

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2080-21

STATE OF NEW JERSEY IN
THE INTEREST OF I.C.

Argued October 20, 2022 – Decided June 6, 2023

Before Judges Haas and DeAlmeida.

On appeal from an interlocutory order of the Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket Nos. FJ-07-0285-20 and FJ-07-0306-20.

Frank J. Ducoat, Special Deputy Attorney General/Acting Assistant Prosecutor, argued the cause for appellant State of New Jersey (Theodore N. Stephens II, Acting Essex County Prosecutor, attorney; Frank J. Ducoat, of counsel and on the brief).

Brian P. Keenan, Assistant Deputy Public Defender, argued the cause for respondent I.C. (Joseph E. Krakora, Public Defender, attorney; Tamar Yael Lerer, Assistant Deputy Public Defender, of counsel and on the brief).

PER CURIAM

On leave granted, the State appeals from the October 22, 2021 order of the Family Part denying its motion for an involuntary waiver of juvenile delinquency charges against defendant I.C. to the Law Division for trial as an adult pursuant to N.J.S.A. 2A:4A-26.1. We vacate the order and remand for further proceedings.

I.

We discern the following allegations from the prosecutor's statement of reasons in support of waiver. In 2019, Belleville police responded in the early morning hours to a residence to investigate a burglary. The homeowners reported that they awoke to find the door to their home forced open and the keys to their house and two of their vehicles missing. One of the vehicles also was missing from the driveway.

A front door surveillance camera at a neighboring house recorded I.C.'s adult codefendant walking at 4:24 a.m. toward the home that had been burglarized. A few minutes later, the camera recorded the missing vehicle backing out of the driveway, striking several parked cars, and heading south toward Newark. About an hour later, Newark police recovered the vehicle abandoned after a crash. At 7:06 a.m., the camera recorded both the codefendant and I.C., then seventeen years and five months old, walking toward the home

that was burglarized. Their faces and clothing are clearly visible on the recording.

Just after 7:06 a.m., residents at a home around the corner from the burglarized home discovered that two strangers had entered their house and took the key fob to their vehicle. The residents, including James Dillon, exited the home and attempted to stop I.C. and his codefendant from taking the vehicle. Dillon approached the driver's side but the windows were up and the door was locked. His spouse attempted to block the vehicle with garbage cans. I.C. started the vehicle and accelerated out of the driveway. Dillon jumped on the hood while his spouse darted out of the vehicle's path.

With Dillon clinging to the hood, I.C. took off at a high rate of speed, swerving back and forth in an obvious attempt to eject Dillon from the vehicle. After holding on to the hood for about a mile, Dillon, then fifty-nine, was thrown to the street. He suffered several injuries, including fractured ribs, a fractured skull, a subdural hematoma, a fractured right scapula, and a fractured right clavicle. I.C. and his codefendant did not stop when Dillon hit the pavement. Instead, they fled Belleville and entered Newark.

A short time later, a Newark police officer on patrol saw the vehicle pass him and run a red light. When the officer ran a check on the vehicle's license

plate, he discovered it had been stolen and was involved in a carjacking in Belleville. He activated his overhead lights and sirens on his marked patrol car. I.C. did not pull over. He instead led the officer on a chase through the streets of Newark, running through multiple red lights, hitting other vehicles, and sending pedestrians fleeing for safety. The pursuit ended when I.C. drove the vehicle into several occupied cars at an intersection, injuring two people.

After the vehicle crashed, I.C., still wearing the tank-top, shorts, and sneakers he can be seen wearing in the video recording, exited the vehicle's driver-side door. The codefendant, wearing the same clothes he can be seen wearing in the video recording, exited the passenger-side door. Both ran. A foot chase ensued, but ended quickly when officers caught I.C. and the codefendant near the scene of the crash.

The officer's dash-cam recording captured the entire chase as well as I.C.'s exit from the crashed vehicle. The recording shows that I.C. was driving the vehicle during the chase.

The State filed two juvenile delinquency complaints against I.C. In the first, which concerns conduct in Belleville, the State charged I.C. with conduct that, if committed by an adult, would constitute: (1) second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1); (2) third-degree burglary, N.J.S.A. 2C:18-

2(a)(1); (3) third-degree conspiracy to commit burglary, N.J.S.A. 2C:5-2(a)(1) and N.J.S.A. 2C:18-2(a)(1); (4) first-degree carjacking, N.J.S.A. 2C:15-2(a)(1); (5) second-degree conspiracy to commit carjacking, N.J.S.A. 2C:5-2(a)(1) and N.J.S.A. 2C:15-2; (6) second-degree assault by auto, N.J.S.A. 2C:12-1(c)(3)(a); and (7) third-degree endangering an injured victim, N.J.S.A. 2C:12-1.2(a).

