

Affirmed in No. 14-20-00079-CV, Reversed and Dismissed in No. 14-20-00081-CV, and Opinion filed June 23, 2020.



In The

Fourteenth Court of Appeals

**NO. 14-20-00079-CV
NO. 14-20-00081-CV**

IN THE MATTER OF D.T.

**On Appeal from the 315th District Court
Harris County, Texas
Trial Court Cause Nos. 2013-02936J & 2013-03190J**

OPINION

In these appeals, we are asked to review two separate orders that transferred an alleged juvenile offender from juvenile court to criminal district court. For the reasons explained below, we affirm one of the transfer orders, but we reverse and dismiss the other for want of jurisdiction.

BACKGROUND

Appellant was named as a suspect in two separate offenses. The first was a capital murder alleged to have been committed in December 2012, and the second

was a regular murder alleged to have been committed in March 2013. At the time of both offenses, appellant was sixteen years old.

In May 2013, the State filed two petitions in juvenile court, alleging that appellant had engaged in delinquent conduct by committing the capital murder and the regular murder. Appellant was seventeen years old at the time of these petitions.

In July 2013, the State moved for the juvenile court to waive its exclusive, original jurisdiction and to certify appellant to be tried as an adult. In September 2013, after various evaluations and a hearing, the juvenile court granted the State's motion and issued two separate orders, transferring each case to criminal district court. Appellant was still seventeen years old at the time of the transfers. He turned eighteen in April 2014.

The State proceeded by first trying the capital murder case in July 2016, when appellant was twenty years old. A jury convicted him of that offense and the trial court imposed a sentence of life imprisonment.

Following the conviction, the State moved for the district court to dismiss the regular murder case, apparently in the interest of judicial economy. The reason given on the motion to dismiss was that appellant was already serving a life sentence because of the capital murder conviction. The district court granted that motion.

Meanwhile, appellant brought an appeal of his capital murder conviction to our court, contending among other issues that the juvenile court's transfer order did not sufficiently state the reasons for its waiver of jurisdiction. This issue invoked the holding in *Moon v. State*, 451 S.W.3d 28 (Tex. Crim. App. 2014), which was decided after the juvenile court had already rendered its transfer order. Because we agreed that the transfer order was deficient under *Moon*, we sustained appellant's issue. We then vacated appellant's conviction for capital murder and remanded that case back

to the juvenile court. *See Taylor v. State*, 553 S.W.3d 94, 100 (Tex. App.—Houston [14th Dist.] 2018, pet. ref'd).

Our mandate did not encompass the regular murder case, which belonged to a separate trial court cause number. Nevertheless, the State determined for itself that the transfer order in the regular murder case was also deficient because that transfer order similarly lacked case-specific reasons for the juvenile court's waiver of jurisdiction. Believing that the deficient transfer order had deprived the district court of jurisdiction to render a dismissal, the State simply refiled the delinquency petition for the regular murder case in juvenile court. The State also refiled the delinquency petition for the capital murder case, and then moved for the juvenile court to transfer both cases back to the district court in a manner consistent with *Moon*.

The State's motion set up a dispute between the parties as to which transfer standard should apply. Because appellant had since turned twenty-three, the State argued that the juvenile court should follow the standard set forth in subsection (j) of Section 54.02 of the Texas Family Code, which applies to alleged juvenile offenders who have since become adults. Appellant countered that the juvenile court should follow the standard set forth in subsection (a), which applies to alleged juvenile offenders who are still children. Subsection (a) is more demanding than subsection (j) because it requires the juvenile court to perform an individualized assessment of the alleged juvenile offender. Even though appellant was no longer a child, he pointed out that the juvenile court had previously applied subsection (a) in 2013 during his original transfer hearing, and he reasoned that if the juvenile court did not reapply subsection (a), then he would be penalized for having successfully exercised his right of appeal. He relatedly argued that the State's proposed application of subsection (j) was unconstitutional because a transfer without an individualized assessment violates the Eighth Amendment's protection against cruel

and unusual punishment and the Fourteenth Amendment's guarantee of the due process of law.

The juvenile court disagreed with appellant's legal arguments and issued two new transfer orders under subsection (j). Appellant then brought these separate appeals from those orders, availing himself of an interlocutory procedure that was not available at the time of his previous transfer hearing.

We address each appeal separately.

THE CAPITAL MURDER CASE

Appellant does not challenge the sufficiency of the juvenile court's transfer order under *Moon*. Instead, he reasserts his as-applied challenge that subsection (j) is unconstitutional under both the Eighth Amendment and the Fourteenth Amendment.

Our analysis begins with the presumption that subsection (j) is constitutional. *See Stockton v. Offenbach*, 336 S.W.3d 610, 618 (Tex. 2011) ("We presume that when enacting legislation, the Legislature intends to comply with the state and federal constitutions."). As the party attacking that presumption, appellant bears the burden of proving that subsection (j) is unconstitutional as applied to his particular facts and circumstances. *See Gen. Servs. Comm'n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 598 (Tex. 2001).

