

STATE OF MICHIGAN
IN THE CIRCUIT COURT FAMILY DIVISION
COUNTY OF MARQUETTE

In the matter of:

DAVID JOHN SKEWIS JR.,

File No. 11-9330-DL

juvenile.

(People v Skewis – File No. I11-0036-FY)

ORDER DISMISSING JURISDICTION

This case was initiated by authorization of a warrant charging Defendant with two counts of First Degree Criminal Sexual Conduct. The warrant was issued by a District Court magistrate on January 19, 2011. Defendant is 26 years old. The allegations state that the actions upon which the charge was based took place between 1996 and 1999. In 1999, Defendant would have been 15 years old.

On February 18, 2011, the case was transferred to this court by order of Hon. Roger W. Kangas. This order was apparently issued as a result of the motion by the prosecutor, and was based on MCL 712A.3(1).

The matter is now before this court on competing motions: the People have requested that this court conduct a waiver hearing to transfer the case back to adult criminal court; the defense has requested a probable cause hearing and dismissal for failure to hold a timely preliminary examination as required by MCL 766.4.

There is no question that Defendant is entitled to a probable cause determination. In a routine delinquency proceeding, a probable cause determination would be made as part of a preliminary hearing under MCR 3.935. Adult criminal procedures do not apply to proceedings in Juvenile Court.

In re Blackshear, 262 Mich App 101; 686 NW² 280; (2004).

Charges that a person committed a “specified juvenile violation”, including First Degree Criminal Sexual Conduct, may be handled in a variety of ways:

1. The matter could be conducted entirely in Juvenile Court, and, if the Respondent was found to have committed the offense, a juvenile disposition could be imposed under MCL 712A.18.
2. The matter could be initiated in Juvenile Court, and, if the Respondent was at least 14 years of age, the prosecution could request that the matter be waived to adult criminal court pursuant to MCL 712A.4.
 (“Traditional waiver”).
3. The matter could be initiated in Juvenile Court and “designated” by the prosecutor pursuant to MCL 72A.2d. When designation occurs, the juvenile has the right to a “preliminary examination” within 14 days MCR 3.951(a)(2)(b)(iv). A juvenile who is found to have committed a designated offense can be subject to adult criminal sanctions under MCL 712A.18(1)(n).
 (“Designation”)
4. The prosecutor may authorize a warrant under the provisions of MCL 600.606. The matter will then proceed in adult criminal court. In the event that the magistrate concludes after the preliminary hearing that a “specified juvenile offense” was not committed, the case may be transferred to Juvenile Court under MCL 766.14. If the Defendant is convicted in adult criminal court for this offense, the sentencing judge must impose an adult sentence. MCL 769.1(1). If the juvenile is convicted of another offense, the sentencing court may impose an adult sentence or a juvenile disposition pursuant to MCL 769.1(3).
 (“Automatic waiver”).

This is clearly an “automatic waiver” case because it was initiated in adult criminal court by authorization of a warrant. The request for transfer of the case to Juvenile Court and the request that this court hold a waiver hearing are inappropriate, and this court will not, and should not, process the case in Juvenile Court.

The People rely on MCL 712A.3(1) and *People v Schneider*, 119 Mich App 480; 326 NW² 416; (1982) to support their position. The *Schneider* case was decided to resolve a conflict in the statutory scheme that existed at the time. It provided a mechanism by which individuals who had become adults could be prosecuted for crimes committed when they were juveniles.

The “designation” and “automatic waiver” statutes were enacted in 1988, six years after the *Schneider* case was decided. These statutes provided different mechanisms to deal with the problem identified in the *Schneider* case.

In 1993, the Michigan Supreme Court decided *People v Veling* 443 Mich 23; 504 NW² 456; (1993). In describing the operation of the “automatic waiver” procedure, the Supreme Court said this:

In 1988, the Michigan Legislature passed a package of laws that modified the manner in which courts treat the jurisdiction, adjudication, and treatment or punishment of juvenile offenders. Among the many changes was an amendment of the Revised Judicature Act giving the state’s circuit courts automatic jurisdiction to hear certain offenses committed by juveniles aged fifteen or sixteen.¹ This amendment allows prosecutors to proceed automatically in circuit court against juvenile offenders charged with certain enumerated offenses without first having to obtain a waiver from the probate court.²

²Before the enactment of the automatic waiver statute, a juvenile could only be tried in circuit court if the prosecutor sought and received a waiver from the probate court.

(at pp 25 – 26)

This holding explains the operation of the “automatic waiver” statute. By implication, the *Veling* case overrules *People v Schneider*, and makes it clear that if a juvenile is charged in adult court, no waiver hearing is necessary.

The *Veling* holding controls these facts. This court does not have jurisdiction to hold either a preliminary examination or a waiver hearing. Unless or until a magistrate determines that a specified offense has not been committed, and transfers the case to this court pursuant to MCL 766.14, this juvenile court proceeding is **HEREBY DISMISSED**.

DATE: _____

Hon. Michael J. Anderegg
Family Court Judge