

1979

State of Utah v. Aaron Lee Greuber : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

STATE OF UTAH, :
Plaintiff - Respondents, :
vs. : Case No. 15753
AARON LEE GREUBER, :
Defendant - Appellant, :

BRIEF OF APPELLENT

Appeal from Certification by the Juvenile Court and Trial
and Conviction in the Third District Court, Salt Lake County,
state of Utah.

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STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a certification of a juvenile for trial in The Third District Court, and ultimate trial and conviction of said juvenile for the crime of aggravated robbery.

DISPOSITION IN LOWER COURT

The defendant, Aaron Lee Greuber, was certified by the Juvenile Court to stand trial as an adult on three charges of aggravated robbery and one charge of criminal homicide. Defendant's appeal of the certification to the Utah Supreme Court was not heard as not being an appeal from a final order. The defendant was tried and convicted in the District Court of the Third Judicial District of Utah on two crimes or the crime of aggravated robbery.

RELIEF SOUGHT ON APPEAL

That defendant's trial and conviction in the District Court for the Third Judicial District of Utah be vacated for lack of jurisdiction as stemming from improper certification in the Juvenile Court, and denial of due process in defendant's right to appeal in such certification.

STATEMENT OF FACTS

Aaron Lee Greuber, a juvenile, was identified by several

witnesses as being one of several boys who followed a general pattern of gaining access to people's homes through artifice, for the purpose of robbing the individuals once entry was obtained. It was further alleged that in the course of such conduct, a firearm was utilized to support the threats of the juveniles. In the course of one such robbery, a victim allegedly resisted and was shot by one of the boys, William Ruch, resulting in the death of the victim.

In hearing for certification of defendant Aaron Lee Greuber, it was determined that he had been in the juvenile system for several years, with both a stay on a boys' ranch and supervised probation in his home. No other alternatives for treatment has been attempted with this juvenile.

POINT I

TRIAL IN THE DISTRICT COURT WAS WITHOUT JURISDICTION AND DENIED THE APPELLANT DUE PREOCCESS OF LAW.

Appeals from final orders of the Juvenile Court are provided by U.C.A. §78-3a-51 (formerly, U.C.A., Section 55-10-112). The only question then in determining the right to appeal is whether the order of certification is, in fact a final order. This issue, while not decided at the time of defendant's appeal in

June of 1977, was decided in the case of In the Interest of Atcheson, 575 P. 2d 181, in January of 1978. Accordingly, defendant's appeal from his certification should have been entertained, and determination of its validity allowed prior to proceeding to trial in the District Court. The logic and basis for the Atcheson case will not be repeated in this argument.

The effect, however, of failure to review certification for Aaron Lee Greuber was a denial of due process under the Fifth and Fourteenth Amendment of the Constitution of the United States. This has created an irrevocable harm, upon certification, the juvenile was immediately transferred to the authority of the District Court and incarcerated in the Salt Lake County Jail, and subsequently, upon conviction, the Utah State Prison, where he has been exposed to the influence of adult offenders, the very kinds of harm that are designed to be avoided by the creation of the Juvenile Court and the juvenile procedures. Additionally, as a quick review and determination of the issues in June of 1977 may still have allowed the Juvenile Court to provide appropriate treatment, the defendant now is clearly too old for treatment within the Juvenile System. A similar situation was involved in the case of Kent v. United States, 383 U. S. 541 (1966), in which a juvenile was denied appropriate safeguards in the process of his certification. It is clear from Kent that a determination

must now be made as to whether the certification of the defendant was appropriate under the circumstances. If the underlying certification is deemed to have been improper the conviction must be vacated and the defendant no longer capable of treatment as a juvenile, must be released. Id. at 565.

If it is found that certification was appropriate, such certification may be upheld at this point. However, the action in the District Court should be vacated and the matter remanded for trial, or other appropriate remedies as seen fit by the District Court. Until the Juvenile Court has "after full investigation" make a determination that said certification would be "in the best interests of the child or of the public" and certify the child the District Court has no jurisdiction, U.C.A. 78-3a-25; State v. Musser 175 P 2d 724. From this certification, the defendant had a right of appeal before jurisdiction passed to the District Court. U.C.A. 78-3a-51; In The Interest of Atcheson, Supra.

