

Trial court did not abuse its discretion since there was some evidence to support the juvenile court's decision to transfer juvenile to TDCJ. [In the Matter of J.D.H.M.] (14-3-3)

On March 19, 2014, the San Antonio Court of Appeals held that the trial court did not abuse its discretion in transferring juvenile to TDCJ as opposed to releasing him on parole because there was some evidence to support the court's decision.

¶ 14-3-3. **In the Matter of J.D.H.M.**, MEMORANDUM, No. 04—13—00235—CV, 2014 WL 1089748 (Tex.App.—San Antonio, 3/19/14).

Facts: According to documents in the record, J.D.H.M. received a call from a female individual asking him if he wanted some marijuana. The female claimed she knew a drug dealer they could rob. The female individual and a male individual picked up J.D.H.M., who claimed to be using Xanax and marijuana that day. The male individual had a gun. When the three arrived at the drug dealer's house, only J.D.H.M. went inside—he took the gun with him. Once inside, J.D.H.M. pointed the gun at the individuals in the house and demanded marijuana, a scale, and the television. One of the individuals in the home carried the television outside and loaded it into the waiting car. J.D.H.M. and the others left.

Ultimately, J.D.H.M. was arrested. The State filed a petition alleging J.D.H.M. engaged in delinquent conduct in that he committed an aggravated robbery. J.D.H.M. stipulated to the charge and pursuant to a plea bargain agreement with the State, the juvenile court committed J.D.H.M. to TJJD for a fifteen-year determinate sentence, with the possibility of transfer to TDCJ.

After J.D.H.M. spent approximately two years in the TJJD, the Executive Director of the TJJD advised the juvenile court that the agency was requesting J.D.H.M. be transferred to TDCJ because he would not have completed his minimum required stay at TJJD before his nineteenth birthday. After a hearing, the juvenile court ordered J.D.H.M. transferred to TDCJ to complete his sentence. J.D.H.M. perfected this appeal.

J.D.H.M. contends that the trial court abused its discretion in transferring him to TDCJ rather than placing him on parole.

Held: Affirmed

Memorandum Opinion: In determining whether a juvenile should be transferred, the juvenile court may consider several factors, including:

- the experiences and character of the juvenile before and after commitment to TJJD;
- the nature of the offense the juvenile committed and the manner in which it was committed;
- the abilities of the juvenile to contribute to society;
- the protection of the victim of the offense or any member of the victim's family;
- the recommendations of the TJJD and the prosecutor;

- the best interests of the juvenile; and
 - any other factor relevant to the issue to be decided.
- TEX. FAM.CODE ANN. § 54.11(k).

Although the court may consider these factors, it is not required to consider each one, and is expressly permitted to consider relevant factors not set forth in section 54.11(k). J.J., 276 S.W.3d at 178; see TEX. FAM.CODE ANN. § 54.11(k).

The record establishes the juvenile court looked at the evidence in light of the relevant section 54.11(k) factors. The court noted “the good things” J.D.H.M. accomplished, but recalled that at the time of sentencing, she warns those like J.D.H.M. with determinate sentences about their behavior and its possible ramifications with regard to subsequent transfers to TDCJ. The juvenile court stated it was possible J.D.H.M.’s behavior had changed simply because he realized he was turning nineteen and he would have to come back to court with regard to a transfer to TDCJ.

Considering J.D.H.M.’s offense—aggravated robbery—and his extensive behavioral issues during his time in TJJD, coupled with the recommendations from Mr. Cucolo and TJJD, we cannot say the juvenile court abused its discretion in ordering J.D.H.M. transferred to TDCJ. Mr. Cucolo presented evidence that J.D.H.M. was not a good candidate for even structured parole based on his behavioral problems while at TJJD, his drug and alcohol issues, and the fact that he had not yet fulfilled the minimum three years of his sentence. Although Dr. Covarrubias thought that it was in J.D.H.M.’s best interest to be released into a structured parole environment based on his recent behavioral improvements, mental stability, and academic success, the court did not find his opinion compelling, perhaps because J.D.H.M.’s recent improvement was at a time when he knew transfer was possible.

Clearly, there was some evidence to support the juvenile court’s decision to transfer J.D.H.M. to TDCJ as opposed to releasing him on parole. Because there was some evidence to support the court’s decision, we hold there was no abuse of discretion. See L.G.G., 398 S.W.3d at 855; D.L., 198 S.W.3d at 229.

Conclusion: Based on the foregoing, we overrule J.D.H.M.’s point of error and affirm the trial court’s judgment.