For his Eighth Amendment claim, appellant relies on a series of cases that hold that juvenile offenders cannot be punished in the same way as adult offenders. *See, e.g., Roper v. Simmons*, 543 U.S. 551 (2005) (juvenile offenders cannot be sentenced to death); *Graham v. Florida*, 560 U.S. 48 (2010) (juvenile offenders convicted of non-homicide crimes cannot be sentenced to life without parole); *Miller v. Alabama*, 567 U.S. 460 (2012) (juvenile offenders convicted of homicide crimes

cannot be sentenced to a mandatory term of life without parole). These cases do not demonstrate that subsection (j) is unconstitutional, as subsection (j) is just a transfer provision, not a punishment provision. More importantly, any sort of Eighth Amendment argument is premature at this stage because appellant has not yet been convicted and sentenced upon his retrial for capital murder. *See Matter of A.K.*, No. 02-19-00385-CV, 2020 WL 1646899, at *7–8 (Tex. App.—Fort Worth Apr. 2, 2020, no pet. h.) (mem. op.) (holding that a similar as-applied challenge to Section 54.02 was not ripe for review); *see also State ex rel. Lykos v. Fine*, 330 S.W.3d 904, 911–12 (Tex. Crim. App. 2011) (explaining that appellate courts may not entertain a “hypothetical” as-applied challenge under the Eighth Amendment).

For his Fourteenth Amendment claim, appellant relies on *Kent v. United States*, 383 U.S. 541 (1966), which holds that a transfer hearing “must measure up to the essentials of due process and fair treatment.” *Id.* at 562. Appellant asserts that he was denied the essentials of due process during his transfer hearing because subsection (j) did not require the juvenile court to perform an individualized assessment by considering such factors as his level of maturity or his capacity for rehabilitation. *See* Tex. Fam. Code § 54.02(f) (requiring the juvenile court to consider these factors and others in a transfer hearing under subsection (a), but not in a transfer hearing under subsection (j)). This argument stretches *Kent* too far.

Kent does not hold that due process requires a juvenile court to perform an individualized assessment of an alleged juvenile offender who has since become an adult. Instead, *Kent* holds that due process requires that the alleged juvenile offender receive a hearing, including access by his counsel to pertinent records, and a statement of reasons for the juvenile court’s decision to transfer the case. *See Kent*, 383 U.S. at 557. Appellant received those procedural guarantees: a hearing was held, both sides were given an opportunity through counsel to address the factors for

transferring a case under subsection (j), and the reasons for the juvenile court's transfer were made known through a detailed written order.

Based on this record, we conclude that appellant has failed to overcome the presumption that subsection (j) operated constitutionally. *See Matter of H.Y.*, 512 S.W.3d 467, 478 (Tex. App.—Houston [1st Dist.] 2016, pet. denied) (rejecting a similar constitutional challenge that subsection (j) violated the Equal Protection Clause by not affording an individualized assessment for alleged juvenile offenders who have since become adults).

THE REGULAR MURDER CASE

In his appeal of the other transfer order, appellant argues that the State failed to satisfy its burden under subsection (j)(4)(A), which is what the juvenile court cited as the basis for its waiver of jurisdiction. Appellant also brings the same constitutional challenges that we just addressed (and rejected) in his appeal in the capital murder case.

Before we can dispose of these arguments on the merits, we must first determine a threshold question of jurisdiction.

The juvenile court raised the question of its own jurisdiction during the second transfer hearing. In response to that question, both sides agreed that the juvenile court had the jurisdiction to act on the State's motion to transfer, even though the previous transfer order had never been reversed by an appellate court or set aside by a district court. The parties reasoned that the original transfer order was void on its face because it violated *Moon* by not containing any case-specific reasons for the juvenile court's waiver of jurisdiction. Continuing with that premise, the parties argued that the juvenile court's previous waiver of jurisdiction was ineffective, which meant that the juvenile court still retained its exclusive, original jurisdiction.

By rendering the second transfer order, the juvenile court apparently accepted this reasoning.

We believe that this reasoning conflicts with the final footnote in *Moon*, where the Court of Criminal Appeals made the following comment regarding the juvenile court's authority to cure a deficient transfer order: "Unless and until the transfer order is declared invalid, the criminal courts retain jurisdiction, and the juvenile court lacks jurisdiction to retroactively supply critical findings of fact to establish whether or not it has validly waived its jurisdiction." *See Moon*, 451 S.W.3d at 52 n.90. That comment is consistent with *State v. Rhinehart*, 333 S.W.3d 154 (Tex. Crim. App. 2011), where the Court of Criminal Appeals signaled that a transfer order would still vest the district court with jurisdiction, even if the transfer order were somehow erroneous. *Id.* at 159 ("It is not apparent to us that a juvenile court's erroneous ruling on a due-diligence issue deprives the criminal district court of jurisdiction over the matter.").

The original transfer order in the regular murder case has not been declared invalid yet. It has not been reversed in an appeal; though there was an appeal following appellant's capital murder conviction, that appeal only affected the transfer order in the capital murder case, not the transfer order in the regular murder case. It has not been reversed by a district court either. *See* Tex. Fam. Code § 54.02(j)(4)(B)(iii) (contemplating a procedure in which the district court may set aside a transfer order).

Unless and until the original transfer order is declared invalid, we conclude that the district court retains jurisdiction in the regular murder case, which means that the juvenile court lacked jurisdiction and that its second transfer order is void. *See Moon*, 451 S.W.3d at 52 n.90. In light of this conclusion, we do not address the merits of appellant's arguments.

CONCLUSION

The transfer order in the capital murder case is affirmed. The transfer order in the regular murder case is reversed and dismissed for want of jurisdiction.

/s/ Tracy Christopher
Justice

Panel consists of Justices Christopher, Jewell, and Hassan.