

COURT OF APPEALS OF TEXAS, FIRST DISTRICT AT HOUSTON

Ex Parte Cameron Michael Moon

No. 01-18-01014-CR (Tex. App.—Houston [1st Dist.] Feb. 20, 2020) · No. No. 01-18-01014-CR · Decided
February 20, 2020

SUMMARY

This concurring opinion addresses whether Cameron Michael Moon could raise an as-applied due-process challenge to Texas Family Code section 54.02(j) in a pretrial habeas appeal. The opinion concurs in the judgment that the claim was not cognizable under existing precedent but argues that pretrial review should be permitted because the challenge concerns the validity of transferring Moon, who committed the alleged offense as a juvenile, to adult criminal court.

CASE DETAILS

COURT	Court of Appeals of Texas, First District at Houston
WRITING FOR THE COURT	Gordon Goodman; Justice Lloyd; Justice Goodman; Justice Hightower
JURISDICTION	Texas
DECIDED	February 20, 2020
DOCKET	No. 01-18-01014-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal from the denial of a pretrial application for a writ of habeas corpus challenging the constitutionality of a juvenile-court transfer under Texas Family Code section 54.02(j).
STANDARD OF REVIEW	De novo review applies to the legal question whether a pretrial habeas claim is cognizable and to constitutional challenges; the concurrence discusses the standards governing pretrial as-applied constitutional challenges.
PRECEDENTIAL VALUE	Published concurring opinion; the concurrence's proposed expansion of pretrial as-applied habeas review is not itself the majority holding.
PARTIES	Cameron Michael Moon

TOPICS

[habeas corpus](#)[due process](#)[appellate procedure](#)[constitutional law](#)[statutory interpretation](#)

PRACTICE AREAS

criminal procedure

juvenile justice

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether Moon's facial constitutional challenge to Texas Family Code section 54.02(j) failed because he could not show that the statute was unconstitutional as to every person subject to it.
2. Whether Moon could raise an as-applied due-process challenge to his transfer under section 54.02(j) in a pretrial habeas proceeding.
3. Whether existing Texas precedent should be reconsidered because requiring Moon to wait until after trial to challenge the transfer would effectively undermine the asserted right to avoid adult prosecution absent compliance with section 54.02(a).

HOLDINGS

1. The facial constitutional challenge fails because Moon cannot establish that section 54.02(j) is unconstitutional as applied to all persons subject to the statute.
2. Under existing Texas precedent, a defendant generally may not litigate an as-applied constitutional challenge to a statute before trial, although recognized exceptions include double-jeopardy and bail claims.
3. The concurrence would hold that Moon should be permitted to bring his as-applied due-process challenge before trial because delaying review until after trial would effectively undermine the right he claims was violated.

KEY QUOTATIONS

“Requiring Moon to wait until after trial to challenge his transfer to the criminal district court under 54.02(j) effectively undermines the very right underlying his challenge—the right not be tried in the criminal district court absent compliance with the transfer requirements of section 54.02(a).” (at 5-6)

“Requiring Moon to be tried as an adult in the criminal district court before we consider whether he is subject to trial there, as we must, makes no sense and serves no purpose.” (at 6)

FACTUAL BACKGROUND

Moon was sixteen when the juvenile court initially waived jurisdiction and transferred him to adult criminal court for a murder prosecution under Texas Family Code section 54.02(a). After that transfer was held erroneous and his conviction was vacated, the juvenile court transferred him a second time in 2015 under section 54.02(j), by then relying on the fact that Moon had turned eighteen. Moon contended that the second transfer denied him the procedural protections required by section 54.02(a), which he could no longer receive because of his age.

PROCEDURAL HISTORY

In 2008, the juvenile court transferred Moon, then sixteen, to adult criminal court under Texas Family Code section 54.02(a), and he was convicted of murder. The conviction was vacated after the appellate courts held that

the transfer was erroneous. In 2015, after Moon had turned eighteen, the juvenile court again transferred him under section 54.02(j). The district court denied Moon's pretrial habeas application, and Moon brought this interlocutory appeal.

DISPOSITION

affirmed

CASES CITED

- Moon v. State, 410 S.W.3d 366 (Tex. App.—Houston [1st Dist.] 2013), aff'd, 451 S.W.3d 28 (Tex. Crim. App. 2014)
- 451 S.W.3d 28 (Tex. Crim. App. 2014)
- In re J.G., 495 S.W.3d 354, 367-69 (Tex. App.—Houston [1st Dist.] 2016, pet. denied)
- Ex parte Perry, 483 S.W.3d 884, 888, 895-96, 918, 920 (Tex. Crim. App. 2016)
- Moore v. State, 532 S.W.3d 400, 404-05 (Tex. Crim. App. 2017) (per curiam)

OPINION

Ex Parte Cameron Michael Moon

PER CURIAM.

Opinion issued February 20, 2020 In The Court of Appeals For The First District of Texas
NO. 01-18-01014-CR

EX PARTE CAMERON MICHAEL MOON

On Appeal from the 182nd District Court Harris County, Texas Trial Court Case No. 1467534A

CONCURRING OPINION

The majority construes Moon's due-process claim as a facial constitutional challenge to section 54.02(j) of the Family Code. Because Moon cannot show that section 54.02(j) is unconstitutional as to all persons subject to the statute, the majority reasons, his facial challenge fails. I concur in the majority's holding. But lurking below the surface is the question whether Moon could raise his due-process claim as an as-applied constitutional challenge to section 54.02(j) in this appeal from the denial of a pretrial application for the writ of habeas corpus. Under existing precedent, he cannot. I write to urge reconsideration of this precedent.

