

1979

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

Utah Supreme Court

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Recommended Citation

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, :
Plaintiff-Respondent, :
-v- : Case No. 19751
AARON LEE GREUBER, :
Defendant-Appellant. :

BRIEF OF RESPONDENT

Appeal from a Certification Order of the
Second District Juvenile Court and
and Conviction in the Third District
Court, Salt Lake County, State of Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

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

BRIEF OF RESPONDENT

Appeal from a Certification Order of the
Second District Juvenile Court and Trial
and Conviction in the Third District
Court, Salt Lake County, State of Utah

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TABLE OF CONTENTS

	<u>Page</u>
NATURE OF CASE.....	1
DISPOSITION IN LOWER COURT.....	1
RELIEF SOUGHT ON APPEAL.....	2
STATEMENT OF FACTS.....	2
ARGUMENT:	
POINT I APPELLANT WAS NOT DEPRIVED OF ANY DUE PROCESS RIGHTS NOR DID THE JUVENILE COURT LACK JURISDICTION TO PROCEED AFTER APPELLANT WAS CERTIFIED.....	3
POINT II THE ORDER FOR CERTIFICATION WAS A REASONABLE EXERCISE OF DISCRETION BASED ON SUBSTANTIAL EVIDENCE.....	10
A. The certification order of the Juvenile Court should be upheld if reasonable and supported by substantial evidence.....	10
CONCLUSION.....	18

CASES CITED

Page

Bambrough v. Bethers, 552 P. 2d 1286 (Utah 1976)...	10
In re Welfare of Hernandez, 548 P. 2d 340 (Wash. 1976).....	12
Kent v. United States, 383 U.S. 541, 86 S. Ct. 1045 (1966).....	11
Lancaster v. Chemi-Cote Perlite Corporation, 511 P. 2d 673 (Ariz. 1973).....	10
State, In Interest of Atcheson, 575 P. 2d 181 (Utah 1978).....	5,6,8,10, 12,17,19
State, In Interest of Giron, No. 15557 (Utah, filed Sept. 21, 1978).....	10,12,17
State, In Interest of Salas, 520 P. 2d 874 (Utah 1974)	10

STATUTES CITED

Utah Code Annotated, Section 76-6-203.....	13
Utah Code Annotated, Section 78-3a-51.....	4,5,18

RULES CITED

Juvenile Court Rules of Practice and Procedure, Rule 7(7).....	11,12,13,14, 15,17,18
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Appellant was tried in the district court and convicted of aggravated burglary and aggravated robbery.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of the juvenile court's order for certification and the district court's judgment.

STATEMENT OF FACTS

Respondent agrees generally with appellant's statement of facts with the following exception and additions:

The final sentence of appellant's statement of facts reads: "No other alternatives for treatment has [sic] been attempted with this juvenile." (Appellant's Brief, p. 2). In making this statement appellant alleges that only probation and "a stay on a boys' ranch" were used to deal with him. However, the record discloses many attempts to use the juvenile system to reform appellant.

Probation was tried twice (Tr. p. 45), both times unsuccessfully (Tr. p. 53). Appellant was sent to two boys' ranches (Tr. p. 45-46), the second of which he ran away from refusing to return (Tr. P. 49). Appellant's probation counselor established a special school program for appellant (Tr. p. 46). Appellant was uncooperative so individual tutoring was arranged (Tr. p. 46). However, appellant's lack of motivation and poor attitude resulted in failure of this program as well (Tr. p. 46).

Appellant was placed in detention twice (Tr. p. 48, 52), and he underwent a psychological evaluation (Tr. p. 47). These attempts proved futile and the Youth Development Center was suggested (Tr. p. 52). However, the authorities agreed that the Youth Development Center would not be of any value in this situation (Tr. p. 54-55, 57, 114-115).

