

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2002-458

JULY TERM, 2003

	}	APPEALED FROM:
	}	
State of Vermont	}	District Court of Vermont, Unit No. 3,
	}	Lamoille Circuit
	}	
v.	}	DOCKET NO. 252-4-02 Lecr
	}	
Nathaniel Church	}	Trial Judge: Howard E. VanBenthuyesen
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Defendant Nathaniel Church moved to transfer this criminal proceeding to juvenile court, and appeals from the district court's denial of his motion. We find no abuse of the trial court's discretion, and therefore, we affirm.

The essential facts are undisputed. Defendant is charged with stalking K.B, a female high school student, between October 2001 and January 2002. At the time of the alleged offense, defendant was sixteen-years old. He will turn eighteen on August 6 of this year. Defendant has spent time at the Brattleboro Retreat for treatment of a mental illness, although the record is silent about the illness from which he suffers.

The stalking charges were based on an affidavit of the investigating officer. The officer's affidavit alleged, among other things, that defendant had repeatedly made rude comments to K.B., threatened to rape, kill, and cut her into little pieces, took pictures of her, followed her, and on one occasion, grabbed and held her until she answered a question he had posed to her. The court arraigned defendant on April 15, 2002, and released him on conditions, including that he refrain from contacting the alleged victim. The State later filed two misdemeanor charges against defendant for violating the no-contact condition.

Defendant moved to transfer the prosecution to juvenile court. The State opposed the request, and the court convened a hearing on the motion on July 15, 2002. Defendant offered no evidence in support of his motion, but defense counsel presented argument to the court. During the hearing, the court suggested that the parties, along with defendant's guardian, meet in chambers off the record to discuss all of the charges pending against defendant. Defendant agreed, as did the attorney for the State. After the in-chambers discussion, the court went back on the record to explain what the parties had discussed. The court indicated that the parties were going to attempt to settle the pending charges and report back to the court on their progress.

On August 26, 2002, the court entered its order denying defendant's motion. Apparently, the parties had not reached settlement by that time. The court based its order on the seriousness of the charge, the fact that defendant was approaching the age of majority, and the fact that he was charged subsequently for violating the condition not to contact the alleged victim. The court noted that the stalking charge contained allegations of interpersonal violence and that transferring the cause to juvenile court would diminish the importance and nature of the charge. We granted defendant's request to review the court's order on an interlocutory basis, and we now affirm.

The district court has broad discretion when ruling on a motion to transfer. In re J.G., 160 Vt. 250, 254 (1993). Thus, we review the court's decision here under the abuse-of-discretion standard. Id.; State v. Smail, 151 Vt. 340, 341 (1989). Defendant bears the burden to demonstrate to the trial court that his case does not belong in criminal court, State v.

Buelow, 155 Vt. 537, 540 (1990), and on appeal, he must show that the court clearly and affirmatively abused its discretion by denying his motion. Smail, 151 Vt. at 343.

Defendant first asserts that the court had no evidence before it " that could have supported the finding that [his] alleged behavior required something other than treatment or rehabilitation." Defendant' s assertion reflects the erroneous view that a presumption in favor of proceeding in juvenile court exists. As we explained above, defendant bore the burden to convince the court that the district court proceeding was inappropriate in his case. He failed to sustain that burden. Defendant' s first argument must fail because he has not demonstrated affirmatively and clearly that the court abused its discretion by denying his request to transfer the action to juvenile court.

Defendant next contests the court' s finding that he " apparently has not engaged in sustained personal counseling for his mental health issues." But defendant did not offer any evidence in support of his motion. Although defendant spoke during the hearing, and told the court that he had engaged a counselor, defendant did not provide the court with any details about the engagement, including the length of time he has been in counseling, how often he sees his counselor, what his mental illness is, or how long he might be in treatment. Moreover, defense counsel indicated that he believed defendant had been seen by a counselor during his stay at the Brattleboro Retreat, but was unaware that defendant was seeing a counselor at the time of the hearing. Finally, the court' s order reflects that it denied defendant' s motion for a host of reasons, his lack of sustained counseling being just one of several factors. In light of this record, we find any error in the court' s finding to have been harmless, and reversal is not required. V.R.Cr.P. 52(a).

Defendant claims the court partly based its order on a mistaken understanding of the admission criteria for Woodside, a detention facility for juveniles. He claims the court found that " Woodside is available for placement of delinquent youth between the ages of 12 and 15." Defendant' s reading of the order does not comport with the order' s actual text. The order states that Woodside " is engaged primarily in the therapeutic treatment of troubled and delinquent adolescent youth between the ages of 12 and 15 in a minimally secure environment." Not only does defendant misstate what the court wrote, he inadequately explains how the statement led to an abuse of the court' s discretion. Defendant has not sustained his burden on appeal to overturn the court' s discretionary ruling.

The remainder of defendant' s brief addresses problems he sees in the statutes governing prosecuting children for adult offenses, as well as the lack of specific standards for evaluating when a transfer to juvenile court is appropriate. These arguments are better addressed to the Legislature. And, because they fail to identify an abuse of the court' s discretion in this particular case, we do not address them.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned