

Juvenile Amenability in Discretionary Transfers

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Court Reviews Standards and Procedures in Ohio Juvenile Discretionary Transfer to Adult Court

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In the matter of *State v. Nicholas*, 2022 W.L. 17365211 (Ohio 2022), the Supreme Court of Ohio considered “standards and procedures that apply to a juvenile court’s discretionary transfer of a juvenile for prosecution in an adult court” (*Nicholas*, p 1). The court ruled that the state bears the burden of persuasion on the question of a juvenile’s nonamenability to rehabilitation in the juvenile system, and the lower courts’ decision to transfer the juvenile to adult court was not supported by the evidence.

Facts of the Case

Donovan Nicholas was charged with aggravated murder and murder, both with firearm specifications, for killing his father’s live-in girlfriend when he was 14 years old in the context of dissociative-identity disorder (DID). The state filed a motion to transfer from the juvenile court to the adult court.

Ohio’s discretionary bindover statute outlines discretionary transfer criteria for a juvenile to transfer to adult court. It requires “the child was at least 14 years old at the time of the charged act”; “that there is probable cause to believe that the child committed the charged act”; and that the child was not “amenable to care or rehabilitation within the juvenile system or. . . appear[ed] to be a threat to public safety”

(*Nicholas*, p 15, citing Ohio Rev. Code Ann. § 2152.12(B)(2016)). In addition, the court must balance statutory factors in favor of transfer (Ohio Rev. Code Ann. § 2152.12(D) (2016)) against factors against transfer (Ohio Rev. Code Ann. § 2152.12E (2016)). Additional investigations are required into the child’s social history, educational history, family support, and any other factor influencing whether the child is amenable to juvenile rehabilitation, including a “mental examination” of the child.

In Ohio, a “serious youthful offender” is a juvenile disposition option. This disposition is “a blended sentence that consists of a juvenile disposition coupled with a stayed adult sentence” (*Nicholas*, p 8). Juvenile courts may only enforce a serious youthful offender disposition if the juvenile commits specified acts that demonstrate the rehabilitation efforts using juvenile disposition options have failed. The serious youthful offender status is only possible if an individual has not been transferred to adult court.

Mr. Nicholas claimed that an alternate personality was responsible for the murder. A guardian *ad litem* (GAL) was appointed, and Dr. Daniel Hrinko, PsyD, completed a competency evaluation. At the competency and probable-cause hearing, Mr. Nicholas was declared competent to stand trial. Mr. Nicholas and his father waived the probable cause hearing. The court found that Mr. Nicholas was eligible for discretionary transfer to adult court. Dr. Hrinko was ordered to complete an amenability evaluation. The GAL was ordered to complete a social history and investigation into Mr. Nicholas’ family, education, and juvenile court history.

At the amenability hearing, Dr. Hrinko testified that Mr. Nicholas was amenable to treatment within the juvenile system. He diagnosed Mr. Nicholas with DID and said the disorder could be treated in a residential setting, with “24/7 supervision and support” and weekly psychotherapy sessions. The GAL concluded that it was in Mr. Nicholas’s best interest to remain in juvenile court. Sarah Book, the Acting Chief of Behavioral Health Services for the Ohio Department of Youth Services (DYS), testified that DHS facilities were equipped to offer individual and group psychological and psychiatric services to juveniles who needed them. She was aware of Mr. Nicholas’s diagnosis and indicated that DHS could treat him. During her testimony, Ms. Book could not say that a psychologist would be available 24 hours a day, seven days a week, but indicated that

during weekend and overnight hours, a psychology supervisor could consult over the phone if not available on site.

The juvenile court granted the state's motion to transfer Mr. Nicholas to adult court. The juvenile court decision specified that because DYS could not guarantee 24 hours a day, seven days a week access to a psychologist, it could not provide treatment for Mr. Nicholas's mental illness. Therefore, the juvenile court ruled that "because [DYS] cannot offer the specific treatment necessary to rehabilitate the juvenile, the juvenile system cannot provide a reasonable assurance of public safety" (*Nicholas*, p 9). After transfer, Mr. Nicholas was found guilty of the charges.

Mr. Nicholas appealed, arguing the juvenile court abused its discretion and violated his right to due process by transferring him to adult court. The Second District Court of Appeals rejected his arguments and affirmed the lower court's decision. He appealed to the Supreme Court of Ohio on the basis that due process required the nonamenability decision be supported by clear and convincing evidence; that the moving party for transfer bears the burden of establishing that the juvenile is not amenable to treatment; and that, in deciding whether juvenile offenders are not amenable to juvenile court treatment, juvenile judges must first weigh all the available dispositional options, especially a serious youthful offender disposition.

Ruling and Reasoning

The Supreme Court of Ohio rejected Mr. Nicholas's first proposition on the standard of proof. It found that Ohio Rev. Code Ann. § 2152.12(B)(3) set the standard of evidence. The statute requires the weighing of factors for and against transfer. The basis for the nonamenability decision was simple outweighing of one side over the other, consistent with a preponderance of the evidence. The court also ruled that the amenability hearing satisfies due process because the juvenile and counsel are present to hear the court's reasons for nonamenability.

Regarding Mr. Nicholas's second proposition on the burden going to the moving party, the Supreme Court of Ohio agreed that although prosecution bears the "burden of persuasion" when it asks for transfer to adult court, it did not have to produce affirmative proof of nonamenability. The court ruled that statute Ohio Rev. Code Ann. § 2152.12(C) is unique and requires the juvenile court to gather its own evidence for use in deciding a juvenile's

amenability or nonamenability to rehabilitation in the juvenile setting.