In the second complaint, which concerns conduct in Newark, the State charged I.C. with conduct that, if committed by an adult, would constitute: (1) two counts of second-degree aggravated assault while fleeing or attempting to elude police, N.J.S.A. 2C:12-1(b)(6); (2) second-degree eluding, N.J.S.A. 2C:29-2(b); (3) fourth-degree resisting arrest by flight, N.J.S.A. 2C:29-2(a); and (4) third-degree receiving stolen property, N.J.S.A. 2C:20-7.

The State thereafter moved pursuant to N.J.S.A. 2A:4A-26.1 to waive the first-degree carjacking count and two second-degree aggravated assault counts to the Law Division for trial of I.C. as an adult.¹ The State's notice of motion listed only the docket number for the charges relating to conduct in Newark. An October 2, 2019 written statement of reasons filed in support of the State's

¹ Although the State charged I.C. with three counts of aggravated assault, it sought waiver with respect to only two of those counts. The State did not identify which two counts of aggravated assault were the subjects of its waiver application. N.J.S.A. 2A:4A-26.1(c)(2)(n) allows for waiver charges of conspiracy to commit carjacking. The State did not seek waiver of that charge.

motion, however, addresses conduct in both Newark and Belleville and mistakenly states that all eleven charges brought against I.C. were filed under one complaint. The first paragraph of the statement lists a docket number that appears to be a typographical error, as it does not relate to either of the complaints filed against I.C. The second to last paragraph of the statement states that the statutory factors weigh in favor of waiving jurisdiction with respect to "X.G." This also appears to be a typographical error.

The statement is signed by an Acting Assistant Prosecutor. There is no indication in the statement that the waiver request was reviewed and approved by the County Prosecutor or his designee, as required by the Attorney General's Juvenile Waiver Guidelines (March 14, 2000) (Guidelines) adopted pursuant to N.J.S.A. 2A:4A-26(f) (repealed by L. 2015, c. 89, § 6, eff. March 1, 2016).

On May 21, 2021, the State submitted a revised written statement of reasons in support of its motion. Again, the statement lists the docket number of only the charges relating to conduct in Newark. The statement, however, again addresses conduct in both Newark and Belleville and mistakenly states that all eleven charges brought against I.C. were filed under one complaint. The first paragraph of the statement again lists a docket number that appears to be a typographical error, as it does not relate to either of the complaints against I.C.

The statement indicates that the State seeks waiver of all three counts of second-degree aggravated assault, but does not include the conspiracy to commit carjacking charge within the waiver request. The statement removes the reference to "X.G.," is signed by an Assistant Prosecutor, and contains no indication it was reviewed and approved by the County Prosecutor or his designee.

The May 21, 2021 submission addressed each of the factors set forth in N.J.S.A. 2A:4A-26.1(c)(3)(a) to (k). We focus only on the factors called into question by the trial court – (g), (h), and (j) – and by I.C.– (e) and (i):

(1) Factor (e) ("[a]ny classification that the juvenile is eligible for special education to the extent this information is provided to the prosecution by the juvenile or by the court . . ."). The statement provides, "[a]t this time, no information has been provided to the prosecution by I.C. or this Court suggesting that I.C. is eligible for special education[;]"

(2) Factor (g) ("[n]ature and extent of any prior history of delinquency of the juvenile and dispositions imposed for those adjudications . . ."). The statement provides, "I.C. does have prior contacts with the New Jersey juvenile court system." The statement notes that I.C. was arrested on three separate occasions and charged with shoplifting, tampering with evidence, narcotics

possession, narcotics distribution, and resisting arrest. The statement also notes that a bench warrant had been issued for I.C. and that he committed the current offenses less than three weeks from his last arrest;

(3) Factor (h) ("[i]f the juvenile previously served a custodial disposition in a State juvenile facility operated by the Juvenile Justice Commission, and the response of the juvenile to the programs provided at the facility to the extent this information is provided to the prosecution by the Juvenile Justice Commission"). The statement provides, "[t]here is no indication that the juvenile has previously served a custodial disposition in a State juvenile facility operated by the Juvenile Justice Commission";

(4) Factor (i) ("[c]urrent or prior involvement of the juvenile with child welfare agencies"). The statement provides, "it appears that I.C. had previous involvement with child welfare agencies in the State of Georgia. The State is unaware of any involvement in child welfare agencies within New Jersey.";

(5) Factor (j) ("[e]vidence of mental health concerns, substance abuse, or emotional instability of the juvenile to the extent this information is provided to the prosecution by the juvenile or by the court"). The statement provides "it appears that I.C. has a history of anger related outbursts as well as general

anti-social behavior. Apparently, I.C. has been previously diagnosed with attention-deficient/hyperactivity disorder combined type. Materials provided by defense counsel also suggest that I.C. uses marijuana recreationally." The prosecutor concluded that factors (a), (b), (c), (d), (f), and (k) weigh in favor of waiving jurisdiction.

After a hearing, the trial court issued a written opinion denying the State's application. Following an extensive review of the evidence supporting the charges, including identification of what it believed to be flaws in the State's investigation, the trial court concluded that the State had established probable cause for the charges against I.C.

The court, however, concluded that the State abused its discretion by relying on "incomplete or conclusory statements in support of its application," contrary to State ex rel. Z.S., 464 N.J. Super. 507, 534 (App. Div. 2020). The basis of this conclusion, however, is difficult to discern from the trial court's opinion. The court's analysis begins with the erroneous finding that the prosecutor concluded "that factors (a), (b), (c), (d), (f), (g), (h) and (k) weighed in favor of waiving jurisdiction with respect to I.C[.]" (emphasis added). As noted above, however, the prosecutor did not rely on factors (g) and (h) in support of waiver. In addition, the court found that in its submission "the State

reiterates its erroneous consideration of the young man's prior history before the [c]ourt pursuant to factors G and H." The court, however, provides no explanation of this finding and does not identify what it found to be erroneous in the State's consideration of I.C.'s juvenile delinquency history. The parties have inferred from the opinion that the trial court found it was error for the prosecutor to consider the numerous interactions I.C. had with the juvenile justice system that did not result in an adjudication of delinquency. There is, however, no findings to that effect in the trial court's opinion.

The court's opinion also includes brief summaries of I.C.'s medical and educational records, which indicate that he had a "conduct disorder" and a full scale I.Q. score "within the extremely low range of performance," include test results indicating "differentially developed skills in the areas of verbal comprehension and perceptual organization," and indicate that he was eligible for special education services. The court found that "none of [these records were] addressed by the State's one paragraph reference to same in its statement of reasons."

Finally, the trial court concluded that the State abused its discretion by failing "to adequately and properly assess factors G, H and J," adding another factor, (j), on which the State did not rely when seeking waiver. The import of

the trial court's conclusion with respect to these factors is not clear, although I.C. argues that the court's opinion should be interpreted as a finding that the prosecutor abused his discretion when he failed to consider factors (g), (h), and (j) as weighing against waiver. There is, however, no findings in the court's opinion concerning factors weighing against waiver.

An October 22, 2021 order memorializes the trial court's decision denying the State's waiver motion.²

We denied the State's motion for leave to appeal from the October 22, 2021 order. The Supreme Court subsequently granted the State's motion for leave to appeal from our decision and remanded the matter to this court for consideration on the merits. State ex rel. I.C., 250 N.J. 165 (2022).

The State argues that the trial court substituted its judgment for that of the prosecutor. In addition, the State argues that the trial court erred with respect to its conclusions regarding factors (g), (h), and (j) because the State did not rely on those factors in support of its waiver application. In addition, the State argues that it fairly represented I.C.'s delinquency history under factor (g) when it included charges, arrests, violations of probation, and bench warrants and that

² The October 22, 2021 order erroneously includes a docket number relating to drug possession and distribution charges against I.C. that were not subject to the State's waiver motion. This appears to be a typographical error.

it considered all mental health and educational records submitted by I.C. Finally, the State argues that its analysis of the statutory factors was sufficiently thorough to withstand judicial review.³

I.C. argues that the trial court correctly concluded that the State failed to consider his intellectual, medical, developmental, and educational records as factors weighing against waiver. In addition, I.C. argues that the prosecutor abused his discretion by failing to analyze the statutory factors sufficiently, and inappropriately considered I.C.'s contacts with the juvenile justice system that did not result in an adjudication of delinquency.

II.

