

No. 19 - _____

In the
SUPREME COURT of the UNITED STATES
October Term, 2020

JUVENILE MALE,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the refusal of the United States Attorney to detail the defendants role in weighing his potential for rehabilitation in the interest of justice and the failure of the District Court to consider that role in offenses charged violated the defendants Due Process rights particularly when at the transfer hearing there was no evidence proffered by the government with regard to what acts were committed by the juvenile. The District Court considered the brutal and heinous nature of the offense in determining whether the defendant could be rehabilitated when the defendant may not have committed any acts of violence and thus transferred the defendant from juvenile status to adult status. He now faces multiple life sentences.

PARTIES TO THE PROCEEDING

The are no parties other than those named in the caption of this petition who were parties to the proceeding before the court whose judgment is sought to be reviewed.

DIRECTLY RELATED CASES

1. United States District Court for the Eastern District of New York

United States v. Juvenile Male, 17-Cr-367 (JFB), Opinion and Order entered June 19, 2018

2. United States Court of Appels for the Second Circuit

United States v. Juvenile Male, 18-Cr-1909, Summary Order entered December 3, 2019

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Petitioner Juvenile Male (“the defendant”) respectfully petitions for a writ of certiorari issue to review the decision and order of the United States Court of Appeals for the Second Circuit entered in this case.

OPINIONS AND ORDERS BELOW

The summary order of the United States Court of Appeals for the Second Circuit, *United States v. Juvenile Male*, No. 18–1909-cr (2d Cir., December 3, 2019), appears as Appendix (“App.”) A to this petition. The opinion and order of the district court is attached as App. B.

JURISDICTION

The judgment of the Court of Appeals for the Second Circuit was entered on December 3, 2019. The Supreme Court of the United States has jurisdiction under 28 U.S.C. § 1254(1) The statute mandates that:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

CONSTITUTIONAL PROVISIONS INVOLVED

The question presented is governed by the Fifth Amendment (which states “nor shall any State deprive any person of life, liberty, or property, without due process of law”). The guarantee of due process mandates that all governments respect the rights and protections granted by the U.S. Constitution before that government can deprive a person of life, liberty, or property. Due process guarantees that a person will receive a fair, orderly, and just trial. Due process requires “ ‘fair notice and a real opportunity to be heard at a meaningful time and in a meaningful manner’ ” to insure fair treatment when parties face ‘governmental decisions that deprive individuals of liberty or property interests.’ ” Constitutional Law: Due Process 34 Stetson L. Rev. 829 (2004-2005)

Daigneault, Jay.

STATEMENT OF THE CASE

Introduction

On July 10, 2017, the government filed a Juvenile Information against the defendant charging him with one count of racketeering by engaging in a conspiracy to murder and murder, 18 U.S.C. § 1962(e); one count of, racketeering conspiracy, 18 U.S.C. § 1962(d); one count of conspiracy to murder rival gang members, 18 U.S.C. § 1959(a)(5); and four counts of murder, 18 U.S.C. §§ 2, 1959(a)(I). These charges relate to the alleged murders of Justin Llivicura Michael Lopez, Jorge Tigre, and Jefferson Villalobos in a wooded area near the Central Islip Recreational Center in Central Islip, New York on April 11, 2017 (“The April 11 murders”).¹

On January 19, 2018 the government moved the district court pursuant to 18 U.S.C. § 5032 to transfer the defendant to the district court to be tried as an adult. On June 5, 2018 the district court held a hearing on the motion, reviewing submissions and argument by the government and defense counsel. On June 19, 2018, the district court issued an opinion and order (*United States v. Juvenile Male*, 17-cr-367(JFB) (Appendix B) granting the government’s motion to transfer. On December 3, 2019, the Second Circuit affirmed the judgment of the district court in its entirety. (Appendix A)

Background

On July 10, 2017, the government filed a Juvenile Information against defendant Juvenile Male (“the defendant”) charging him with one count of racketeering by

¹ The underlying crime alleges the defendant being part of a large group.

engaging in a conspiracy to murder and murder, 18 U.S.C. § 1962(e); one count of, racketeering conspiracy, 18 U.S.C. § 1962(d); one count of conspiracy to murder rival gang members. 18 U.S.C. § 1959(a)(5); and four counts of murder. 18 U.S.C. §§ 2, 1959(a)(1). These charges relate to the alleged murders of Justin Llivicura, Michael Lopez, Jorge Tigre, and Jefferson Villalobos in a wooded area near the Central Islip Recreational Center in Central Islip, New York on April 11, 2017 ("The April 11 murders").

