

Juvenile Law Case Summaries

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Probable cause shown in discretionary transfer hearing that respondent committed aggravated robbery as a party [Faggins v. State] (01-3-02).

On May 30, 2001, the Dallas Court of Appeals reviewed the point made in the respondent's brief filed pro se following an Anders claim by his appellate lawyer that the juvenile court erred in finding probable cause in a discretionary transfer hearing that he committed aggravated robbery. There was sufficient evidence that he committed the offense under the law of parties.

¶ 01-3-02. Faggins v. State, UNPUBLISHED, No. 05-00-00067-CR, 2001 WL 576602, 2001 WL ____ (Tex.App.--Dallas 5/30/01)[Texas Juvenile Law (5th Ed. 2001)]

Facts: Christopher B. Faggins appeals his conviction for aggravated robbery. This case began as a juvenile proceeding against appellant. The juvenile court waived its original jurisdiction and transferred appellant to district court for criminal proceedings. Appellant entered an open guilty plea to the charge. The trial court found appellant guilty and assessed punishment at ten years' imprisonment.

Appellant's attorney filed a brief in which she concludes the appeal is wholly frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738 (1967). The brief presents a professional evaluation of the record showing why, in effect, there are no arguable grounds to advance. See *High v. State*, 573 S.W.2d 807 (Tex.Crim.App. [Panel Op.] 1978). Appellant filed a pro se response, presenting eight grounds he contends are arguable points of error. Specifically, appellant contends the record does not reflect his jury waiver was received by the trial judge, the indictment was "unconstitutional," the State filed a frivolous petition for discretionary transfer, section 3(g) of article 42.12 of the code of criminal procedure violates the Equal Protection and Due Process Clauses of the United States Constitution and Article I, Section 19 of the Texas Constitution, his guilty plea was involuntary, he should have been charged with a lesser crime than aggravated robbery, he received ineffective assistance of counsel, and certain exhibits were obtained by duress.

Held: Affirmed.

Opinion Text: PETITION FOR DISCRETIONARY TRANSFER

In his third ground, appellant claims the State filed a frivolous petition for discretionary transfer. Specifically, appellant contends the State failed to conduct a "full insight investigation" into his case and, as a result, failed to discover that appellant did not use a deadly weapon during the robbery. The essence of appellant's complaint is the evidence presented during his adult criminal proceedings showed he had little involvement in the aggravated robbery, thus, he should have been charged in juvenile court with the lesser offense of robbery. We construe this ground to complain of the juvenile's court's finding of probable cause to believe appellant committed the offense of aggravated robbery as alleged in the petition for discretionary transfer.

Absent an abuse of discretion, an appellate court will not disturb a juvenile court's decision to certify a juvenile as an adult, waive jurisdiction, and transfer the juvenile to adult court. In the *Matter of N.M.P.*, 969 S.W.2d 95, 98 (Tex.App.--Amarillo 1998, no pet.). In reviewing the factual sufficiency of the evidence to support a juvenile court's decision to transfer, we consider and weigh all of the evidence in the case and set aside the decision only if the decision is so against the great weight and preponderance of the evidence as to be manifestly unjust. See In the *Matter of D.I.N.*, 930 S.W.2d 253, 255 (Tex.App.--Houston [14th Dist.] 1996, no writ). Under section 54.02 of the

family code, the juvenile court must determine whether probable cause exists to believe the child committed the offense alleged in the petition to transfer before certifying the juvenile as an adult. See Tex.Fam.Code Ann. § 54.02(a)(3) (Vernon Supp.2001); D.I.N., 930 S.W.2d at 256. Probable cause is shown by facts and circumstances sufficient to warrant a prudent person to believe the child committed the offense. See D.I.N., 930 S.W.2d at 256.

In this case, we do not have a reporter's record for appellant's transfer proceedings. We do have a clerk's record of the proceedings, which contains two affidavits stating appellant committed the aggravated robbery as alleged in the petition for discretionary transfer. See *In the Matter of K.B.H.*, 913 S.W.2d 684, 687 (Tex.App.—Texarkana 1995, no writ) (juvenile court may consider officer reports and affidavits during transfer proceedings). Moreover, the evidence appellant cites was introduced during criminal proceedings held after his transfer to district court. In the absence of any other evidence presented to the juvenile court, we cannot conclude the juvenile court abused its discretion in finding probable cause existed to believe appellant committed aggravated robbery as alleged in the petition for discretionary transfer. The finding is not so against the great weight of evidence as to be manifestly unjust or erroneous. [FN1] Accordingly, we conclude appellant does not present an arguable point of error in his third ground.

FN1. A petition for discretionary transfer need not allege the law of parties, even if the State presents evidence the juvenile is only liable as a party for the alleged offense. See *In the Matter of A .A.*, 929 S.W.2d 649, 655 (Tex.App.—San Antonio 1996, no writ.). In this case, it appears appellant was criminally liable for aggravated robbery as a party.

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