In a juvenile delinquency matter pending in the Family Part, the State may seek waiver of the charges to the Law Division for trial as an adult without consent. The decision to seek waiver is committed to the discretion of the prosecutor. State ex rel N.H., 226 N.J. 242, 249 (2016). "As our Supreme Court has recognized, 'waiver to the adult court is the single most serious act that the juvenile court can perform . . . because once waiver of jurisdiction occurs, the

³ We note that during the hearing the assistant prosecutor stated as follows: "is this a perfect wavier? No, I will not sit here and tell the [c]ourt it's perfect. It's not. It's imperfect, there are flaws. It could have been written much better, it should have been written much better."

child loses all the protective and rehabilitative possibilities available to the Family Part." Z.S., 464 N.J. Super. at 513 (citing State v. R.G.D., 108 N.J. 1, 4-5 (1987)).

Waiver is available where probable cause exists that the juvenile was at least fifteen years old when he committed certain enumerated crimes, including two crimes charged here, carjacking and aggravated assault. N.J.S.A. 2A:4A-26.1(c)(1) and (2)(d) and (g). A waiver application is made through the filing of a motion and a written statement of reasons "clearly setting forth the facts used in assessing all factors contained in [N.J.S.A. 2A:4A-26.1(c)(3)], together with an explanation as to how evaluation of those facts support waiver for each particular juvenile." N.J.S.A. 2A:4A-26.1(a). The factors to be considered are:

- (a) The nature and circumstances of the offense charged;
- (b) Whether the offense was against a person or property, allocating more weight for crimes against the person;
- (c) Degree of the juvenile's culpability;
- (d) Age and maturity of the juvenile;
- (e) Any classification that the juvenile is eligible for special education to the extent this information is provided to the prosecution by the juvenile or by the court;

- (f) Degree of criminal sophistication exhibited by the juvenile;
- (g) Nature and extent of any prior history of delinquency of the juvenile and dispositions imposed for those adjudications;
- (h) If the juvenile previously served a custodial disposition in a State juvenile facility operated by the Juvenile Justice Commission, and the response of the juvenile to the programs provided at the facility to the extent this information is provided to the prosecution by the Juvenile Justice Commission;
- (i) Current or prior involvement of the juvenile with child welfare agencies;
- (j) Evidence of mental health concerns, substance abuse, or emotional instability of the juvenile to the extent this information is provided to the prosecution by the juvenile or by the court; and
- (k) If there is an identifiable victim, the input of the victim or victim's family.

[N.J.S.A. 2A:4A-26.1(c)(3).]

The sufficiency of the prosecutor's written statement is vital and "should apply the factors to the individual juvenile and not simply mirror the statutory language in a cursory fashion." Z.S., 464 N.J. Super. at 533 (quoting N.H., 226 N.J. at 250). The written assessment cannot be "incomplete or superficial." Id. at 534. Instead, the "written [assessment] must reasonably address the content of the defense material and explain why it is flawed, inadequately supported,

internally contradictory, or otherwise unpersuasive." Ibid. Nevertheless, the written statement "need not elaborate about minutiae," and we have recognized that the ultimate balancing of the eleven factors "may not be amendable to precise articulation." Id. at 535. Moreover, "[n]o one factor . . . may be treated as dispositive," and the decision as to how much weight to accord each statutory factor remains vested in the discretion of the prosecutor. Ibid.

Judicial review of the prosecutorial decision to waive a juvenile to adult court is limited. We must apply a "'patent and gross' abuse of discretion" standard. State ex rel. R.C., 351 N.J. Super. 248, 260 (App. Div. 2002). There is a "strong presumption in favor of waiver for certain juveniles who commit serious acts" Z.S., 464 N.J. Super. at 519 (citing R.G.D., 108 N.J. at 12). When applying the abuse-of-discretion standard of review in this context "it must be borne in mind that a juvenile seeking to avoid the 'norm' of waiver . . . must carry a heavy burden to clearly and convincingly show that the prosecutor was arbitrary or committed an abuse of his or her considerable discretionary authority to compel waiver." State ex rel. V.A., 212 N.J. 1, 29 (2012). The Family Part may not substitute its judgment for that of the prosecutor. Id. at 8.

Our review of the trial court's order is hindered by the absence of detailed analysis in the trial court's opinion. Although the trial court set forth a careful

analysis of the evidence supporting the charges, it failed to explain its rejection of the prosecutor's waiver decision in similar detail. For example, the trial court found that the prosecutor reiterated an erroneous consideration of I.C.'s juvenile delinquency history, but provided no explanation of that finding. The court also mischaracterized two factors as having been relied on by the prosecutor in support of waiver and, without explanation, identified a third factor as having been improperly weighed by the prosecutor.

