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COURT OF APPEALS

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IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO

Plaintiff-Appellee

v.

MATTHEW AALIM

Defendant-Appellant

Appellate Case No. 26249

Trial Court Case No. 14-CR-206

(Criminal Appeal from
Common Pleas Court)

.....
OPINION

Rendered on the 13th day of March, 2015.
.....

MATHIAS H. HECK, JR., by ANDREW T. FRENCH, Atty. Reg. No. 0069384,
Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts
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Attorney for Plaintiff-Appellee

MICHAEL R. PENTECOST, Atty. Reg. No. 0036803, Law Office of the Public Defender,
117 South Main Street, Suite 400, Dayton, Ohio 45422
Attorney for Defendant-Appellant
.....

FAIN, J.

{¶ 1} Defendant-appellant Matthew Aalim appeals from his conviction and
sentence on two counts of Aggravated Robbery, a felony of the first degree, in violation

of R.C. 2911.01, a category two offense under R.C. 2152.02(CC)(1). Aalim contends that the juvenile court erred when it transferred his case to adult court based on the mandatory transfer provisions in R.C. 2152.10(A)(2)(b) and R.C. 2152.12(A)(1)(b). Aalim argues that the mandatory transfer statutes violate his constitutional right to due process and equal protection and violate the prohibition against cruel and unusual punishment.

{¶ 2} In light of established precedent, we conclude that the mandatory transfer provisions of R.C. 2152.10 and R.C. 2152.12 do not violate Aalim's constitutional rights to due process or equal protection and do not constitute cruel and unusual punishment. Accordingly, the judgment of the trial court is Affirmed.

I. The Course of Proceedings

{¶ 3} On November 13, 2013, Aalim was involved in a robbery of two women by threatening them with a loaded gun and demanding their money and cell phones. A complaint was filed against Aalim in juvenile court alleging that he was delinquent by reason of committing an offense that would be considered Aggravated Robbery, if committed by an adult. The State filed a motion to transfer the case to the general division of common pleas court, to proceed with prosecuting Aalim as an adult. The juvenile court held a hearing and made three findings: that at the time of the offense Aalim was 16 years old (date of birth July 27, 1997); that the alleged act would be a felony if committed by an adult; and that there was probable cause to believe that Aalim was responsible for the commission of the felony offense. Based on these findings, the juvenile court relinquished jurisdiction and transferred the case to the general division of common pleas court.

{¶ 4} Aalim was indicted on two counts of Aggravated Robbery, with a firearm specification added to each count. The trial court overruled Aalim's motion to dismiss the indictment, in which he attacked the constitutionality of the mandatory transfer statutes for juvenile offenders accused of certain type of felonies. Aalim then entered a plea of no contest to two counts of Aggravated Robbery and the State dismissed the gun specifications. Aalim was sentenced to four years imprisonment for each of the two felony offenses, to be served concurrently. Aalim appeals, asserting three assignments of error.

II. The Mandatory Transfer Statutes Do Not Violate the Right to Due Process

{¶ 5} Aalim's First Assignment of Error states:

THE MANDATORY TRANSFER OF A JUVENILE OFFENDER TO ADULT COURT PURSUANT TO R.C. 2152.10(A)(2)(B) AND R.C. 2152.12(A)(1)(B) VIOLATES THE JUVENILE'S RIGHT TO DUE PROCESS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 16 OF THE OHIO CONSTITUTION.

{¶ 6} In his first assignment of error, Aalim contends that the mandatory transfer statutes violate his due process rights by failing to require a meaningful transfer hearing, and by failing to incorporate procedural safeguards set forth by the Supreme Court of the United States. In *Kent v. United States*, 383 U.S. 541, 86 Sup.Ct. 1045, 16 L.Ed. 2d 84 (1966), the Supreme Court held the transfer of a juvenile to adult court invalid when no hearing was held, no findings were made, and no reasons were stated for the waiver of

jurisdiction. *Id.* at 552. The Court declared that the transfer process must satisfy basic requirements of due process and fairness, as well as compliance with statutory requirements. *Id.* at 553. The Court stated, "[i]t is clear beyond dispute that the waiver of jurisdiction is a 'critically important' action determining vitally important statutory rights of the juvenile." *Id.* at 557.