BACKGROUND

In 2008, under section 54.02(a) of the Family Code, the juvenile court waived its jurisdiction and transferred Moon, who was then 16 years old, to stand trial for murder as an adult in the criminal district court. He was tried by a jury, which found him guilty. On appeal, our court held that the juvenile court had erred in waiving its jurisdiction, vacated the conviction, and dismissed the case. The Court of Criminal Appeals affirmed our decision. See Moon v. State, 410 S.W.3d 366 (Tex. App.—Houston [1st Dist.] 2013), aff'd, 451 S.W.3d 28 (Tex. Crim. App. 2014). On remand, in 2015, the juvenile court again waived its jurisdiction and transferred Moon to stand trial for

murder as an adult in the criminal district court. This time, the juvenile court relied on section 54.02(j) of the Family Code, as Moon was by then over the age of 18. Moon applied for a writ of habeas corpus, contending that the application of section 54.02(j) denied him the process that he had been due under section 54.02(a). The trial court denied Moon's application. The trial court's order doing so is the subject of Moon's current interlocutory appeal. 2

DISCUSSION

Moon's Challenge to Section 54.02(j) Under section 54.02(a), a juvenile court may transfer to the criminal district court for trial as an adult a person who was 14 years old or older at the time he is alleged to have committed a first-degree felony, like murder, but who remains a child at the time of transfer. See TEX. FAM. CODE § 54.02(a)(2)(A). If, however, the person who is alleged to have committed murder as a child has reached his eighteenth birthday, the juvenile court must make any transfer order under section 54.02(j). See *id.* § 54.02(j)(1). Section 54.02(a) imposes requirements for transfer to the criminal district court that section 54.02(j) does not. See *id.* § 54.02(a), (f), (j); *In re J.G.*, 495 S.W.3d 354, 367–68 (Tex. App.—Houston [1st Dist.] 2016, pet. denied). Moon argues that his second transfer to stand trial as an adult under section 54.02(j) circumvented the additional requirements of section 54.02(a) to which he originally was entitled but denied. Cf. *J.G.*, 495 S.W.3d at 368–69 (rejecting same as-applied due-process claim because juvenile court had applied section 54.02(a)'s requirements in deciding whether to transfer juvenile offender who had since turned 18 to criminal district court for second time under section 54.02(j)). He further argues that the juvenile court can no longer extend him the benefit of section 54.02(a)'s additional transfer requirements because he is now over the age of 18. Thus, Moon asserts, the second transfer order violates his due-process rights. 3

As-Applied Pretrial Constitutional Challenges Under existing precedent, a defendant generally cannot litigate whether a statute is unconstitutional as applied to him before trial. See *Ex parte Perry*, 483 S.W.3d 884, 895–96 (Tex. Crim. App. 2016) (plurality op.). Exceptions exist for claims involving double jeopardy and bail. *Id.* In *Perry*, however, a majority of the Court decided a pretrial as-applied constitutional challenge in the defendant's favor, even though his claim did not fall within these recognized exceptions. See *id.* at 888, 918. The Court was divided as to when and why an as-applied challenge is cognizable before trial and did not produce a majority opinion on the subject. See *id.* Because the Court did not reach a consensus as to the circumstances under which a pretrial as-applied constitutional challenge may be heard, it is no longer clear what cognizability analysis applies to these claims. See *id.* at 920 (Alcala, J., concurring). In her plurality opinion in *Perry*, Presiding Judge Keller surveyed the Court's prior decisions. See *id.* at 895–96 (plurality op.). From these decisions, one can discern at least four criteria for assessing when pretrial habeas relief is appropriate. These four criteria are whether:

- (1) protection of the applicant's substantive rights or the conservation of judicial resources is better served by interlocutory review;
- (2) the result would be the defendant's immediate release (except when

double jeopardy is involved);

(3) the resolution of the claim will not be aided by the development of the record at trial; and 4

(4) if the challenge is an as-applied one, the right underlying the challenge

would be effectively undermined if not vindicated before trial. See *id.* All these criteria favor pretrial consideration of Moon's due-process claim as an as-applied challenge to section 54.02(j). If Moon is correct, then he is: • entitled to dismissal of the present indictment against him; and • could not be indicted for this crime again because he cannot receive the benefit of section 54.02(a)'s transfer requirements on account of his age. See *Moore v. State*, 532 S.W.3d 400, 404–05 (Tex. Crim. App. 2017) (per curiam) (with respect to those who have turned 18, juvenile court generally can only transfer case to criminal district court or dismiss case); *J.G.*, 495 S.W.3d at 363 (same). Thus, if this court were to rule in Moon's favor, the result would be his immediate release. No further factual development is necessary to assess Moon's due-process claim. Significant judicial resources that otherwise could have been conserved will be wasted if Moon's claim is decided in his favor after trial. Most significantly, section 54.02(a) gives those who committed crimes as a child the right to be adjudicated in juvenile court, rather than being tried as adults, unless specific criteria are satisfied. See *Moon*, 451 S.W.3d at 38 (child has right to remain outside jurisdiction of criminal district court unless juvenile court properly waives its jurisdiction under section 54.02). It is undisputed that Moon did not receive the benefit of section 54.02(a). Requiring Moon to wait until after trial to challenge his 5 transfer to the criminal district court under 54.02(j) effectively undermines the very right underlying his challenge—the right not be tried in the criminal district court absent compliance with the transfer requirements of section 54.02(a).

CONCLUSION

Moon's due-process claim is not cognizable as an as-applied constitutional challenge to section 54.02(j) under existing precedent. But it should be. Requiring Moon to be tried as an adult in the criminal district court before we consider whether he is subject to trial there, as we must, makes no sense and serves no purpose. Gordon Goodman Justice Panel consists of Justices Lloyd, Goodman, and Hightower. Justice Goodman, concurring. Justice Hightower, concurring. Publish. TEX. R. APP. P. 47.2(b). 6