Rule 1:7-4(a) provides a court shall "find the facts and state its conclusions of law . . . on every motion decided by a written order that is appealable as of right . . ." "[A]n articulation of reasons is essential to the fair resolution of a case." Schwarz v. Schwarz, 328 N.J. Super. 275, 282 (App. Div. 2000). Effective appellate review of a trial court's decision requires examination of the findings of fact and conclusions of law on which the trial court relied. Raspantini v. Arocho, 364 N.J. Super. 528, 534 (App. Div. 2003). "When a trial court issues reasons for its decision, it 'must state clearly [its] factual findings and correlate them with relevant legal conclusions, so that parties and the appellate courts [are] informed of the rationale underlying th[ose] conclusion[s]." Avelino-Catabran v. Catabran, 445 N.J. Super. 574, 594-95 (App. Div. 2016) (alterations in original) (quoting Monte v. Monte, 212 N.J.

Super. 557, 565 (App. Div. 1986)). When that is not done, a reviewing court does not know whether the judge's decision is based on the facts and law or is the product of arbitrary action resting on an impermissible basis. Monte, 212 N.J. Super. at 565. Here, the trial court's decision is insufficient to permit effective appellate review.

We are, therefore, constrained to remand this matter for more complete findings of fact and conclusions of law with respect to whether the prosecutor abused his discretion when seeking waiver of the charges against I.C. to the Law Division.

We leave it to the trial court on remand to address in the first instance two legal issues raised by the parties. First, whether the Attorney General's guidelines, including the requirement that the county prosecutor or their designee review and approve a waiver application, remain in effect. Over the years, the waiver statute has been revised by the Legislature numerous times. In 1999, the Legislature called on the Attorney General to develop guidelines for county prosecutors "to ensure the uniform application" of waiver decision. L. 1999, c. 373, § 1 (codified as N.J.S.A. 2A:4A-26(f)), repealed by L. 2015, c. 89, § 6, eff. March 1, 2016. "The Legislature required the Attorney General to issue such guidelines to eliminate arbitrariness or abuse of discretionary power"

State v. J.M., 182 N.J. 402, 419 (2005). "Consistent with that mandate, the Attorney General prepared and published guidelines for the prosecutor to follow in determining whether to seek waiver." Ibid. (citing Attorney General's Juvenile Waiver Guidelines (March 14, 2000)).

The current version of the waiver statute was adopted effective March 1, 2016. L. 2015, c. 89, § 1. The statute provides that the Attorney General "may develop for dissemination to the county prosecutors those guidelines and directives deemed necessary or appropriate to ensure the uniform application of [the waiver statute] throughout the State." N.J.S.A. 2A:4A-26.1(c)(3). Although the 2016 statute differs in significant ways from the prior version, the Attorney General has not adopted new guidelines that reflect the current version of N.J.S.A. 2A:4A-26.1.

The 2000 guidelines provide "[t]he assistant prosecutor making the initial waiver decision shall prepare a written statement of reasons for waiver." In addition,

[t]he waiver decision shall be reviewed and approved by the County Prosecutor or by his or her designee. The County Prosecutor may designate an assistant prosecutor to perform this function. The chief of the juvenile unit in the County Prosecutor's Office may be designated to perform this function, provided the chief of the juvenile unit is not the assistant prosecutor making the initial waiver decision.

Should the trial court determine that the review and approval provision of the guidelines remain in effect, it shall also determine whether the State complied with that provision, and, if not, the consequences, if any, of a failure to comply.

Second, the trial court shall determine whether N.J.S.A. 2A:4A-26.1 permits the prosecutor to consider I.C.'s entire history of interactions with the juvenile justice system or only those instances in which he was adjudicated delinquent.⁴

Finally, the State requests that this matter be assigned to a different judge on remand. We agree that because the judge who heard the matter has already conscientiously engaged in weighing the evidence and rendered an opinion on the prosecutor's application, the remand proceedings should take place before a different judge. See N.J. Div. of Youth & Family Servs. v. A.W., 103 N.J. 591, 617 (1986).

⁴ In light of the assistant prosecutor's concession that the May 21, 2021 statement could and should have been more thorough in its analysis, we leave to the trial court in the first instance the question of whether the State shall, should it so request, be permitted to issue a third written statement seeking waiver.

The October 22, 2021 order is vacated and the matter is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing is a true copy of the original on file in my office.



CLERK OF THE APPELLATE DIVISION