


CONFIDENTIAL - NOT FOR DISSEMINATION

MEMORANDUM

From: Deborah Ross 
To: Legal Committee
Re: State v. Andre Green
Date: December 3, 1996

Background

On November 5, 1996, the Court of Appeals unanimously declined to reverse the conviction of 13 year old Andre Green for first-degree sexual offense, first-degree burglary and attempted first-degree rape. Because the Court of Appeals would not let us file an amicus brief, we assisted the Appellate Defender's Office with the section of the brief challenging the transfer of Andre Green's case from juvenile court to Superior Court under N.C. Gen. Stat. § 7A-610, which was amended by the Legislature in 1994 to allow for the transfer of 13 year olds to adult court. We argued that the law violates due process because it does not require the court to make specific findings about whether the best interest of the State or the juvenile would be served by the transfer, and the statute does not require the court to balance those findings in making its ruling. The Court of Appeals rejected this argument based on a 1974 case upholding the constitutionality of a predecessor to the statute. The Appellate Defender's Office plans to appeal and file a petition for discretionary review. Assuming the Supreme Court takes the case, the Legal Committee must decide whether we will file an amicus brief on behalf of Andre Green. The Legal Committee also needs to decide whether we want to file a motion in support of the petition for discretionary review.

The Current State of the Law and the Problems it Creates

The current North Carolina transfer statutes, N.C.G.S. § 7A-608 - 610, permit a juvenile age 13, 14 or 15 to be bound over to Superior Court on his own request or the request of the prosecutor after notice, hearing, and a finding of probable cause, if he committed an offense that would be a felony if committed by an adult. For class A felonies transfer is mandatory. In deciding whether to bind the juvenile over the judge "may proceed to determine whether the needs of the juvenile or the needs of the State will be served by transfer" N.C.G.S. § 7A-610 (emphasis added). The judge's order of transfer shall specify the reason for the transfer, id. at (c), but findings of fact are not required. In re Bunn, 34 N.C. App. 614, 239 S.E.2d 483 (1977). The standard of review of the judge's decision on appeal is gross abuse of discretion. Id. There is no requirement that the judge weigh such factors as prior criminal history or amenability to treatment when making a transfer decision. Such due process protections were required for the District of Columbia by the United States Supreme Court in Kent v. United States, 383 U.S. 541 (1966). The North Carolina Court Appeals rejected Kent as applicable only in the District of Columbia. In Re Bullard, 22 N.C. App. 245, 247-48, 206 S.E.2d 305, 307, appeal dismissed, 285 N.C. 758, 209 S.E.2d 279 (1974). Other states have adopted the Kent factors in their transfer statutes.

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It is crucial that North Carolina's transfer statute provide meaningful due process protections, especially given the increased number of juveniles who are bound over to superior court and the fact that judicial review of bindovers is much more deferential than judicial review of commitment to training school, including the fact that a bindover is arguably a more severe punishment with greater negative consequences than commitment to training school. Commitments to training school require detailed findings of fact that are reviewed to see whether they include findings about the juvenile's needs and whether there are appropriate community resources to meet those needs, and that alternatives to commitment have been attempted but failed or are inappropriate and the juvenile's behavior constitutes a threat to the community. N.C.G.S. § 7A-652. We have heard that when presented with a juvenile who commits a serious felony but who has not been involved in community based services, some judges believe that a decision to bind the juvenile over is less likely to be reversed than a decision to send him to training school. This puts juveniles who judges think should really be in training school directly into the adult system.

Why Andre Green's Case Might be the Best Case for Challenging the Constitutionality of the Law

The facts of Andre Green's case may be the most sympathetic the Court will see in considering the constitutionality of the transfer statute. He was 13 years old when he committed the crimes, he has a 75 IQ, he has no previous criminal record, he would be amenable to treatment, and he has had no previous treatment. The next case that reaches the Supreme Court on this issue might involve a defendant with a more serious prior record. Furthermore, there is more appropriate treatment for juvenile sex offenders in the juvenile system than he will ever receive in the adult system. Finally, Andre Green will be eligible for parole in 25 years. Without the appropriate treatment, he will reenter society at age 38 having learned everything he knows about sex in prison. If he goes into the juvenile system, he still could receive three years of treatment.