

In re Interest of Zoie H.

Caselaw No.

No. S-18-1028

Filed on

Friday, January 24, 2020

Summary:

Zoie H. appeals this case out of the Separate Juvenile Court of Lancaster County. She was adjudicated under Neb. Rev. Stat. § 43-247(2) for attempted theft. This Court affirms.

In September of 2018, Zoie was with a friend at a gas station where the owner of a Lexus says the girls got in her car and Zoie attempted to start the car and said she was going to take it. The clerk in the gas station called 911. Zoie escaped, but the woman identified her. Zoie was interviewed by the LPD with her father. She waived her Miranda rights and explained how she entered the car and felt like taking it.

The State filed a petition alleging that Zoie committed attempted theft by unlawful taking in the amount of \$5,000 or more, which is a class IIIA felony. Zoie filed a motion to quash and a demand for a jury trial based on Neb. Rev. Stat. § 28-1204.5, enacted in 2018 which prohibits people under 25 from knowingly possessing a firearm if he or she has been adjudicated in the juvenile court for a crime that would constitute a felony. The Court held a hearing and overruled the motion to quash and denied the demand for a jury trial under Neb. Rev. Stat. § 43-279(1), which states that juvenile court proceedings shall be conducted before the court without a jury??

The Court held an adjudication hearing and witnesses, including a sergeant, the car owner, and the store manager testified that the value of the Lexus was over \$5,000 based on the Kelley Blue Book value. Zoie did not present any evidence.

Zoie's assignments of error on appeal include the overruling of her motion to quash, denial of her demand for a jury trial, and the State failing to meet its burden of proof on the value of the car.

An appellate court reviews juvenile cases de novo on the record, statutory interpretation and the review of constitutional standards are questions of law and are reviewed independently.

Neb. Rev. Stat § 29-1808 allows motions to quash to be made when there is a facial constitutional challenge for the offense charged. Zoie did not challenge the face of the statute she was being adjudicated for, but a different statute entirely; Neb. Rev. Stat § 28-1204.05, which would only apply after she is adjudicated. The Supreme Court has held before that persons only have standing to challenge statutes that are relevant to their prosecution. *State v. Harris*, 284 Neb. 214 (2012). The Court finds this is relevant in the juvenile context as well. Because she does not have standing, the Court does not reach any of the constitutional challenges to Neb. Rev. Stat § 28-1204.05.

Right to a trial by jury attaches when the potential incarceration exceeds 6 months or if the offense is a serious offense. *State v. Wiltshire*, 241 Neb. 817 (1992). Zoie argues that she is

charged with a serious offense.

Juvenile adjudications are not criminal, but civil. In *re Interest of Laurance S.*, 274 Neb. 620 (2007). Disposition in juvenile cases is similar to punishment for a crime, but the Court has held prior that it is not a punishment because of the civil nature of the cases. In *re Interest of Brandon M.*, 273 Neb. 47 (2007). Here, Zoie considers her prohibition on owning a firearm to be a punishment, but the Court sees it as a collateral consequence, not as part of the punishment for a felony. *State v. Peters*, 261 Neb. 416 (2001).

The US Supreme Court has held that trial by jury is not required in juvenile cases, *McKeiver v. Pennsylvania*, 403 US 528 (1971). States can choose to give juveniles the right to trial by jury, but it is a privilege and not a requirement. *Id.* Nebraska has considered the right of juveniles to have trials by jury in *Debacker v. Brainard*, 183 Neb. 461 (1968) and *McMullen v. Geiger*, 184 Neb. 581 (1969) and did not extend that right. The Court here agrees with the Juvenile Court that § 43-279(1) applies and Zoie is not entitled to trial by a jury as the firearm restriction does not impose a penalty.

Regarding the value of the property, the Court reviews the record *de novo* and finds that the State met its burden. In Nebraska, the owner of chattel may testify to its value. *State v. Holland*, 213 Neb. 170 (1982). Here, the car owner testified as to the value of her car.

The decision of the Juvenile Court is affirmed.