The Supreme Court of Ohio rejected Mr. Nicholas's third proposition that a juvenile court must consider all juvenile dispositions as part of its amenability analysis, including a serious youthful offender disposition. According to state statutes, a serious youthful offender disposition is only for juveniles who are not transferred to adult court and are subsequently declared delinquent. Consideration of dispositions by a juvenile court need occur only after a juvenile has been adjudicated delinquent, and not before.

The Supreme Court of Ohio found that the "procedure leading up to the juvenile court's amenability determination in this case was proper" (*Nicholas*, p 9). But, the court ruled that the juvenile court erred in its decision regarding Mr. Nicholas's amenability because it "mischaracterized" the treatment recommended by Dr. Hrinko as requiring immediate as-needed access to a psychologist and staff experienced in treating DID. The Supreme Court of Ohio found that the "record is devoid of any evidence that supports the court's finding that DYS lacks the resources or capability to treat Nicholas for dissociative-identity disorder" (*Nicholas*, p 10). Because the amenability decision was based on "mischaracterized" testimony without support from evidence in the record, a preponderance of evidence had not been met. Therefore, the Supreme Court of Ohio reversed the appeals court decision, vacated the adult court decision, and remanded the case back to juvenile court.

In addition, the Supreme Court of Ohio decision highlighted a concern that the lower court's ruling suggested "that the state can deny a juvenile access to the rehabilitative goals of the juvenile system based on the state's own failure to make necessary services available" (*Nicholas*, p 11). The court indicated that an amenability decision should not be confused with a state resource problem, particularly because Ohio's juvenile system is not limited to state-run treatment options, per Ohio Rev. Code Ann. § 2152.19(A)(2) (2017).

Discussion

This case reinforces practical considerations for forensic psychiatrists consulting within the juvenile justice setting and emphasizes the importance of unambiguous language when making recommendations. Juvenile courts frequently base decisions on

the evidence of expert psychiatric testimony. As demonstrated by experts in this case, opinions should be clearly communicated to the court. Should a “mischaracterization” of evidence occur, clearly expressed opinions may be relied on in future proceedings with a potentially significant impact.

This case also highlights the importance of familiarity with relevant dispositional options to educate juvenile courts. Should state-managed dispositions be limited, alternative treatment settings or placements might be appropriately included in recommendations. In addition, the emphasis on disentangling a juvenile’s amenability to rehabilitation within the juvenile system from disposition availability is important for forensic psychiatrists, stressing the need to make suitable treatment recommendations not obfuscated by what the expert believes is manageable for the state.

Involuntary Commitment and Right to Possess Firearms

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Seventh Circuit Upheld Federal Gun Prohibition Based on Previous Involuntary Civil Commitment to a Psychiatric Hospital

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In *Escamilla v. United States*, 62 F.4th 367 (7th Cir. 2023), Stefen Escamilla challenged the denial of his attempted handgun purchase under the federal Gun Control Act of 1968. The denial was based on his record of a prior involuntary admission to a psychiatric unit. Mr. Escamilla argued that his psychiatric hospitalization did not constitute a formal commitment within the meaning of the federal firearm statute because he was there on a voluntary and informal basis. The Seventh Circuit Court of Appeals disagreed

and, instead, held that the New York Mental Hygiene Law (NYMHL) emergency admission procedures qualify as a formal involuntary commitment, regardless of the committed person’s subjective intent.

Facts of the Case

Mr. Escamilla served in the United States Army and was stationed at Fort Drum in New York. In March 2018, during an on-base medical appointment, he reported command auditory hallucinations to kill himself and was referred to an on-base psychologist. The psychologist recommended that he go to Samaritan Hospital (Samaritan), a local civilian hospital, for treatment. He agreed and was escorted to the emergency room by Fort Drum personnel. Once there, he was involuntarily admitted to an inpatient psychiatric unit for safety and stabilization on the examining physician’s certification that the admission was warranted pursuant to N.Y. Mental Hyg. Law § 9.39 (2018) because of his psychotic symptoms, depression, and suicidal ideation with plans to hang or stab himself. A psychiatrist examined him the next day and confirmed the need for continued psychiatric hospitalization due to elevated risk of physical harm to himself. Mr. Escamilla was cooperative with the admission process and did not challenge his 11-day psychiatric hospitalization; in fact, the discharge summary indicated that he wanted to prolong his stay. Subsequently, the hospitalization was reported to the National Instant Criminal Background Check System (NICS) database, which the Federal Bureau of Investigation (FBI) uses in determining if a prospective gun buyer is eligible to purchase a firearm.

In July 2019, approximately one year after his hospitalization, Mr. Escamilla attempted to purchase a handgun from a firearms retailer. The gun transfer was denied under 18 U.S.C. § 922(g)(4) (2018) because his background check identified him as a person who had been involuntarily committed to a mental institution. He filed suit against the United States pursuant to 18 U.S.C. § 925 (2018), which allows an individual who is denied a firearm to bring an action against the government for an order directing that the gun transfer be approved. The U.S. District Court for the Eastern District of Wisconsin granted summary judgment to the government, holding that Mr. Escamilla’s emergency psychiatric admission under N.Y. Mental Hyg. Law § 9.39 was a gun-disqualifying commitment within the meaning of § 922(g)(4). Mr. Escamilla appealed and challenged the