

**IN THE COURT OF APPEALS OF IOWA**

No. 8-556 / 07-1374  
Filed August 13, 2008

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**DANIEL PEC-SON,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge, (waiver) and James D. Coil, District Associate Judge, (trial and sentencing).

Daniel Pec-Son appeals from his conviction and sentence on two counts of forgery. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and James J. Katcher, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Vogel and Eisenhauer, JJ.

**HUITINK, P.J.**

Daniel Pec-Son appeals from his conviction and sentence on two counts of forgery following the juvenile court's waiver of jurisdiction and a bench trial in district court. We affirm.

**I. Background Facts and Proceedings**

On May 15, 2006, Pec-Son entered Veridian Credit Union with a friend who acted as Pec-Son's interpreter because Pec-Son does not speak English. Pec-Son asked teller Deno Cejvanovic about opening an account and presented him with a social security card and a resident alien card both showing the name Daniel Pec. When Cejvanovic attempted to verify the social security number provided by Pec-Son, he was informed the number was invalid due to death. Cejvanovic's coworker received the same information when she tried to verify the social security number. After Cejvanovic consulted with another coworker about the situation, Cejvanovic called the police.

When Officer Matthew Wertz arrived at Veridian Credit Union, Pec-Son told Wertz he was nineteen years of age. Officer John DeKoster also arrived, and the officers believed the social security and resident alien cards were both fake.<sup>1</sup>

At the police station, Pec-Son told officers he was twenty years of age and that he had been attempting to open a bank account. He admitted that he had purchased both cards from a man on a street corner about two years earlier and that he was in the country illegally. Pec-Son was charged with two counts of

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<sup>1</sup> Wertz later determined that the cards were not fake, but the social security card belonged to a woman who had died and the resident alien number belonged to a Mexican male born in 1967.

forgery, a class D felony, in violation of Iowa Code sections 715A.2(1)(d) and 715A.2(2)(a)(4) (2007).

Pec-Son later produced a Guatemalan birth certificate showing he was actually seventeen years of age at the time of the incident. The juvenile court waived jurisdiction to an adult criminal court. Pec-Son argues that the juvenile court abused its discretion when it failed to consider immigration issues in its decision to waive Pec-Son's case to adult court.

## **II. Standard of Review**

We generally review rulings in juvenile proceedings de novo, but where the legislature clearly gives the juvenile court discretion in a specific area, we review the juvenile court's decision for an abuse of discretion. *State v. Tesch*, 704 N.W.2d 440, 447 (Iowa 2005). Thus, our review is de novo only to the extent that we must still examine all the evidence in determining if the juvenile court abused its discretion. *Id.* "An abuse of discretion occurs when the trial court exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable." *State v. Henderson*, 696 N.W.2d 5, 10 (Iowa 2005).

## **III. Waiver to Adult Court**

Pec-Son argues that when the juvenile court considered whether to waive jurisdiction of his case to adult court, the juvenile court abused its discretion in finding it could not consider immigration issues. A juvenile court may waive its jurisdiction over a child after a waiver hearing if all of three conditions apply. Pec-Son stipulated to the first two conditions, that (1) he is fourteen years of age or older and (2) probable cause existed to believe that he committed a public

offense. The issue is whether the juvenile court properly evaluated all factors in considering the third condition, which requires the court to determine

that the state has established that there are not reasonable prospects for rehabilitating the child if the juvenile court retains jurisdiction over the child and the child is adjudicated to have committed the delinquent act, and that waiver of the court's jurisdiction over the child for the alleged commission of the public offense would be in the best interests of the child and the community.

Iowa Code § 232.45(6)(c). In making the determination required by section 2323.42(6)(c) quoted above, the court is given a nonexhaustive list of factors it must consider:

- a. The nature of the alleged delinquent act and the circumstances under which it was committed.
- b. The nature and extent of the child's prior contacts with juvenile authorities, including past efforts of such authorities to treat and rehabilitate the child and the response to such efforts.
- c. The programs, facilities and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities and personnel which would be available to the court that would have jurisdiction in the event the juvenile court waives its jurisdiction so that the child can be prosecuted as an adult.

Iowa Code § 232.45(8). This section "confers very broad discretion upon the court to consider such factors as it deems relevant in determining whether it ought to waive jurisdiction in a particular case." *In re J.J.A.*, 580 N.W.2d 731, 741 (Iowa 1998).

The juvenile court clearly considered all of the factors it is required to consider under sections 232.45(6) and 232.45(8). The juvenile court's order for waiver of jurisdiction expressed concern that because Pec-Son lived with his uncle, who had failed to meet with juvenile court authorities, the court could not conclude Pec-Son would have adequate supervision to participate in the service

alternatives offered by the juvenile court. The juvenile court further found after considering Pec-Son's "age, lack of adult supervision, and nature of the offenses," that "it is in the juvenile's best interest and the community's best interests that orders for waiver of jurisdiction be entered."

The juvenile court did state during the hearing on the motion for waiver of jurisdiction that "the immigration issue really is--is a non-issue for me. That is not a factor I'm considering. I don't think I can--can consider it." While the Iowa Code lists several factors the juvenile court must consider, immigration issues are not one of the required factors. Thus, while the juvenile court could have considered the possible immigration effects of waiving its jurisdiction, it was not required to. We find the juvenile court undertook the necessary evaluations required by the Iowa Code and ultimately, after weighing the "respective prospects for rehabilitation offered by the juvenile and adult systems," agreed with the juvenile court officer's report that the juvenile system offered only limited service alternatives due to the lack of parental supervision. *See State v. Greiman*, 344 N.W.2d 249, 251 (Iowa 1984).

Because we find Pec-Son preserved error on the issue of the juvenile court's waiver of jurisdiction, we decline to address Pec-Son's ineffective assistance of counsel argument. Accordingly, we affirm the conviction and sentence of Daniel Pec-Son.

**AFFIRMED.**