In addition, appellant and his family were assisted through a counseling program (Tr. p. 46). However, appellant was again uncooperative (Tr. p. 46). Family therapy was also tried, but was unsuccessful (Tr. p. 48). In short, as stated in the transcript, no other appropriate services were available in the juvenile system (Tr. p. 55).

ARGUMENT

POINT I

APPELLANT WAS NOT DEPRIVED OF ANY DUE
PROCESS RIGHTS NOR DID THE JUVENILE
COURT LACK JURISDICTION TO PROCEED
AFTER APPELLANT WAS CERTIFIED.

Appellant alleges a denial of due process but fails to show how such denial occurred. It appears, however, that appellant feels the Court's refusal to review his initial appeal from the certification order was a denial of due process which invalidates all proceedings in the District Court.

The Juvenile Court ordered that the appellant, Aaron Lee Grueber, be certified to stand trial as an adult on June 9, 1977. (R. p. 8) Immediately thereafter, and prior to commencement of proceedings in the District Court, appellant appealed to this Court from the certification order (See Supreme Court Case No. 15322, July 1977). That appeal was dismissed on the court's own motion, on July 26, 1977. At that time this court did not interpret U.C.A. §78-3a-51 of the Juvenile Court Act to provide for a direct appeal from a certification order. State courts across the country are divided almost equally on the issue of whether a certification is a final, appealable judgment, so Utah was certainly not alone in its practice of disallowing appeals until after the trial in the adult court. Furthermore, direct appeal from a certification order has never been held to be a constitutional right, denial of which would constitute a violation of due process.

After the court's dismissal of his original appeal, appellant did not request a rehearing or present any arguments to the court on the propriety of the dismissal. He was tried and convicted in the District Court and sentenced to a prison term. He has now been in prison

for over a year and complains that he is being subjected to the hardships of prison life because the court did not hear his original appeal and his certification was allowed to stand (Appellant's Brief, p. 3). However, it should be noted that appellant was convicted and sentenced in February, 1978. (R. p. 71). He filed his Notice of Appeal on March 24, 1978 (R. p. 72), and then extended his time for filing his brief for over a year. Thus, his prolonged stay at the prison can be attributed at least as much to his own delays as to the fact that his original certification appeal was not heard.

In January, 1978, this court, upon rehearing in State in the Interest of Atcheson, 575 P. 2d 181 (Utah, 1978), decided that under the statutory language of U.C.A. 78-3a-51, a certification order is a final, appealable order. This decision was based upon the wording of the Utah statute not on constitutional grounds. §78-3a-51 U.C.A. 1953 provides in part:

When a criminal complaint is filed in a court of competent jurisdiction charging the child with the offense certified under this section, the jurisdiction of the juvenile court is terminated as to the child or person concerned.

Based upon this Language, the court concluded:

The fact that jurisdiction is specifically terminated by the statutory provisions at such time as a complaint is filed is clearly indicative of the finality of a certification order. From and after that time jurisdiction is irrevocably transferred to the district court. 575 p. 2d at 183.

Thus, the right to appeal directly from a certification order is not a constitutional right, and appellant was not deprived of any due process protections when his appeal was dismissed.

The Atcheson decision gives juveniles the option to appeal the certification order prior to commencement of District Court proceedings, but it does not mandate that the appeal be taken at the time. A juvenile offender can still appeal the validity of a certification order after the trial in the district court, together with any issues raised in the trial. There is no authority in the Atcheson case or elsewhere for appellant's proposition that the District Court had no jurisdiction until after he had appealed the certification order. (Appellant's Brief, p. 4). Such a theory would invalidate every District Court proceeding which has taken place after certification if the juvenile did not appeal from the certification order prior to the District Court trial. This principle, as

espoused by appellant, would certainly provide a simple means of insuring that the District Court never had jurisdiction to act. If, as appellant alleges, the adult court does not have jurisdiction until the juvenile appeals his certification order, the juvenile could forever hold off the adult trial simply by never appealing from the certification order.

