

Certification and Transfer
FROM KENT TO MOON



KENT V. UNITED STATES, 383 U.S. 541 (1966)

In September 1961, Morris Kent was charged with entering into an apartment in the District of Columbia, raping the owner and taking her wallet. Kent was 16 at the time of the offense and was already on probation for prior offenses. Since he had been on probation for two years already, the prosecution sought to have the Juvenile Court waive jurisdiction to District Court.

KENT V. UNITED STATES, 383 U.S. 541 (1966)

The Juvenile Court entered an order waiving jurisdiction to District Court despite the defense counsel for Kent filing a motion for a hearing on the matter, access to the Juvenile Court's social service file, and for Kent to be treated for mental illness in a hospital. The Juvenile Court waives jurisdiction without the hearing and with an annotation that a "full investigation" had been done.

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Supreme Court stated in their ruling:

"The net, therefore, is that petitioner - then a boy of 16- was, by statute, entitled to certain procedures and benefits as a consequence of this statutory right to the "exclusive" jurisdiction of the Juvenile Court. In these circumstances, considering particularly that decision as to waiver of jurisdiction and transfer to the matter of the District Court was potentially as important to petitioner as the difference between five years' confinement and a death sentence, we conclude that, as a condition to a valid waiver order, petitioner is entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the Juvenile Court's decision. We believe that this result is required by the statute, read in the context of constitutional principles relating to due process and the assistance of counsel."

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The Court further stated:

"The right to representation by counsel is not a formality. It is not a grudging gesture to a ritualistic requirement. It is of the essence of justice. Appointment of counsel without affording an opportunity for hearing on a 'critically important' decision is tantamount to denial of counsel. There is no justification for the failure of the Juvenile Court to rule on the motion for hearing filed by petitioner's counsel, and it was error to fail to grant a hearing. We do not mean by this to indicate that the hearing to be held must conform with all of the requirements of a criminal trial, or even the usual administrative hearing, but we do hold that the hearing must measure up to the essentials of due process and fair treatment."

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Appendix to opinion of the court

The determinative factors which will be considered by the Judge in deciding whether the Juvenile Courts jurisdiction over such offenses will be waived are the following:

- (1) The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
- (2) Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
- (3) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
- (4) The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment (to be determined by consultation with the United States Attorney).

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- (5) The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the U.S. District Court for the District of Columbia.
- (6) The sophistication and maturity of the juvenile as determined by consideration of this home, environmental situation, emotional attitude and pattern of living.
- (7) The record and previous history of the juvenile, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions.
- (8) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.

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It will be the responsibility of any office of the Court's staff assigned to make the investigation of any complaint in which waiver of jurisdiction is being considered to develop fully all available information which may bear upon the criteria and factors set forth above. Although not all such factors will be involved in an individual case, the Judge will consider the relevant factors in a specific case before reaching a conclusion to waive juvenile jurisdiction and transfer the case to the U.S. District Court for the District of Columbia for trial under the adult procedure of that Court.

TEXAS FAMILY CODE 54.02(F)

In 1967, the Texas Legislature incorporated the factors listed in the Kent Appendix in our statutory scheme. In 1996, two of the factors were waived and we are left with the current considerations listed in the Texas Family Code 54.02 (f):

- (1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offense against the person;
- (2) the sophistication and maturity of the child;
- (3) the record and previous history of the child; and
- (4) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

MOON V. STATE, 451 S.W. 3RD 28 (TEX. CRIM. APP. 2014)

In 2008, the State filed to certify and transfer Cameron Moon for the offense of murder. A hearing was held in the 313th Juvenile Court in Harris County. The State presented only the Detective to discuss the offense alleged. The State also offered into evidence the report of Moon's prior misdemeanor offense, the Juvenile Probation Certification report, and a physical examination done by the Harris County Juvenile Probation Health Services Division. Defense counsel for Moon presented testimony from seven witnesses including a forensic psychiatrist. The psychiatrist testified that Moon lacked sophistication and would be amenable to rehabilitation in the juvenile system. The Court ordered Moon to be certified to stand trial as an adult.

MOON V. STATE, 451 S.W. 3RD 28 (TEX. CRIM. APP. 2014)

Moon states:

- (1) The juvenile court needs to make more specific findings of fact concerning the reasons for transfer – they need to “show their work”.
- (2) “ The State must persuade the juvenile court, by a preponderance of the evidence, that the welfare of the community requires transfer of jurisdiction for criminal proceedings, either because of the seriousness of the offense or background of the child (or both).”
- (3) While the juvenile court must consider all four factors, it “need not find that each and every one of those factors favors transfer before it may exercise its discretion to waive jurisdiction.”
- (4) The waiver of jurisdiction can be reviewed under factual sufficiency.

POST MOON CASES

- (1) Gonzales v. State, 467 S.W.3rd 595
- (2) Matthews v. State, 2016 Tex. App. Lexis 11991
- (3) Alvarado v. State, 2016 Tex. App. Lexis 13536
