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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge
The Honorable Debra Matthews, Family Court Judge

THE STATE,

Respondent,

vs.

JOHN KENNETH TOTTEROW,

Appellant.

APPELLATE CASE NO 2023-001483

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Whether the family court abused its discretion by transferring Totherow's case to general sessions court with his consent, and whether the issue is preserved for review when Totherow pleaded guilty in circuit court rather than objecting to transfer.

STATEMENT OF THE CASE

Appellant John Totherow pleaded guilty in circuit court to voluntary manslaughter after killing his mother by shooting her 11 times with a handgun. Totherow was 16 years old at the time of his plea. Totherow was originally charged with murder and was represented by counsel. Because Totherow was a juvenile, the complaint was brought in family court. See S.C. Code §63-3-510. The State moved to transfer the case to general sessions court pursuant to S.C. Code §63-10-1210. On the advice of counsel, Totherow reached an agreement with the State whereby he consented to transfer and agreed to plead guilty to the lesser-included offense of voluntary manslaughter and possession of a weapon during the commission of a violent crime. A hearing was convened before the Honorable Debra A. Matthews, family court judge, on September 7, 2023. Totherow was examined on the record about the voluntariness of his decision to consent to transfer. Further, the parties presented a signed “Waiver and Plea Agreement” wherein Totherow agreed that the State “would be able to present sufficient evidence” to support his waiver to general sessions court, agreed to transfer, and agreed to plead guilty to manslaughter with a negotiated sentence of 339 months’ incarceration. Court’s Exhibit #2. Totherow pleaded guilty in circuit court before the Honorable Eugene C. Griffith, circuit court judge, on September 12, 2023, in York. The circuit court accepted Totherow’s plea and imposed the negotiated 339-month sentence. Totherow now appeals his conviction and sentence, claiming his transfer to general sessions court was improper.

STANDARD OF REVIEW

A family court's transfer order is reviewed for an abuse of discretion. State v. Lamb, 374 S.C. 346, 349, 649 S.E.2d 486, 487 (2007).

ARGUMENT

Totherow consented to transfer of his case to general sessions court and failed to preserve the propriety of transfer for appellate review by pleading guilty in circuit court rather than objecting.

Totherow claims the family court abused its discretion by accepting his decision to consent to transfer of his case to general sessions court. He cites cases explaining the family court's responsibility to conduct a full inquiry into the propriety of transfer, but ignores the fact that each of those cases involved a contested transfer hearing. Because the record conclusively shows Totherow voluntarily decided to forego a transfer hearing, and because Totherow waived any objection to transfer by pleading guilty in circuit court rather than objecting, his convictions and sentences should be affirmed.

The South Carolina code establishes the procedure by which a juvenile criminal defendant may be transferred to general sessions court for prosecution as an adult. S.C. Code § 63-19-1210 (5) provides:

If a child fourteen, fifteen, or sixteen years of age is charged with an offense which, if committed by an adult, would be a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more, the court, after full investigation and hearing, may determine it contrary to the best interest of the child or of the public to retain jurisdiction. The court, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

The jurisdiction of the family court over juveniles is a privilege rather than a matter of right. Sanders v. State, 281 S.C. 53, 56, 314 S.E.2d 319, 321 (1984). The best interests of the public or of the juvenile may require that the juvenile be held accountable as an adult for his criminal conduct. Id. A transfer hearing is not a full trial on the merits. Rather, its function is to determine whether there is probable cause to support the charge and whether transfer is proper in

the circumstances. In making this determination, the family court considers the factors listed in Kent v. United States, 383 U.S. 541 (1966). See State v. Corey D., 339 S.C. 107, 118, 529 S.E.2d 20, 26 (2000).

A juvenile defendant may choose to forego a full transfer hearing. In State v. Lamb, a juvenile defendant consented to transfer and was convicted of murder. State v. Lamb, 374 S.C. 346, 649 S.E.2d 486 (2007). He appealed his conviction, arguing that “because a waiver evaluation and hearing were not conducted in the family court, the court of general sessions was without subject matter jurisdiction to try him as an adult for murder. Basically, Lamb maintains the family court was not permitted to accept his consent to the waiver.” Lamb, 374 S.C. at 348, 649 S.E.2d at 487. In other words, Lamb raised the same argument Totherow now raises to this Court.

The supreme court rejected the argument. The court explained that because “Lamb’s consent was intelligently and voluntarily given. . . . the family court appropriately accepted Lamb’s consent to waiver.” Id. at 349, 649 S.E.2d at 487. The court further explained “because of the family court’s transfer order and the subsequent indictment, the general sessions court was properly vested with jurisdiction to try Lamb on the murder charge.” Id. at 349–50, 649 S.E.2d at 487.¹ The court further rejected Lamb’s argument that the family court was required to conduct a full waiver hearing:

Lamb contends that under South Carolina law, the family court must conduct a waiver hearing after an evaluation has been performed, and only then issue its waiver order. We note, however, that the facts of those cases are inapposite since waiver of the family court’s jurisdiction was not at issue. Furthermore, we simply see no reason why a defendant should not be permitted to consent to the transfer of jurisdiction provided the consent is knowing and voluntary.

