

Juvenile Law Case Summaries

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[2002 Case Summaries](#) [2001 Case Summaries](#) [2000 Case Summaries](#) [1999 Case Summaries](#)

No discretion abuse in transferring youth to TDCJ who was already incarcerated there on capital murder offense [In re T.W.] (02-3-28).

On August 8, 2002, the Dallas Court of Appeals held that the juvenile court did not abuse its discretion in transferring respondent to TDCJ. He was already confined there on a capital murder charge and had accumulated numerous disciplinary infractions in TYC and TDCJ.

02-3-28. In the Matter of T.W., UNPUBLISHED, No. 05-01-01030-CV, 2002 WL 1792493, 2002 Tex.App.Lexis ____ (Tex.App.-Dallas 8/6/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: T.W. appeals the order transferring him from the Texas Youth Commission (TYC) to the Texas Department of Criminal Justice (TDCJ) to serve the remainder of his sentence. In two issues, T.W. contends the trial court abused its discretion by ordering him transferred and the trial court erred by conducting the transfer hearing without giving the required notices.

On March 19, 1997, T.W. was adjudicated a child engaged in delinquent conduct for committing an aggravated robbery, an aggravated assault, and possessing marijuana. T.W. received a thirty-year determinate sentence with commitment to the TYC. Subsequently, the TYC requested that T.W. be transferred to the TDCJ. After a hearing, the trial court ordered T.W. to be transferred to TDCJ to serve the remainder of his sentence. This appeal followed.

Held: Affirmed.

Opinion Text: In his first issue, T.W. contends the trial court abused its discretion by ordering him to be transferred. According to T.W., the trial court "place[d] overwhelming weight" upon the possibility of T.W.'s unrelated conviction for capital murder being reversed on appeal. We disagree.

We review the trial court's decision to transfer a juvenile from TYC to TDCJ under an abuse of discretion standard. See *J.R.W. v. State*, 879 S.W.2d 254, 257 (Tex.App.-Dallas 1994, no writ). In deciding whether the trial court abused its discretion, we review the entire record to determine if the trial court acted without reference to any guiding rules and principles. *Id.* If some evidence supports the trial court's decision, there is no abuse of discretion. *Id.* at 257-58. We do not substitute our opinion for that of the trial court. We reverse the trial court's decision only if the trial court acted in an unreasonable or arbitrary manner. *Id.* at 257.

In making the transfer determination, the trial court may consider: the experiences and character of the juvenile before and after commitment to TYC; the nature of the offense the juvenile was found to have committed and the manner in which the offense was committed; the ability 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 TYC and the prosecuting attorney; the best interests of the juvenile; and any other factor relevant to the issue to be decided. *Tex. Fam.Code Ann. § 54.11(k)* (Vernon Supp.2002); *In re R.G.*, 994 S.W.2d 309, 312 (Tex.App.-Houston [1st Dist.] 1999, pet. denied). The trial court is not required to consider all of the factors, and the court is expressly allowed to consider unlisted but relevant factors. *R.G.*, 994 S.W.2d at 312. Evidence of each factor is not required. *Id.* Similarly, the court may assign different weights to the factors it considers. *Id.*

At the transfer hearing, Leonard Cucolo, a representative for the TYC, testified that T.W. was confined in the TYC for eighteen months before he was bench-warranted back to Dallas County on an unrelated charge of capital murder. While T.W. was at the TYC his behavior was "chronically disruptive." He was involved in seventy-four incidents of misconduct, including endangering others and assaults. During his treatment, T.W. did not indicate that he regretted his crimes, but rather that he had been caught. Cucolo also testified that T.W. was already in TDCJ after pleading guilty to capital murder and the TYC was requesting a transfer in this case to

"remove him from [the] census." Finally, Cucolo testified that the outcome of T.W.'s capital murder appeal would not change the TYC's recommendation that T.W. be transferred.

William Atkins testified that after giving T.W. a ride in his car, T.W. robbed him at gunpoint. T.W. hit Atkins in the face with the gun and then tried to shoot him, but the gun did not fire. A few weeks later, T.W. shot Atkins two times. Two weeks after the shooting incident, T.W. shot and killed someone. Atkins testified that he was concerned for his safety if T.W. was released into the community.

The prosecutor testified that while incarcerated at TDCJ, T.W. had lost almost a thousand days of good time credit due to behavioral problems in the penitentiary. The prosecutor recommended that T.W. be transferred based upon the seriousness of his crimes and his behavior both at the TYC and TDCJ.

Thus, the record shows that T.W. has a history of committing violent offenses, the victim of two of his offenses was concerned for his safety if T.W. was released, and T.W. continued to be violent and disruptive after his incarceration. Under these circumstances, we cannot conclude the trial court abused its discretion by ordering T.W. transferred to the TDCJ. We overrule T.W.'s first issue.

In his second issue, T.W. contends the trial court erred by conducting the transfer hearing without giving the notices required by the family code. According to T.W., we must reverse the trial court's order because the record does not affirmatively reflect that he was provided with the required notice. We disagree.

The record shows that T.W., his mother, his lawyer, and a representative from the TYC were present at the transfer hearing. The transfer order reflects that "all persons and parties entitled to notice were properly notified." T.W. did not object to any defect in notice. Under these circumstances, we must presume the required notices were given before the trial court conducted the transfer hearing. See *In re B.D.*, 16 S.W.3d 77, 80 (Tex.App.-Houston [1st Dist.] 2000) (applying presumption of regularity when judgment reflected required notices were given and no evidence to the contrary was in the record), *pet. denied*, 53 S.W.3d 327 (Tex.2000). We overrule T.W.'s second issue.

Accordingly, we affirm the trial court's order.

[2001 Case Summaries](#) [2000 Case Summaries](#) [1999 Case Summaries](#)