It is true, as appellant alleges on page 4 of his brief, that the District Court does not obtain jurisdiction until after the Juvenile Court has made a full investigation and determination that certification would be in the best interests of the child. (Appellant's Brief p. 4). However, there is no basis in law for the proposition that the District Court does not obtain jurisdiction until after the juvenile appeals from the certification order. In this case, there was a full and complete investigation and hearing which led to the Juvenile Court's determination that certification was necessary and proper. If the certification is upheld by this Court, then the proceedings in the District Court must also be upheld, as appellant makes no challenges to his District Court trial and conviction except the jurisdictional challenge discussed herein. Appellant's argument that even if this Court upholds the certifi-

cation that all proceedings in the District Court should nevertheless be violated is untenable. Such a decision would render ineffective any trial court holding where the defendant juvenile had not appealed his certification order. Thus, any juvenile who was dissatisfied with his conviction or sentence in adult court could have it set aside on the ground that the District Court had no jurisdiction to act because there was no appeal from the certification order. Clearly, such was not the intent of this Court's decision in the Atcheson Case, supra, which allows a juvenile to appeal directly from a certification order, but does not require such an appeal before the District Court obtains jurisdiction.

As is evident from the present appeal, the appellant has never been denied his right to appeal. He now has a full opportunity to have this Court consider any issues concerning his certification with which he takes exception. If this Court finds that the certification was improper, the appellant should be returned to the jurisdiction of the Juvenile Court for whatever appropriate disposition remains available in the juvenile system. He should not simply be released as he proposes

(Appellant's Brief, p. 4). If the certification is upheld by this Court, the trial and conviction in the District Court remains valid, and appellant should continue to serve out his sentence. There would clearly be no reason to vacate all proceedings in the District Court as appellant suggests.

POINT II

THE ORDER FOR CERTIFICATION WAS A
REASONABLE EXERCISE OF DISCRETION
BASED ON SUBSTANTIAL EVIDENCE.

- A. The certification order of the Juvenile court should be upheld if reasonable and supported by substantial evidence.

This Court has consistently held that certification is a discretionary action, State, In Interest of Salas, 520 P2d. 874 (Utah 1974), Atcheson, supra, and State, In Interest of Giron, No. 15557 (Utah, filed Sept. 21, 1978). The standard of review established by the Atcheson case and reaffirmed in Giron is that if the decision to certify is a "reasonable exercise of discretion" based upon "substantial evidence," the order will be sustained, Atcheson, supra, 575 P2d at 183-184. This policy conforms with generally accepted standards of appellate review, especially when the judgment appealed from was discretionary in nature.

It is well settled that a judgment of the trial court is presumed to be correct if there is reasonable evidence in the record to sustain it and the reviewing court will not substitute its discretion for that exercised by the trial court. Lancaster v. Chemi-Cote Perlite Corporation, 511 P. 2d 673, 676 (Ariz. 1973).

This court stated the same policy in Bambrough v. Bethers, 552 P. 2d 1286, 1290 (Utah, 1976): "The judgment

of the trial court will not be reversed unless it is shown that the discretion exercised therein has been abused." Therefore, under well-recognized rules of appellate review, the decision to certify in the present case must be affirmed absent a showing that the exercise of discretion by Judge Hermansen was unreasonable or not supported by substantial evidence. No such showing has been made by appellant in this case.

B. The order of certification was based on substantial evidence.

The criteria to be considered by the judge in a certification hearing were set out by the U.S. Supreme Court in Kent v. United States, 383 U.S. 541, 86 S. Ct. 1045 (1966), and substantially adopted in Rule (7)7 of the Utah Juvenile Court Rules of Practice and Procedure. The certification order in the present case shows that these criteria were properly considered (R. p. 7-8). Moreover, as noted in the following analysis, there is substantial evidence supporting the judge's determination to certify appellant in light of these criteria.

