

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LOWZARIUS DASHAWN
WILLIS, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

LOWZARIUS DASHAWN WILLIS,

Respondent-Appellant.

UNPUBLISHED
December 19, 2013

No. 311658
Wayne Circuit Court
Family Division
LC No. 08-481040-DL

Before: JANSEN, P.J., and O'CONNELL and M. J. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right the order of disposition committing him to the Department of Human Services. He was adjudicated guilty, by way of plea, to fourth-degree fleeing a police officer, MCL 257.602a(2). We affirm.

This case arises from respondent's involvement in a carjacking in Detroit. Respondent argues the court abused its discretion by removing him from the community and placing him in a secure placement facility instead of allowing him to be sentenced in the least restrictive way for the purposes of rehabilitation. Specifically, respondent maintains that the family court erred by failing to make a clear record delineating the reasons for ordering respondent into a secure placement, as opposed to a non-secure placement. We disagree.

The record supports the referee's decision, in that the referee addressed the six factors that the court should examine when imposing a juvenile sentence, MCL 712A.18(1)(m). MCL 712A.18(1)(m) provides:

(i) The seriousness of the offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.

(ii) The juvenile's culpability in committing the offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense

and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.

(iii) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.

(iv) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.

(v) The adequacy of the punishment or programming available in the juvenile justice system.

(vi) The dispositional options available for the juvenile.

See also *People v Petty*, 469 Mich 108, 117; 665 NW2d 443 (2003) (interpreting MCL 712A.18(1)(m)).

The first factor is the seriousness of the offense in terms of community protection and impact on the victim. MCL 712A.18(1)(m)(i). Respondent was involved in a carjacking and fled from police, and the victim testified that she now has anxiety attacks and other health issues as a result of the incident. The referee stated several times that respondent was dangerous to the community. The second factor used to determine a juvenile's sentence is culpability, MCL 712A.18(1)(m)(ii). The record shows respondent was not remorseful. He failed to recognize that he hurt anyone as a result of stealing the vehicle, telling the referee his mistake that day was smoking marijuana.

The third factor, MCL 712A.18(1)(m)(iii), for determining a juvenile's sentence involves the prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior. Respondent's record is replete with 15 previous petitions, including an assault charge and breaking and entering into a home from which he stole property. The fourth and fifth factors address the juvenile's programming history and the adequacy of the punishment, MCL 712A.18(1)(m)(iv)-(v). In the past, respondent was on probation for which he received services.

Respondent argues that the referee did not adequately explain her rationale for placing him in secure placement, citing *Matter of Chapel*, 134 Mich App 308; 350 NW2d 871 (1984), for the proposition that the court must articulate reasons for its disposition. However, the facts in *Chapel* are distinguishable from those in the present case because in *Chapel*, there was no record that showed reasons for the disposition. *Id.* at 315. As such, the Court could not review a formal disposition because there was no formal record that showed the "relevant material statements and proofs properly and legally presented upon which the judge made his disposition decision." *Id.* at 314.

In this case, witnesses testified on the record at the dispositional hearing and during several previous hearings. The referee questioned the victim, respondent, and respondent's mother. There was no indication that the referee spoke ex parte with anyone to determine respondent's punishment. Further, the referee stated why she placed respondent in a secure

facility. She said respondent had been previously placed in a nonsecure facility, had exhibited violent behavior, and was a danger to society. Unlike in *Chapel*, in which this Court noted that a record did not exist, in this case there was a clear record from which to determine the referee's reasoning. Further, the referee noted in the order of disposition, "While the Matrix may say "non secuyre" [sic] a secure placement is recommended due to the repeated past history of this child. One that includes a long term behavior modification program is recommended." We find no error warranting reversal in the referee's decision.

Affirmed.

/s/ Kathleen Jansen
/s/ Peter D. O'Connell
/s/ Michael J. Kelly