

FILED
July 30, 2025

C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re A.M.

No. 23-367 (Mercer County CC-28-2022-JD-70)

MEMORANDUM DECISION

Petitioner A.M. appeals the Circuit Court of Wood County’s June 12, 2023, order transferring a juvenile delinquency matter to adult criminal jurisdiction.¹ The petitioner argues that the circuit court erred in ordering the transfer based upon certain evidentiary rulings it made at the transfer hearing, the State’s failure to present sufficient evidence to support the transfer, the court’s failure to consider exculpatory evidence, the court’s failure to grant a continuance, and the court’s failure to incorporate specific findings and conclusions into its final order. Upon our review, this Court concludes that the transfer order is not immediately appealable pursuant to West Virginia Code § 49-4-710. As explained below, a memorandum decision dismissing this appeal is appropriate.

On November 17, 2022, Marquise McLean (the victim) was shot and killed in a parking lot located outside of a restaurant/bar in Mercer County, West Virginia. Detective M.T. Hatfield responded to the scene, spoke with some bystanders and restaurant employees, and collected surveillance footage of the shooting. After obtaining a still shot of the shooter from the surveillance footage and distributing the picture to local law enforcement agencies, Det. Hatfield identified then-seventeen-year-old A.M. as the suspected shooter.

On November 29, 2022, the State filed a juvenile delinquency petition alleging that A.M. committed acts which, if committed by an adult, would be a crime under State law and punishable by imprisonment, i.e., murder and use or presentation of a firearm during the commission of a felony. Subsequently, on December 12, 2022, the State filed a motion to transfer the case to adult criminal jurisdiction.

After several continuances, a hearing on the motion to transfer was held on June 12, 2023. Counsel for A.M. requested another continuance, stating that the State had not yet provided all discovery, including the autopsy report. The State objected to the request, stating that it “has turned over every piece of evidence we had except for the lab results, which aren’t done yet.” The court

¹ The petitioner appears by counsel David B. Kelley. The State of West Virginia appears by Attorney General John B. McCuskey and Deputy Attorney General Andrea Nease Proper. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. We use initials to protect the identity of a juvenile involved in this case. *See* W. Va. R. App. P. 40(e).

denied the request, and the State presented Det. Hatfield's testimony regarding his investigation of A.M. as the perpetrator, as well as the surveillance footage depicting the shooting, in support of the motion to transfer.

By order dated June 12, 2023, the court ordered that A.M. "be transferred to adult status." In support of its order, the court found that A.M.'s forensic psychological evaluation indicated that A.M. had the mental capacity to consult with his attorney and assist in his defense, that A.M. was not suffering from a mental disease or defect such that he lacked the substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law, and that A.M.'s cognitive abilities were intact. The court acknowledged that A.M. had no prior juvenile or criminal history, had attained gainful employment in the past, and "appears to have the same maturity level as would be expected from a person of his age." Lastly, the court found that A.M. was seventeen years of age when the alleged murder took place and that, "[b]ased on the testimony of the investigating officer and the exhibits, probable cause exists to believe that [A.M.] committed the offense of murder." It is from the June 12, 2023, order transferring his juvenile matter to criminal jurisdiction that A.M. appeals.

The circuit court's application of the transfer statute is reviewed de novo. *State v. Larry T.*, 226 W. Va. 74, 77, 697 S.E.2d 110, 113 (2010) (citing Syl. Pt. 1, *Crystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995)). Initially, we observe that the "[t]he primary object in construing a statute is to ascertain and give effect to the intent of the Legislature." Syl. Pt. 1, *Smith v. State Workmen's Comp. Comm'r*, 159 W. Va. 108, 219 S.E.2d 361 (1975). However, "[w]here the language of a statute is plain and unambiguous, there is no basis for application of rules of statutory construction; but courts must apply the statute according to the legislative intent plainly expressed therein." Syllabus Point 1, *Dunlap v. State Compensation Director*, 149 W. Va. 266, 140 S.E.2d 448 (1965)." Syl. Pt. 7, *State v. Mills*, 243 W. Va. 328, 844 S.E.2d 99 (2020).

In plain language, West Virginia Code § 49-4-710(j) provides, in relevant part, that

[a] juvenile who has been transferred to criminal jurisdiction pursuant to subsection (e), (f) or (g) of this section, by an order of transfer, has the right to either directly appeal an order of transfer to the supreme court of appeals or to appeal the order of transfer following a conviction of the offense of transfer.

Subsections (e), (f), and (g) of West Virginia Code § 49-4-710 pertain to the discretionary transfer of a juvenile to adult criminal jurisdiction. However, in this case, the State moved to transfer A.M. to adult criminal jurisdiction pursuant to West Virginia Code § 49-4-710(d)(1), which provides that murder is an enumerated offense requiring mandatory transfer to adult criminal jurisdiction. There is nothing in the statute to suggest that a juvenile who has been transferred to criminal jurisdiction pursuant to subsection (d) has the right to directly appeal an order of transfer, and this Court has consistently reiterated that

[i]t is imperative to remember that "it is not for this Court arbitrarily to read into a statute that which it does not say. Just as courts are not to eliminate through judicial interpretation words that were purposely included, we are obliged not to add to

statutes something the Legislature purposely omitted.” Syl. Pt. 11, *Brooke B. v. Ray*, 230 W. Va. 355, 738 S.E.2d 21 (2013).

State v. Butler, 239 W. Va. 168, 178, 799 S.E.2d 718, 728 (2017). *See also War Mem’l Hosp., Inc. v. W. Va. Health Care Auth.*, 248 W. Va. 49, 55, 887 S.E.2d 34, 40 (2023) (“[T]his Court is not free to read into a statute words that do not exist; rather, we are required to apply the statute as written.” (citing *Phillips v. Larry’s Drive-In Pharmacy, Inc.*, 220 W. Va. 484, 491, 647 S.E.2d 920, 927 (2007))). Accordingly, because West Virginia Code § 49-4-710 specifically omits subsection (d) from the list of transfers from which a juvenile can directly appeal, we must conclude that the statute does not permit A.M. to directly appeal from the circuit court’s order transferring him to adult criminal jurisdiction. Consequently, we decline to review A.M.’s appeal.

For the foregoing reasons, this appeal is dismissed.

Dismissed.

ISSUED: July 30, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice Tim Armstead
Justice C. Haley Bunn
Justice Charles S. Trump IV