{¶ 7} R.C. 2152.12(A) requires the juvenile court to conduct a hearing prior to waiving its exclusive jurisdiction over juveniles and transferring a case to the general division of common pleas court. For certain categories of offenses, the transfer is mandatory if the child is over the age of fourteen, while lesser offenses are subject to discretionary transfer, allowing the juvenile court to consider nine factors set forth in R.C. 2151.12 (D) to determine whether the child is amenable to care or rehabilitation in the juvenile court system. The juvenile court did not utilize these factors before transferring Aalim, because he was charged with a category two offense and was over the age of 16 at the time of the offense. The procedure followed for Aalim's transfer does comply with the statutory requirements set forth in R.C. 2152.10(A)(2)(B) and R.C. 2152.12(A)(1)(B). We have previously reviewed this statutory scheme and found that it does comport with fundamental concepts of due process. *State v. Brookshire*, 2d Dist. Montgomery No. 25853, 2014-Ohio-1971, ¶ 30.

{¶ 8} . At we stated in *Brookshire*, "this court along with other appellate districts have already determined that the statutory provisions requiring mandatory transfer do not violate due process and equal protection rights under the Fourteenth Amendment. See, e.g., *State v. Ramey*, 2d Dist. Montgomery No. 16442, 1998 WL 310741 (May 22, 1998); *State v. Agee*, 133 Ohio App.3d 441, 728 N.E.2d 442 (2d Dist.1999); *State v. Kelly*, 3d

Dist. Union No. 14-98-26, 1998 WL 812238 (Nov. 18, 1998); *State v. Lee*, 11th Dist. Lake No. 97-L-091, 1998 WL 637583 (Sept. 11, 1998); *State v. Collins*, 9th Dist. Lorain No. 97 CA 0006845, 1998 WL 289390 (June 3, 1998) (all finding that the mandatory transfer provisions in former R.C. 2151.26(B), which is now codified as R.C. 2152.12, do not violate a juvenile's constitutional rights to due process and equal protection under the law). We will continue to follow the precedent on this issue unless otherwise advised by the Supreme Court of Ohio." *Brookshire* at ¶ 30.

{¶ 9} We are not persuaded that we should overrule our holding in *Brookshire*.

{¶ 10} Aalim's First Assignment of Error is overruled.

**III. The Mandatory Transfer Statutes Do Not
Violate the Right to Equal Protection**

{¶ 11} Aalim's Second Assignment of Error states:

THE MANDATORY TRANSFER OF A JUVENILE OFFENDER TO
ADULT COURT PURSUANT TO R.C. 2152.10(A)(2)(B) AND R.C.
2152.12(A)(1)(B) VIOLATES THE JUVENILE'S RIGHT TO EQUAL
PROTECTION AS GUARANTEED BY THE FOURTEENTH
AMENDMENT TO THE UNITED STATES CONSTITUTION AND
ARTICLE 1, SECTION 2 OF THE OHIO CONSTITUTION

{¶ 12} Aalim argues that the mandatory transfer provisions found in R.C. 2152.10 and R.C. 2152.12 create classes of similarly situated juvenile offenders who are treated differently, solely based on their age. Aalim was 16 years of age at the time of the category two offense, which mandated a transfer to adult court, but if the offense had occurred

eighteen weeks earlier, Aalim would have been entitled to an amenability hearing, because his transfer would have been discretionary, Aalim having been under the age of sixteen at the time of the offense. Aalim also argues that age-based distinctions in the mandatory transfer statutes are not rationally related to the purpose of juvenile delinquency proceedings. The State cites precedent for the proposition that treating juvenile offenders differently based on the seriousness of the offense is rationally related to the government's interest in deterring violent juvenile crime.

{¶ 13} We have previously reviewed this argument finding that the mandatory transfer process does not violate a juvenile offender's right to equal protection of the law. *State v. Anderson*, 2d Dist. Montgomery No. 25689, 2014-Ohio-4245, ¶¶ 72-75.

{¶ 14} "The standard for determining if a statute violates equal protection is 'essentially the same under state and federal law.'" *State v. Lane*, 11th Dist. Geauga No. 2013-G-3144, 2014-Ohio-2010, at ¶ 64, quoting *Fabrey v. McDonald Village Police Dept.*, 70 Ohio St.3d 351, 353, 639 N.E.2d 31 (1994). "Under a traditional equal protection analysis, class distinctions in legislation are permissible if they bear some rational relationship to a legitimate governmental objective." *Lane* at ¶ 64, quoting *State ex rel. Vana v. Maple Hts. City Council*, 54 Ohio St.3d 91, 92, 561 N.E.2d 909 (1990).

{¶ 15} As here, the defendant in *Lane* and the defendant in *Anderson* contended that disparate treatment based on age was not rationally related to the purpose of juvenile delinquency proceedings, but did not support this contention with any type of empirical evidence. "In the absence of such evidence, we cannot find that the distinction the legislature made is unconnected to its aims. As the court in *Lane* observed, 'the purpose of this legislation is to protect society and reduce violent crime by juveniles. * * * Contrary

to appellant's argument, juveniles who are 14 or 15 are markedly different from those who are 16 or 17 in many ways, e.g., in terms of physical development and maturity. *** Thus, the legislature's decision to single out older juvenile homicide offenders, who are potentially more street-wise, hardened, dangerous, and violent, is rationally related to this legitimate governmental purpose.' " *Anderson* at ¶ 75, quoting *Lane* at ¶ 67.

{¶ 16} We are not persuaded that we should overrule our holding in *Anderson*.

{¶ 17} Aalim's Second Assignment of Error is overruled.

**IV. The Mandatory Transfer Statutes Do Not Violate
the Prohibition Against Cruel and Unusual Punishment**

{¶ 18} Aalim's Third Assignment of Error states:

THE MANDATORY TRANSFER OF A JUVENILE OFFENDER TO
ADULT COURT PURSUANT TO R.C. 2152.10(A)(2)(B) AND R.C.
2152.12(A)(1)(B) VIOLATES THE PROHIBITION AGAINST CRUEL AND
UNUSUAL PUNISHMENT AS GUARANTEED BY THE EIGHTH AND
FOURTEENTH AMENDMENTS TO THE UNITED STATES
CONSTITUTION AND ARTICLE 1, SECTION 9 OF THE OHIO
CONSTITUTION

{¶ 19} Aalim argues that the mandatory transfer statutes violate the prohibition against cruel and unusual punishment because age is treated as an aggravating factor, not a mitigating factor, because penalties imposed on adult offenders are far more severe and the adult system does not allow the court to consider the unique characteristics of the minor's age or the circumstances surrounding the offense. The State argues that the

transfer process, by itself, is not a form of punishment.

{¶ 20} In *State v. Brookshire*, supra, at ¶¶ 31-32, we rejected a similar 8th Amendment challenge. We are not persuaded that we should overrule this holding in *Brookshire*.

{¶ 21} Aalim's Third Assignment of Error is overruled.

V. CONCLUSION

{¶ 22} All of Aalim's assignments of error having been overruled, the judgment of the trial court is Affirmed.

.....

HALL, J., concurs.

DONOVAN, J., concurring:

{¶ 23} Although I am compelled to follow our jurisprudence on mandatory transfer, I'd urge the Ohio Supreme Court to take up the issue.

{¶ 24} The judicial branch is shut out of the transfer process entirely in Aalim's case. The juvenile judge's ability to exercise sound discretion is subjugated to the legislative branch. Although there may be strong policy reasons for drawing a line based upon chronological age, this ignores the fact that the "signature qualities of youth are transient" as noted in *Miller v. Alabama*, 567 U.S. _____, 132 S.Ct. 2455, 2467, 183 L.Ed.2d 407, 422 (2012). Whether an individual defendant has reached a stage of mental and emotional development where society must subject them to adult rules of criminal responsibility is best decided on a case by case basis by a learned juvenile judge.

Copies mailed to:

Mathias H. Heck
Andrew T. French
Michael R. Pentecost
Hon. Dennis J. Adkins

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FINAL ENTRY

Pursuant to the opinion of this court rendered on the 13th day
of March, 2015, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the clerk of the Montgomery
County Court of Appeals shall immediately serve notice of this judgment upon all parties and
make a note in the docket of the mailing.

Mike Fain
MIKE FAIN, Judge

Mary E. Donovan
MARY E. DONOVAN, Judge

Michael T. Hall
MICHAEL T. HALL, Judge

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