The defendant's involvement stems from his alleged association with the MS-13. According to the government, the defendant was categorized as a "parro," or a recruit, for the Leeward clique of the MS-13.

The government proffered that pursuant to an investigation by the Suffolk County Police Department (SCPD), on April 11, 2017, Juvenile Female-1 and Juvenile Female -2 contacted Witness -1 and invited him to go to the Recreation Center with them under the guise of smoking marijuana. Witness-1, who was with Llivicura, Lopez, Tigre and Villalobos, invited them to join the group. Once Witness-1, Llivicura, Lopez, Tigre and Villalobos, Juvenile Female-1 and Juvenile Female -2 arrived in the woods and began smoking marijuana, the MS- 13 members and associates divided into groups, surrounded the victims, and then ordered them not to move and to get on the ground. Witness-1 immediately jumped over a fence and escaped. The remaining victims were surrounded by MS-13 members, and killed by the use of machetes, knives and other weapons. App. B at 4-5.

According to the government, on April 12, 2017, the Suffolk County Police Department ("SCPD") responded to a wooded area adjacent to the Central Islip Recreational Center, which is located at 555 Clayton Street, Central Islip, New York 11722 ("the Recreation Center"), and found the bodies of Llivicura, Lopez, Tigre and Villalobos. All four victims had significant sharp force and blunt -force injuries covering their bodies. That evening, the SCPO located and interviewed a certain witness ("Witness-1"), who stated, in sum and substance, that he was with the four victims and two women, whose identities are known to the government ("Juvenile Female-1" and "Juvenile Female-2"), at the Recreation Center the prior evening, April 11, 2017 at approximately 10:31 p.m. Further, Witness-1 informed the SCPO that they were in a wooded area adjacent to the Recreation Center when they encountered a group of Spanish-speaking men, who were armed with machetes, and told the victims not to run and to get on their knees. Witness-1 stated that he immediately ran away from the group and escaped.

Due to his juvenile status, the defendant was charged by sealed information in connection with these murders in federal court in the Eastern District of New York. Other alleged coconspirators have been indicted in connection with these murders, in the Eastern District of New York, (see, United States v. Amaya-Sanchez, et al., 16-403 (S - 3)(JFB), Counts 1-2, 55-59, and Juvenile Male-1, Juvenile Male-2, Juvenile Male-3, Juvenile Female-1 and Juvenile Female-2 have been charged by sealed juvenile information.

The Decision and Order

On January 19, 2018 the government filed a motion to transfer the defendant to the district court to be tried as an adult. After receiving submissions from the government and the defendant, the court held a hearing on June 5, 2018, and then on June 19, 2018 issued a decision and order granting the governments motion to transfer. App. B at 8.

The court discussed the following factors enumerated in 18 U.S.C §5032. First, the court found that the nature of the alleged offenses overwhelmingly favors transferring the case to the district court to try the defendant as an adult. Because of the manner in which the victims were lured and murdered, as well as the alleged motivation behind the killing, the court found that “[a] defendant who is alleged to have participated in this manner in the brutal murder of four individuals is unlikely to be rehabilitated it the juvenile system.” App. B at 9. Because of the “gravity of the alleged crimes,” the court considered this the “most crucial factor in this particular analysis.” Id.

Second, the court found that the defendants age and social background also weigh strongly in favor of transfer. Specifically, the court indicated that the defendant was “two months shy of eighteen” when the alleged crime was committed and at the time of the hearing, was over nineteen years of age. Id. In addition, the court noted that the defendant benefited from a supportive family and community ties but still chose to associate with MS-13 as a factor favoring transfer to adult status. Id.

Third, the court held that defendant’s lack of juvenile record weighs against transfer but was not dispositive. App. B at 10.

Fourth, despite a neuropsychological screening that detailed that the defendant's intellectual function was "at the low average range" and that the defendant was "emotionally and socially immature," the court found this factor to be neutral on balance because the defendant had a strong academic record. *Id.*

Finally, despite reports that the defendant's "grades and behavior during his detention have been very positive," and that facilities in Pennsylvania and Maine specially designed to treat the defendant's behavioral problems would be available if the defendant were found guilty as a juvenile the court determined that these factors merely weigh slightly against transfer. *Id.*

In sum, the court held that

Here, after analyzing all of the factors with respect to this defendant, the Court concludes that there is no likelihood the goals of the juvenile system will be achieved while the defendant is in juvenile custody and under the particular circumstances of this case, "the concerns of public protection and punishment become paramount." *Nelson*, 90 F.3d at 640. In other words, the juvenile justice system is simply ill-equipped and woefully insufficient, under the circumstances of this case, to adequately address, in the interest of justice, these violent crimes when considered in conjunction with the other statutory factors.

Id.

The Decision of the Second Circuit

The defendant appealed the decision and order of the District Court. The decision of the Court of Appeals (Appendix A) regarding the issue addressed in this petition – whether the defendant's due process rights were violated where the court considered

specific conduct committed as the nature of the offense to determine whether the defendant could be rehabilitated but was not required to consider the defendant's role or whether the defendant was even alleged to have committed any violent acts.

The defendant here is charged with both conspiracy and substantive counts. However, he is charged under 18 U.S.C. § 2, as an accessory for the substantive counts. The defendant asked for some indication of the defendant's role in the offense so that he could effectively respond to the government's arguments in the government's motion to transfer. The government argued, that it was not required to give any detail regarding the defendant's role in the offense because the statute requires that for the purposes of deciding whether to transfer the defendant the Court must assume that the defendant committed the offense charged. The Court accepted this argument and decided the motion accordingly, relying heavily on the nature of the offense in its decision. It is submitted that in an offense with multiple defendants, that this decision is fundamentally flawed and deprived a fair weighing of the factors pursuant to 18 U.S.C. § 5032 and violates the interest of justice standard.

REASON FOR GRANTING THE WRIT

IN HOLDING THAT THE DEFENDANT COULD NOT BE REHABILITATED AND IN HOLDING THAT THE GOVERNMENT DID NOT HAVE TO DISCLOSE THE DEFENDANT'S ROLE IN THE OFFENSE THE COURT OF APPEALS DECIDED AN IMPORTANT CONSTITUTIONAL QUESTION IN A WAY THAT CONFLICTS WITH THIS COURT'S JURISPRUDENCE

The primary purposes of the federal juvenile delinquency provisions, including 18 U.S.C. § 5032, are to “remove juveniles from the ordinary criminal process in order to avoid the stigma of a prior criminal conviction and to encourage treatment and rehabilitation.” United States v. Brian N., 900 F.2d 218, 220 (10th Cir.1990) (citations omitted); United States v. J.D., 525 F.Supp. 101, 103 (S.D.N.Y.1981). A district court must balance these purposes against the need to protect the public from violent and dangerous individuals. See, United States v. Alexander, 695 F.2d 398, 401 (9th Cir.1982) Juvenile adjudication is presumed appropriate unless the government establishes that prosecution as an adult is warranted. See United States v. A.R., 38 F.3d 699, 706 (3d Cir.1994).

In deciding whether to transfer an action, the district court must consider and make findings on the record with respect to the six statutory factors described above. See, 18 U.S.C. § 5032. The district court is not required to afford equal weight to each factor, but instead may balance them as it deems appropriate. See United States v. Doe, 871 F.2d 1248, 1254–55 (5th Cir.), Alexander, 695 F.2d at 400–01. The district court must make factual findings sufficient to permit meaningful appellate review. See United States v. Romulus, 949 F.2d 713, 715–16 (4th Cir.1991)

Under 18 U.S.C. § 5032, the district court must weigh six factors when assessing whether transfer of a qualified juvenile to adult status is "in the interest of justice." The court must consider (1) the age and social background of the juvenile; (2) the nature of the alleged offense; (3) the extent and nature of the juvenile's prior delinquency record; (4) the juvenile's present intellectual development and psychological maturity; (5) the

nature of past treatment efforts and the juvenile's response to such efforts; (6) the availability of programs designed to treat the juvenile's behavioral problems.

The district court may weigh these factors "in any way that seems appropriate to it." United States v. Nelson, 68 F.3d 583, 588 (2d Cir. 1995).

A district court is permitted to weigh the seriousness of an offense more heavily than the other criteria. See United States v. Ramirez, 297 F.3d 185, 190 (2d Cir. 2002).". However, the nature of the crime must be balanced against the prospect of rehabilitation.

"Furthermore, the defendant's potential for rehabilitation typically should also be given 'special emphasis.' Id at 193. Indeed, the notion of rehabilitation 'permeat(es) the transfer decision ... (and) clearly is one of the primary purposes of the juvenile delinquency provisions.' United States v. Nelson, 90 F.3d 636, 640 (2d Cir.1996) ('Nelson II).

This Court offers guidance in this regard: ". . . a court must determine that the juvenile is 'likely to respond to rehabilitative efforts,' which is the standard that ' strikes the appropriate balance' between ' affording a defendant juvenile status when rehabilitation will work (and the rehabilitative goals of the juvenile system will be achieved), and allowing transfer when it will not (and the concerns of public protection and punishment become paramount).' Nelson II, 90 F.3d at 640." See also United States v. Juvenile Male, No. 14-CR-645 (JFB) (2015).

The Supreme Court has explained that in the context of a transfer hearing, a juvenile's due process rights include the right to contest the value of the evidence offered by the government. Kent v. United States, 383 U.S. 541, 563 (1966) ("If a decision on waiver is 'critically important' it is *equally of 'critical importance' that the material*

submitted to the judge ... be subjected ... to examination, criticism and refutation.”)

(emphasis added). The Senate Report commentary on § 5032's “interest of justice provision” echoes *Kent* in that respect, explaining that a juvenile must be “accorded all due process rights” at a transfer hearing. S.Rep. No. 1011, 93rd Cong., 2nd Sess., 56 (1974), U.S. Code Cong. & Admin. News 1974, p. 5320. In re Sealed Case (Juvenile Transfer), 893 F.2d 363, 369 (D.C. Cir. 1990). Additionally, § 5032 of the Act sets out precisely which offenses precipitate transfer hearings, and conspiracy is not among them.

Here, the defense asked for the Government to indicate what acts the defendant committed and what role he played in the offense. The government refused, stating that because the District Court was supposed to assume the defendant committed the offense, there was no need to indicate what the defendant's role was or what acts he allegedly committed. “Further evidentiary support is not required.” The Court accepted this argument.

Pursuant to the Second Circuit's decision in Nelson I, supra, 68 F.3d at 589, the district court was justified in assuming the defendant had committed the offenses charged in the superseding juvenile information for purposes of the transfer motion. However, the district court went far beyond the assumption it was permitted to make, and adopted all the government's factual allegations regarding the charged offenses. There were at least 10-20 other defendant charged with this specific murder. The indictment only says that the defendant participated in the offense but gives no indication of how he participated in it. Notably, the indictment contained conspiracy counts and the defendant was charged under Section 2 for the substantive offenses as an accessory. Surely, the act did not

contemplate holding uncharged conduct against the defendant. For example, in In re Sealed Case (Juvenile Transfer), 893 F.2d 363, 368 (1990) explained that the statutory phrase itself directing focus on “the nature of the alleged offense” (emphasis added), cannot plausibly be interpreted to encompass evidence of unalleged offenses.

Section 5032 directs the Court to consider the juvenile’s role in the offense: “[T]he court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms. Such a factor, if found to exist, shall weigh in favor of a transfer to adult status, but the absence of this factor shall not preclude such a transfer.” 18 U.S.C. § 5032.

However, therein lies the violation of the defendant’s due process rights. The Court found that because of the nature of this offense, specifically

the seriousness of the allege offenses cannot be overstated. The defendant is charged with four premeditated and brutal murders carried out for MS-13. The defendant allegedly participated in a conspiracy with MS-13 members with associates to murder the victims by luring them to a prearranged location in the woods. As a result of the defendant's alleged conduct, four people were brutally hacked and beaten to death with knives, machetes and tree limbs.

Here, because the defendant is charged with multiple counts of conspiracy and charged under Section 2 there is a real question as to whether the defendant is even alleged to have committed the brutal acts referred to by the Court in its finding that the defendant could not be rehabilitated. Yet at the hearing the government proffered and the

court considered the photos of the four brutalized bodies and their respective autopsy reports leading the AUSA to remark “the crime scene photos are just hard to look at.” It is fundamentally unfair to allow the government to present such inflammatory aggravating evidence like the crime scene photographs and the victim autopsy reports and not to indicate whether the defendant was responsible or even played a hand in making the body look that way.

The defendant was denied the right to meaningfully “contest the value of the evidence offered by the government. Kent v. United States, 383 U.S. 541, (1966) The government set out a recitation of the offense conduct but never specified what role the defendant played or what acts the defendant were alleged to have committed. The Court relied on these unsupported factual allegations not only in describing the nature of the offense but it also weighed them against every other factor listed in 18 U.S.C. § 5032 and ultimately decided for transferring the defendant because of them.

Allowing the Court to consider unsubstantiated and untested allegations in its balance of all six factors under 18 U.S.C. § 5032 renders the Juvenile Transfer Act and its protections utterly meaningless and creates a bright line test essentially holding that anyone charged in certain cases, like the one here, will be transferred without exception.

Because the court of appeals has veered dramatically from this Court’s jurisprudence in a significant way, and because that error has important implications in the administration of justice under this Court’s supervision, we urge that the Court should review the decision of the Second Circuit.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the order of the
Second Circuit.

Respectfully submitted,

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