In the instant case the appeal of the defendant through no fault of his own was not heard. Jurisdiction in the District Court was improperly obtained and all proceedings in that Court should be vacated.

POINT II

CERTIFICATION OF THE DEFENDANT, WAS INAPPROPRIATE ON THE EVIDENCE PRESENTED.

The Juvenile Court act establishes the purpose and general guideline for the operation of the Juvenile Court. It is the purpose of the act to attempt to balance the need to care for, protect and treat children, with the necessity to protect the community. This scale is not to be lightly tipped, and must consider the interest of the community both in the protection and development of its children and their potential dangers to the Community. U. C. A., 78-3a-1; In Interest of Salas, 520 P. 2d 874. No place in the Juvenile Court Act does this come more into play than in the determination of certification of juveniles to stand trial as adults. The Code allows that : "If ... after full investigation and hearing" the Court determines that it would be "contrary to the best interest of a child or of the public to retain jurisdiction" the juvenile may be certified to the District Court for trial and treatment as an adult. U.C.A. §78-3a-25 (formerly, 55-10-86). In dealing with this problem, the United States Supreme Court in Kent v. United States, supra, provided guidance in the form of an appendix to its decision incorporating Policy Memorandum No. 7, dated November 30, 1959,

from the Federal Court. This Policy Memorandum has been substantially adopted by the Utah Juvenile Court in its Rule 7 of the Utah State Juvenile Court Rules of Practice and Procedure.

Standards, in Rule 7 can roughly be divided into three groups. The first three, (a) through (c), deal with the offense itself; the fourth, (d), considers co-defendants who may be adults, not applicable in this case; and the last group, composed of (e), (f) and (g), deal with the background of the juvenile himself.

Normally a juvenile will not be considered for certification unless the offense involved falls into the category of more violent and serious crime, as defined by Standards a through c. Certainly, the crime of aggravated robbery is considered by the legislature to be serious, as it assigned a five year to life sentence for adult offenders. U.C.A. §76-6-302; U.C.A. §76-3-203 but that fact alone is not determinative. Standard is tempered by the necessity for a determination of the community need for certification in order to protect itself from the individual involved. While the evidence presented at the time of certification supported the probability of a spree of robberies by the boys involved, there is no indication that Aaron Lee Greuber was violent, or at all likely to continue similar behavior, even if released. The criminal homicide charge against the defendant

stems not from any violent the actions of the defendant himself, but from a fiction of the law where he, through involvement in the robbery becomes responsible for the actions of another. U.C.A. 76-2-202.

There is no evidence that the robberies were committed in an aggressive or violent manner, as defined by the second Standard, even though a firearm was carried. Standards a-c then must rest on the inherent seriousness of the crime itself, not sufficient reason for certification alone. Many states employ juvenile systems that require the child's welfare to be considered to the complete exclusion of any other interest of the community. But even in these states that require balance, the balance is usually tipped toward the possible treatment of the child. For an excellent example see Welfare of J.E.C. v. State, 225 N.W. 2d 545 (Minn) where the Court remanded to determine if a program could be created for the child, not being content with the mere statement that no program for violent juvenile offender presently existed in the system.

Additionally, at least one Federal Circuit Court has gone so far as to strongly hint that the Federal Constitution guarantee treatment to juveniles in affirming a lower Court finding to that effort. Nelson v. Heyne, 491 F 2d 352 (1974 7th CA).

The Legislature would seem to support the position of the Minnesota court in its mandate to liberally construe the purpose statement of the act, U.C.A. §78-3a-1.

If the protection of the juvenile is to be construed liberally the question of Aaron Lee Greuber's certification must be considered under Standards (e), (f) and (g).

Standard e states:

"The sophistication and maturity of the juvenile as determined by consideration of his home environment situation, emotional attitude, pattern of living and alleged involvement in the offense."

The home environment of Aaron Lee Greuber was not good. In fact, much of the testimony recognizes the inability of the parents to properly reinforce appropriate behavior in this juvenile. See Juvenile Court Transcript pages 47,56, and 62. He does not seem, however, to show the sophistication one would expect of an individual who is operating on an adult level, rather than on a child level; and the testimony strongly indicated that in a structured situation he functions well. Transcript of Juvenile Court Proceeding pages 56, 59, 70,82 and 89.

