

## Juvenile Law Case Summaries

By

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***Respondent cannot appeal non-jurisdictional defects in discretionary transfer proceedings after criminal conviction for offense committed in 1995 [Wright v. State] (01-3-06).***

On June 6, 2001, the San Antonio Court of Appeals held that a juvenile respondent certified to criminal court for an offense committed before January 1, 1996 cannot wait until after criminal conviction to appeal non-jurisdictional defects in the certification proceedings.

¶ 01-3-06. Wright v. State, UNPUBLISHED, No. 04-00-00285-CR, 2001 WL 608715, 2001 Tex.App.Lexis \_\_\_\_ (Tex.App.--San Antonio 6/6/01)[Texas Juvenile Law (5th Ed. 2001)]

Facts: In 1998, pursuant to a plea bargain, Wright pleaded no contest to an aggravated sexual assault of a child charge. The trial court deferred adjudication and placed Wright on community supervision for six years.

The State filed a motion to revoke Wright's probation and to enter adjudication of guilt. The trial court granted the motion, adjudicating Wright guilty of aggravated sexual assault of a child and sentencing him to six years confinement.

Wright appeals his adjudication in two issues. Specifically, he asserts: (1) the evidence is legally and factually insufficient to support the revocation of his probation and adjudication of guilt; and (2) the juvenile court erred in waiving its jurisdiction and transferring Wright's case to the district court.

Held: affirmed.

Opinion Text: In his second issue, Wright asserts the juvenile court abused its discretion in waiving its jurisdiction and transferring Wright's cause to the district court. Specifically, he contends the evidence is insufficient to support the court's findings relating to due diligence. Again, this court is without jurisdiction to address his complaint.

In 1995, Family Code section 56.01 permitted an interlocutory appeal of a certification and transfer order to the court of appeals. See Act of May 23, 1991, 72nd Leg., R.S., ch. 680, § 1, 1991 Tex.Gen.Laws 2466, 2466, amended by Act of May 27, 1995, 74th Leg., R.S., ch. 262, §§ 48, 106(b), 1995 Tex.Gen.Laws 2517, 2546, 2591; Adams v. State, 827 S.W.2d 31, 33 (Tex.App.--Dallas 1992, no writ) (stating that "to complain of an error in the certification process a person must appeal the transfer to the court of appeals") (emphasis added). However, the Legislature amended Family Code section 56.01 and changed the appellate process for appealing certification and transfer orders. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 48, sec. 56.01(c)(1)(a), 1995 Tex.Gen.Laws 2517, 2546. In doing so, the Legislature no longer permitted a child to appeal directly from a "transfer of the child to criminal court for prosecution as an adult." Id.; Tex.Fam. Code Ann. § 56.01 cmt. (Vernon 1996). Rather, to appeal a certification and transfer, a child could only do so in an appeal from a criminal conviction. Tex.Fam.Code Ann. § 56.01 cmt. (Vernon 1996); Tex.Code Crim.Proc. Ann. art. 44.47(a) (Vernon Supp.2001). This change in the law became effective on January 1, 1996, and applied only to conduct occurring on or after that date. See Act of May 23, 1991, 72nd Leg., R.S., ch. 680, § 1, 1991 Tex. Gen.Laws 2466, 2466, amended by Act of May 27, 1995, 74th Leg., R.S., ch. 262, §§ 48, 106(b), 1995 Tex.Gen.Laws 2517, 2546, 2591; Matter of J.C.C., 952 S.W.2d 47, 48 n. 1 (Tex.App.--San Antonio 1997, no writ).

Wright committed the charged offense on or about October 20, 1995. Accordingly, we apply the law effective at that time. See Act of May 23, 1991, 72nd Leg., R.S., ch. 680, § 1, 1991 Tex.Gen.Laws 2466, 2466, amended by Act of

May 27, 1995, 74th Leg., R.S., ch. 262, §§ 48, 106(b), 1995 Tex.Gen.Laws 2517, 2546, 2591. Wright, therefore, was required to file an interlocutory appeal to this court challenging the transfer. See Adams, 827 S.W.2d at 33; Clemons v. State, 630 S.W.2d 506, 508 (Tex.App.--Austin 1982, pet. ref'd). Because he did not, Wright may appeal only those issues involving jurisdictional error in the transfer process. Adams, 827 S.W.2d at 33; Clemons, 630 S.W.2d at 508. Whether the trial court's findings on due diligence are against the great weight of the evidence is not a jurisdictional issue. Cf. Manuel v. State, 994 S.W.2d 658, 662 n. 6 (Tex.Crim.App.1999) (recognizing that evidentiary sufficiency is a non- ) jurisdictional claim). This court, therefore, lacks the jurisdiction to address Wright's second complaint on appeal.

Because this court lacks the jurisdiction to address Wright's issues on appeal, we dismiss his appeal.

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