Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-396

MAY TERM, 2019

In re L.L.*	}	APPEALED FROM:
	}	
	}	Superior Court, Windham Unit,
	}	Family Division
	}	
	}	DOCKET NO. 114-8-18 Wmjv
		Trial Judge: Katherine A. Hayes

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

Youth L.L. appeals a family division order denying his request for youthful offender status. On appeal, youth argues that the evidence does not support the trial court's finding that there were insufficient services available to meet youth's needs for rehabilitation and treatment. We affirm.

In June 2017, youth was charged in the criminal division with two counts of first-degree aggravated domestic assault, one count of second-degree unlawful restraint, and one count of domestic assault. In August 2018, youth moved for treatment as a youthful offender and the case was transferred to the family division.

Youth had the burden of proving "by a preponderance of the evidence that [he] should be granted youthful offender status." 33 V.S.A. § 5283(d). In determining whether to grant youthful offender status, the family division must consider first whether "public safety will be protected by treating the youth as a youthful offender." Id. § 5284(a). If the court finds that public safety will be protected, it must still deny the motion if it finds

> (A) the youth is not amenable to treatment or rehabilitation as a youthful offender; or
>
> (B) there are insufficient services in the juvenile court system and the Department for Children and Families and the Department of Corrections to meet the youth's treatment and rehabilitation needs.

Id. § 5284(b)(1).

Following a hearing, the court found that, despite the seriousness of the offense, youth was not a risk to public safety. The court further found that youth was amenable to treatment. The

court found, however, that there was insufficient time to ensure that all the necessary programming would be completed before youth turned twenty-two and became ineligible for services as a youthful offender. Therefore, the court concluded that there were insufficient services in the juvenile system to provide for rehabilitation and treatment and denied the motion for youthful offender status. Youth filed a request for permission to bring a collateral final order appeal, which was granted.

On appeal, youth argues that the evidence does not support the court's finding that there was insufficient time for him to receive the necessary services through either the Department for Children and Families (DCF) or the Department of Corrections (DOC). We review the court's findings under a clearly erroneous standard. See State v. Buelow, 155 Vt. 537, 543 (1990) ("Findings of fact will not be set aside unless, taking the evidence in a light most favorable to the prevailing party and excluding the effects of modifying evidence, the findings are clearly erroneous." (quotation omitted)).

The evidence presented at the hearing on youth's motion included the following. Youth's juvenile probation officer testified that he had completed a youth assessment screening and was recommending youthful offender treatment based on youth's good cooperation and low-to-moderate risk score. He stated that services would be available to youth including a domestic abusers program that runs twenty-three weeks but could be done in less time. He said that the supervision could come from either DOC or DCF. He was uncertain if it was the same program administered by the DOC. He was also uncertain about whether mental health or substance or alcohol abuse were raised as issues in youth's screening. A licensed psychologist, who did an evaluation of youth, testified that, at age twenty-one, youth had time to participate in and complete a course of treatment that would be appropriate. He said that he recommended anger management with domestic-violence counseling and individual counseling. He stated that he was not familiar with the programs that would be available to youth through either DOC or DCF. He averred that there was sufficient time for youth to complete programming, stating that one year would be enough to complete a program. At the close of the hearing, youth's attorney summarized that a year would be enough for youth to complete the twenty-three or thirty-week domestic abusers program plus additional supervision time. At the close of the hearing, the court inquired on how the case would proceed if accepted. The parties agreed they needed a full day of hearing for the merits and the court questioned whether it would be able to schedule a hearing within sixty days.

We conclude that this evidence supports the court's finding that there was not enough time for youth to receive sufficient services before his twenty-second birthday. Although youth's juvenile probation officer testified that it was possible for youth to complete a domestic abusers program in a year, there was uncertainty about the timing. In addition, he did not address other kinds of services that were recommended, including individual counseling. Moreover, at the time of the court's order, youth was already twenty-one and there was less than a year before his twenty-second birthday. If the court granted youth's motion, there would still have to be a merits hearing and a disposition order before programming could begin, leaving even less time for programming to be completed. See 33 V.S.A. § 5281(d) (incorporating procedure in 33 V.S.A. §§ 5227-5229).

The court acted within its discretion in finding that there was not enough time for youth to obtain the necessary rehabilitation or treatment and therefore that youth had not met his burden of showing that there were sufficient services available to him.

Affirmed.

BY THE COURT:

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice