

Certification Hearing was upheld were appellate record did not contain a court reporter's record of the certification hearing itself.[Carrillo v. State](12-1-6)

On December 6, 2011, the Amarillo Court of Appeals held that, the record contains information the juvenile court could have viewed as supporting its decision. A court does not abuse its discretion when it reaches a conclusion based on conflicting evidence

¶ 12-1-6. **Carrillo v. State**, No. 07-11-00057-CR, 2011 WL 6059800 (Tex.App.-Amarillo, 12/6/11), on rehear.

Facts: Appellant Karla Yvette Carrillo appealed from the trial court's adjudication of her guilt for burglary of a habitation and the resulting sentence. Appellant's appointed attorney filed a brief in compliance with *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967) and *In re Schulman*, 252 S.W.3d 403 (Tex.Crim.App.2008). Agreeing with counsel's conclusion the record failed to show any arguably meritorious issue that could support the appeal, we affirmed the trial court's judgment. *Carrillo v. State*, No. 07-11-00057-CR, 2011 Tex.App. LEXIS 7367 (Tex.App.-Amarillo August 31, 2011, no pet.)(mem. op., not designated for publication).

Now represented by retained counsel, appellant has filed a motion for rehearing, identifying what she believes is an arguably meritorious issue. She argues the juvenile court abused its discretion by certifying her as an adult.

Appellant was born July 23, 1991. She was sixteen years old in 2008 when she took part in the burglary. She requested certification as an adult to avoid placement outside her home in the juvenile system. The juvenile court heard evidence and certified her as an adult. In November 2009, appellant plead guilty to the burglary offense. Under a plea agreement, the trial court deferred adjudication of guilt and placed appellant on community supervision for a period of two years. Her community supervision was revoked in January 2011 after appellant plead "true" to several of the State's allegations in its motion to adjudicate guilt. The trial court assessed punishment against appellant at eight years of imprisonment and a \$500 fine.

As noted, appellant appealed and we affirmed the trial court's judgment. By her motion for rehearing, appellant contends no evidence supported the juvenile court's finding the statutory requisites for her certification as an adult were met.

Assuming, without deciding, that appellant could now, for the first time, assert error in her certification,^{FN2} we do not agree her contention is arguably meritorious.

FN2. See Tex. Code Crim. Proc. Ann. art. 44.47(b) (West 2011) (defendant may appeal transfer from juvenile court only "in conjunction with the appeal of a conviction of or an order of deferred adjudication for the offense for which the defendant was transferred to criminal court"). Under her plea bargain, appellant waived her right of appeal from the order deferring adjudication. See *Woods v. State*, 68 S.W.3d 667, 670 (Tex.Crim.App.2002).

Held: Motion for Rehearing Denied

Opinion: An appellate court reviews a juvenile court's decision to waive jurisdiction and transfer a juvenile to the adult criminal justice system for an abuse of discretion. *State v. Lopez*, 196 S.W.3d 872, 874 (Tex.App.-Dallas 2006, pet. ref'd.); *Faisst v. State*, 105 S.W.3d 8, 12 (Tex.App.-Tyler 2003, no pet.). In making the decision to transfer a juvenile to adult court, the court must find there is probable cause to believe the juvenile committed the offense alleged in the petition, and that the welfare of the community requires criminal prosecution because of the seriousness of the offense alleged or the background of the child. See Tex. Fam.Code Ann. § 54.02(a)(3) (West 2011). Specifically, the court is to consider: (1) whether the alleged offense was against a person or property, with greater weight in favor of transfer given to offenses against the person; (2) the sophistication and maturity of the child; (3) the record and previous history of the child; and (4) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court. Tex. Fam.Code Ann. § 54.02(f) (West 2011). Not every factor must be given equal weight. See *In re J.J.*, 916 S.W.2d 532, 535 (Tex.App.-Dallas 1995, no writ); *In re C.C.G.*, 805 S.W.2d 10, 15 (Tex.App.-Tyler 1991, writ denied).

The appellate record does not contain a reporter's record of the certification hearing. The clerk's record, however, contains appellant's social case history and the report of psychological evaluation conducted of appellant in June 2008. Although appellant argues in her motion for rehearing that the juvenile court should have reached a different conclusion with regard to the factors related to her certification, the record contains information the juvenile court could have viewed as supporting its decision. A court does not abuse its discretion when it reaches a conclusion based on conflicting evidence. *Unifund CCR Partners v. Villa*, 299 S.W.3d 92, 97 (Tex.2009); *In re B.N.F.*, 120 S.W.3d 873, 877 (Tex.App.-Fort Worth 2003, no pet.); *In re Barber*, 982 S.W.2d 364, 366 (Tex.1998) (orig.proceeding).

Conclusion: We remain of the opinion no arguably meritorious claim of reversible error is presented. Accordingly, appellant's motion for rehearing is overruled.