¹ Totherow waived presentment to the grand jury.

Id. at 350, 649 S.E.2d at 487–88.

The record in this case shows Totherow’s consent to transfer was voluntary. As the solicitor stated at the outset of the transfer hearing, the purpose of the hearing was to “make certain that this decision by John is a free and voluntary decision and he’s made it with competent counsel that’s given him the advice and that he understands what’s going on here today.” (Sept. 7 Tr.p.4). Counsel questioned Totherow under oath and Totherow explained he understood the purpose of the hearing was to “determine if [he] will go to general sessions or remain in family court,” and that he was “agreeing to give up [his] right to have the trial next week to determine whether or not [he stays] in family court or be waived up to general sessions.” (Sept. 7 Tr.p.8–9). He agreed that his attorneys had “sufficiently given [him] the understanding of what’s going on so that [he] can voluntarily enter into” the agreement, and that he had no further questions. (Sept. 7 Tr.p.9). He denied that anyone had threatened or forced him into the decision, and stated he believed it was in his best interest to consent to transfer and plead guilty to voluntary manslaughter. (Sept. 7 Tr.p.9). He stated he was not under the influence of anything that would influence his ability to “understand waiving [his] right to trial and moving this to general sessions for ultimate resolution.” (Sept. 7 Tr.p.10). He stated he wanted to receive the “benefit of [the] deal” with the State and “move this to general sessions and finalize the deal” (Sept. 7 Tr.p.10). He stated he had fully reviewed the entire written plea/ transfer agreement. (Sept. 7 Tr.p.11). Finally, counsel asked: “So after all these questions, again, I’m going to ask you one more time, is this what you believe to be in your best interest and you want the court to accept this agreement today and you’re giving up your right to a trial in juvenile court?” Totherow responded: “Yes, sir.” (Sept. 7 Tr.p.11–12). Totherow stated he was satisfied with the services of his attorneys, and the family court found his “decision to consent to waiver

of his case to general sessions has been done so voluntarily with the advice of competent counsel.” (Sept. 7 Tr.p.12–13).

Totherow was represented by two attorneys and his father was present at the hearing. There is nothing anywhere in the record to contradict Totherow’s sworn statements that he understood his right to a full transfer hearing and voluntarily chose to waive that right. Counsel’s exhaustive examination of Totherow under oath clearly demonstrated the knowing and voluntary nature of his decision. Further examination by the court would have served no purpose.

There is no doubt Totherow’s transfer was appropriate given the seriousness of the charge. See State v. Avery, 333 S.C. 284, 292, 509 S.E.2d 476, 481 (1998) (“The serious nature of the offense is a major factor in the transfer decision.”); Corey D., 339 S.C. at 118, 529 S.E.2d at 26 (holding family court abused its discretion by refusing to transfer 12-year-old juvenile of average intelligence to general sessions court where juvenile participated in “horrible, shocking crimes”). Totherow shot his mother 11 times. (Sept. 11 Tr.p.14). He shot until the gun was empty, then reloaded and continued shooting. (Sept. 11 Tr.p.15). Totherow testified he had no medical conditions and was attending school regularly. (Sept. 7 Tr.p.10, 12). He had just turned sixteen at the time of his transfer hearing and plea. Under the Kent factors, his transfer to general sessions court was proper. The family court correctly accepted Totherow’s decision to consent to transfer of his case to general sessions court to enter into a beneficial plea agreement.

Totherow asks this Court to analyze his consent to transfer the same as it would the waiver of a constitutional right. But there is no constitutional or statutory “right” to be tried as a juvenile. Sanders, 281 S.C. at 56, 314 S.E.2d at 321 (“The jurisdiction of the family court over juveniles is a privilege rather than a matter of right.”). He is not entitled to the vacation of his

plea merely because the family court did not explain on the record the differences between family court and general sessions prosecution. Totherow's attorneys certainly explained these differences to him, and any claim to the contrary can be raised in a PCR action.

Finally, Totherow waived the argument that transfer was improper when he pleaded guilty to manslaughter in general sessions court instead of objecting to transfer. See Sanders, 281 S.C. at 56, 314 S.E.2d at 321 (noting trial counsel's failure to object to transfer at circuit court level rendered claim unpreserved on direct appeal); State v. Johnson, 168 S.E.2d 709, 711–12 (N.C. 1969) (“[T]he record before us does affirmatively show that when defendant was brought to trial in superior court, at which time the record shows he was represented by counsel, he pleaded guilty. . . . By his failure to raise the question in superior court and by his plea of guilty, defendant waived any defect, if indeed any existed, in the proceedings in the juvenile court which resulted in his being brought to trial in the superior court.”). The plea occurred five days after the family court hearing where he testified under oath that he understood he was waiving right to a full transfer hearing. During his plea, he again stated under oath that he was voluntarily pleading guilty in order to take advantage of the State's plea offer reducing his charge from murder to voluntary manslaughter. He raised no objection to transfer at any time. Accordingly, his claim is not preserved for review. His convictions and sentences should be affirmed.

CONCLUSION

For all of the foregoing reasons, Totherow's convictions and sentences should be affirmed.

Respectfully submitted,

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