Rule 7(7) sets out seven "factors which may be considered by the court in deciding whether the juvenile court's jurisdiction of such offense will be waived." Although these factors are only "guidelines" for certi-

fication (Giron, supra, p. 3), it has been clearly established that when some or all of the criteria are met, certification is proper. Atcheson, supra; In re Welfare of Hernandez, 548 P.2d 340 (Wash. 1976). The following discussion analyzes the seven factors set out in Rule 7(7) as applicable to the facts and evidence presented in this case.

- (a) The seriousness of the alleged offense to the community and whether the protection of the community requires certification.

Appellant admits that one of the crimes for which he was convicted, aggravated robbery, is of a serious nature (Appellant's Brief, p. 6). However, appellant fails to acknowledge the long list of crimes with which he was initially charged, and which the juvenile court judge had to consider at the time of the certification hearing. These charges included murder in the first degree, aggravated assault, five counts of aggravated robbery, three counts of aggravated burglary, and theft (see Petition, R. p.5-6). Clearly, the argument that such offenses are not serious cannot be maintained.

Furthermore, the court found that the protection of the community required certification (Certification Order R. p.7). This finding was directly supported by the testimony of two expert witnesses (Tr. pp.78-79, 93) and

impliedly supported by the testimony of appellant's probation officer (Tr.p. 54-55). There was no testimony that would support a contrary finding.

- (b) Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.

It would seem that after reading the list of charges in the petition, and the descriptions of the activities of appellant given by the witnesses, it would be difficult to allege that "There is no evidence that the robberies were committed in an aggressive or violent manner". However, just such an assertion is made by appellant herein (Appellant's Brief p.7). By their very definition, ten of the eleven offenses charged require some form of aggressiveness or violence. For example, a burglary becomes an aggravated burglary when the actor causes physical harm to another or threatens immediate use of a dangerous or deadly weapon against another U.C.A. §76-6-203.

Judge Hermansen acknowledged this in his certification order (R. p.7), and there is substantial evidence independent of the inherent characteristics of the charges to support his finding. The record shows that appellant shot at a neighbor during one robbery (Tr. p.5, 6,26) and made threats that amounted to violence in other

robberies (Tr.41). The record also shows that one of these "non-violent" incidents resulted in the death of the robbery victim. (Tr. 28). Also, the psychologist who examined appellant testified that appellant has a potential for violence and could be dangerous (Tr.p.93).

- (c) Whether the alleged offenses was against persons or against property, greater weight being given to offense against persons especially if personal injury resulted.

From the nature of the offenses charged, it is clear that the crimes committed were against both persons and property. The judge also considered this factor as is clear from his order of certification where he specifically found, "That the said alleged offenses were offenses against both persons and property" (R. p. 7). There can be no argument on this point and appellant makes none.

- (d) The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the District Court.

While appellant feels that this factor is inapplicable in this case, Judge Hermansen wisely found it to be a helpful consideration (R. p. 8).

It is true that appellant's accomplice is not an adult, however he was certified to stand trial in the

District Court as an adult (R. p. 8). Thus, the underlying consideration of factor (d) is applicable here and tends to favor certification.

- (e) The sophistication and the maturity of the juvenile as determined by considerations of his home, environmental situation, emotional attitude, pattern of living, and alleged involvement in the offense.

Although the certification order makes no mention of this guideline, the record contains evidence supportive of a finding that appellant is highly sophisticated.

Appellant selected the sites for the crimes (Tr. p. 18), he planned them and made all the decisions (Tr. p. 20). Furthermore, appellant's own probation counselor recommended that certification take place specifically because appellant's high level of sophistication required it (Tr. p. 54).

- (f) The record and previous history of the juvenile including previous contacts with law enforcement agencies, juvenile courts and rehabilitative resources of the juvenile justice system and the success or failure of past corrective efforts in the juvenile system.