Standard f provides:

"The record and previous history of the juvenile, including previous contacts with law enforcement agencies, Juvenile Court and rehabilitative resources of the juvenile system and the success or failure of past corrective efforts in the juvenile system."

This Standard is particularly significant in that Aaron Lee

Greuber has had extensive contact with the juvenile system, but the system has not responded to Aaron Lee Greuber with any degree of effectiveness. Even though all analysts, psychologists and probation officers dealing with Aaron Lee Greuber agree that the worst possible result for him was continuing in his family environment, the system has repeatedly chosen to leave Aaron Lee Greuber in that very environment. In fact, the only time that he was removed from that environment was a stay at two boys' ranches. At the first boys' ranch, Aaron adequately performed and there is no evidence of any failure by Aaron Lee Greuber during his period of treatment. When this ranch was closed, he was transferred to another facility. Problems apparently developed and he ran away twice. There is no indication of the reason or evidence that any attempt was made to determine what the scope and reasons for his running away were; he was merely released from the program and returned again to that disastrous home environment.

The final Standard (g) provides:

"The prospects for adequate protection of the public and the likelihood for reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities available under order of the juvenile court and whether the advantages and resources for treatment and public safety lie with

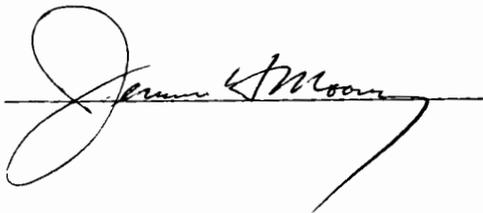
the adult criminal court, rather than the juvenile court."

The record does not support an indication that Aaron Lee Greuber would not be responsive to rehabilitation. What it does support is an indication that Aaron Lee Greuber would not be responsive in the short period of one year. He would require additional time. This may lay as a proper basis for certification where a juvenile's age would cause loss of jurisdiction prior to the time that this type of treatment could be completed. In Interest of Atcheson, supra. However, in the case of Aaron Lee Greuber, the necessary amount of time set by the psychologists was available to the juvenile court. Juvenile Court Transcript page 80,81, 92,& 99.

While much testimony seemed to center on the ease with which one could possibly escape various juvenile facilities, the evaluations did not seem to support the fact that given the opportunity, Aaron Lee Greuber would, in fact, escape. What they, in fact, supported was the idea that given a program of high structure, successful rehabilitation was feasible for this individual. It was clearly agreed by the experts testifying that defendant would not receive adequate treatment in the adult system.

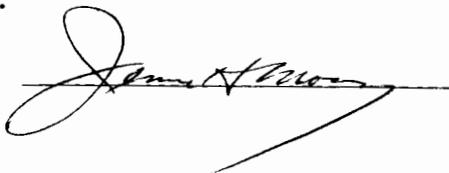
The choice of the Juvenile Court for certification can only be read as a choice for no treatment, not because it could not be

made available, not because it could not succeed, not because it was outweighed by the danger of the defendant, but because it would transcend a one year policy established within juvenile treatment facilities. Juvenile Court Transcript pages 78, 81, & 104. As in the Welfare of J.E.C., supra, the policies of the juvenile treatment programs should not be allowed to dictate the purpose; they should, rather, respond to the needs of the individuals and society, identified by that purpose. Aaron Lee Greuber's denial of treatment was improper, was not supported by the evidences and the order of certification should be reversed.

A handwritten signature in black ink, appearing to read "Aaron Lee Greuber", is written over a horizontal line. The signature is stylized with large loops and a long, sweeping tail that extends to the right.

CERTIFICATE OF SERVICE

THIS WILL CERTIFY that a true and correct copy of the foregoing document was mailed via United States mail postage fully pre-paid to Robert B. Hansen at the Attorney's General Office, State Capitol Building, Salt Lake City, Utah 84114, on this 16th day of April, 1979.

A handwritten signature in black ink, appearing to read "James H. Brown", is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long, sweeping tail that extends to the right.