW2d 396 (1996), aff'd ___ Mich ___ (Docket No. 108160, decided April 14, 1998), such evidence did not preponderate in favor of sentencing defendant as an adult.

The purpose of requiring specific factual findings is to facilitate appellate review. *People v Johnson (On Rehearing)*, 208 Mich App 137, 141; 526 NW2d 617 (1994). Generally, where the factual findings are insufficient, the appropriate remedy is to remand the cause to the trial court for additional fact-finding. *People v Armstrong*, 175 Mich App 181, 184; 437 NW2d 343 (1989).

However, remand is unnecessary where it is manifest that the court was aware of the issues, resolved the factual issues and correctly applied the law, and it would not facilitate appellate review to require further explication of the path the court followed in reaching its result. *Id.* at 185; *Johnson, supra* at 141-142.

In *Hazzard, supra*, this Court reversed and remanded because the trial court “engaged in a rather lengthy diatribe at sentencing—comparing his own upbringing with defendant’s” and apparently neglected to address any of the six factors, although he “made a number of piecemeal findings that were potentially relevant to the statutory criteria.” *Id.* at 660. In the present case, by contrast, the trial court was aware of the issues, considered the six criteria, and relied on the various sentencing reports in reaching its decision. Those reports addressed all factors and concluded that they weighed in favor of sentencing defendant as a juvenile. The preponderance of the evidence presented thus permitted but one conclusion on the last three factors: that defendant be sentenced as a juvenile. Accordingly, we find that remand for further fact-finding would serve no purpose in this case.

Although not raised on appeal, we note that the order of commitment erroneously indicates that defendant was convicted of three counts of felony-firearm. Consequently, we remand this matter for the limited purpose of correction of the order of commitment to reflect defendant’s conviction of two counts of felony-firearm.

Affirmed and remanded for correction of the order of commitment. Jurisdiction is not retained.

/s/ E. Thomas Fitzgerald

/s/ Donald E. Holbrook, Jr.

/s/ Mark J. Cavanagh

¹ The order of commitment erroneously indicates that defendant was convicted of three counts of felony-firearm.

² Although the court did not expressly find whether the instant offenses were part of a repetitive pattern of offenses, that factor is relevant insofar as it bears on the defendant’s amenability to treatment in the juvenile system. The evidence showed that defendant’s behavior was “almost exemplary” after initial difficulties in adjustment and that he had excelled in his studies, thus indicating that he was amenable to treatment.