In his certification order Judge Hermansen states:

The Court further notes that the said Aaron Lee Greuber has a rather lengthy past record of juvenile offenses of a serious nature and that the rehabilitative resources of the Juvenile Justice System have been ineffective in correcting the conduct and life style of this young man. (R. p. 8)

This finding is more than adequately supported by the evidence. In addition to the eleven offenses charged in the original petition, appellant committed many other violations. See Tr. p. 51-52 for a lengthy list, all of which were committed during his second probation and therefore do not include the initial violations that placed appellant in the juvenile system, nor the recurring infractions that kept him there.

As noted in the statement of facts, supra, the rehabilitative resources of the juvenile system had been virtually exhausted with absolutely no measure of success. Appellant's probation counselor testified that appellant's probation was completely unsuccessful (Tr. p. 53). The counselor's supervisor testified that no remedies available to the juvenile system would be adequate (Tr. p. 76-77). Appellant's examining psychologist also felt the juvenile system was incapable of effectively dealing with the problem (Tr. p. 89) and that, at any rate, appellant lacked the proper attitude for rehabilitation within the time restraints of the juvenile system (Tr. p. 100).

The final guideline for determination of the certification is:

- (g) 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.

Judge Hermansen duly considered the relative merits of the rehabilitative resources of the two systems and concluded:

That the prospects for adequate protection of the public and the likelihood for reasonable rehabilitation of this said juvenile if he is found to have committed the alleged offenses by use of procedures and services and facilities available under order of the Juvenile Court are inadequate and the public would be better served if this young man were certified for treatment and programming in the adult criminal system. (R. p. 8)

A major concern on all the testifying experts was that appellant needed to be securely confined for the protection of society (Tr. p. 54-55, 78-79, 81, 93). Furthermore, both Atcheson, supra, 575 P. 2d at 184, and Giron, supra, at p. 2, have acknowledged that "The best interests of the public are equally as vital as those of the minor". In this case, when given equal consideration, the public concern for safety and security prevails against the appellants' interest in

remaining in the juvenile system. This is particularly true because of the testimony which shows that the juvenile system is ineffective in rehabilitating or treating the appellant. Thus, no substantial purpose would be served in allowing appellant to stay in the juvenile system, but an important public purpose was served by transferring jurisdiction to the adult system which can afford the necessary security while still providing some rehabilitative treatment. Therefore, because a certification order is a discretionary action which in this case was based on substantial evidence, the decision of the Juvenile Court should be affirmed and the certification upheld as valid. Each of the factors of Rule 7(7) were considered by the juvenile court, and the evidence presented with relation to said criteria supports the decision to transfer jurisdiction to the district court.

CONCLUSION

The right to appeal directly from a certification order has been determined to exist in Utah by reason of the statutory language of U.C.A. §78-3a-51. However, a juvenile is not compelled to appeal his certification prior to proceedings in adult court, and failure to do so has no effect upon the jurisdiction of the District

Court. A direct appeal from a certification order is not a constitutionally protected right. Therefore, this Court's dismissal of appellant's original appeal did not violate any due process rights. It is well established that a judgment of the trial court is presumed to be correct if there is reasonable evidence in the record to sustain it. Atcheson, supra, 575 P. 2d at 183. There is certainly reasonable evidence in the record to sustain the order made by the juvenile court in the present case and no showing of abuse of discretion has or can be made. The appellant was afforded a full investigation and a fair hearing on all matters relevant to the question of certification. The evidence adduced at the hearing fully justifies the order transferring jurisdiction in these circumstances.

Therefore, the certification order of the Juvenile Court and the conviction and sentence in the District Court should be affirmed.

Respectfully submitted,

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MAILING CERTIFICATE

This is to certify that I mailed two exact copies of the foregoing Brief of Respondent, postage prepaid, to Jerome H. Mooney, Mooney, Jorgensen & Nakamura, 352 South 300 East, Suite 3, Salt Lake City, Utah 84111, on this the 31st day of May, 1978.

John S. Thompson