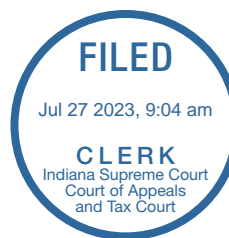


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

R. T.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Plaintiff.

July 27, 2023

Court of Appeals Case No.
23A-JV-228

Appeal from the St. Joseph Probate
Court

The Honorable Jason A.
Cichowicz, Judge

The Honorable Graham Polando,
Magistrate

Trial Court Cause Nos.
71J01-2006-JD-167 & 71J01-2108-
JD-263

Memorandum Decision by Judge Riley.
Judges Bradford and Weissmann concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Respondent, R.T., appeals the juvenile court's decision to commit him to the Department of Correction (DOC).

[2] We affirm.

ISSUE

[3] R.T. raises one issue on appeal, which we restate as: Whether the juvenile court abused its discretion when it modified its dispositional decree and ordered R.T. to serve time in the DOC after finding that R.T. had violated the terms of his probation.

FACTS AND PROCEDURAL HISTORY

[4] On June 2, 2020, then thirteen-year-old R.T. threatened a woman and her five children with a handgun over an argument about a video game. Officers from the South Bend Police Department located R.T. after he had fled the scene. As they were speaking with R.T., the woman who made the initial report formally identified R.T. and informed the officers that he had a gun in his backpack. After admitting to the possession of the gun, R.T. was taken into custody.

[5] On June 9, 2020, the State filed a petition alleging delinquency and asserting that R.T. had committed what would be a Class A misdemeanor dangerous possession of a firearm and a Class A misdemeanor carrying a handgun without a license if committed by an adult. On September 14, 2020, R.T. and the State

entered into an agreement in which R.T. agreed to admit to carrying a handgun without a license, in exchange for the State agreeing to dismiss the remaining Count. During the dispositional hearing on January 26, 2021, the juvenile court ordered R.T. to be placed on “[s]trict and [i]ndefinite [p]robation.” (Appellant’s App. Vol. II, p. 48).

[6] In April 2021, the probation department received complaints that R.T. had “left home with [a] firearm, traveled to the Kroc Center, and pointed the gun at peers.” (Appellant’s App. Vol. II, p. 59). On April 13, 2021, the probation department conducted a home visit at R.T.’s home. During the search of R.T.’s bedroom, officers located a .38 caliber Taurus handgun and ammunition. R.T. was detained and was alleged to have committed what would be a Class A misdemeanor carrying a handgun without a license, if committed by an adult. On April 29, 2021, the probation department filed a probation status report in the current cause, advising the juvenile court of R.T.’s newly incurred allegation.

[7] On May 5, 2021, R.T. entered into an agreement with the State in which he admitted to having violated his probation by possessing a handgun, in exchange for the State agreeing to dismiss the new delinquency allegation of carrying a handgun without a license. On May 20, 2021, during a probation department meeting to assess “whether it was in the best interest of the child and community safety for [R.T.] to remain home or be placed in a residential treatment program,” it became clear that R.T. and his mother “showed no interest” in day reporting. (Appellant’s App. Vol. II, p. 61). The probation

department concluded that, “without family support and amenability,” the department would be unable to ensure R.T.’s safety within the community and determined that “residential treatment [would] be imperative for [R.T.’s] safety and future success.” (Appellant’s App. Vol. II, pp. 61, 71-72). On July 6, 2021, the juvenile court modified R.T.’s placement to home detention for ninety days, with participation in day reporting.

[8] On July 14, 2021, R.T. commenced his day reporting program. Approximately one month later, on August 12, 2021, R.T. initiated a fight at school by hitting a classmate. On August 17, 2021, the State filed a request for authorization to file a delinquency petition, alleging that R.T. had committed what would be a Class B misdemeanor disorderly conduct and Class B misdemeanor battery if committed by an adult. While these allegations were pending, R.T. was placed on GPS monitoring through home detention. However, R.T. was in “chronic violation” of home detention. (Appellant’s App. Vol. II, p. 129). Although the probation department was able to determine his whereabouts, it expressed concern for R.T.’s safety since the department was unable to determine “what he is doing when he violates” or the types of situations he is “placing himself in when he leaves his home without permission.” (Appellant’s App. Vol. II, p. 107). Because of these repeated violations, the juvenile court conducted a detention hearing on September 20, 2021, and placed R.T. in secure detention. While in secure detention, R.T. accumulated twenty-three incident reports for “disrespect to peers/staff; threatening peers/staff; attempted battery on peers/staff; gang promotion; failure to follow staff instructions; and disorderly

conduct.” (Appellant’s App. Vol. II, p. 133). Because the new allegations derived from an incident at school, R.T. was also placed in the APPROVE program. However, his attendance in the program was “poor.” (Appellant’s App. Vol. II, p. 104). His teacher reported that R.T. was frequently absent, and, on September 7, 2021, the teacher advised that R.T. had bloodshot eyes and reeked of marijuana. In addition, R.T.’s mother informed the probation department that she no longer “wanted [R.T.] in her home due to his disrespect.” (Appellant’s App. Vol. II, p. 104). The probation department renewed its recommendation that R.T. be placed in residential treatment through Transitions Academy.

[9] On October 26, 2021, the juvenile court conducted a dispositional hearing. The court found that reasonable efforts had been made to keep R.T. in the community but that removal was now in his best interest. The court ordered R.T. to be placed at Transitions Academy and to participate in a six-month aftercare program once he returned home. On October 4, 2022, R.T. successfully completed his placement at Transitions Academy and was released to his mother’s care to continue his aftercare probation and to participate in educational programming at Keys Academy.

[10] By December 16, 2022, R.T. was discharged from Keys Academy for non-compliance. Keys Academy reported that R.T. showed up two hours late on his first day, fell asleep during the hour he attended, and was unable to remain focused. He failed to attend the two other days he was scheduled. Also, on December 1, 2022, R.T. informed Keys Academy that he would test positive for

marijuana. Subsequent testing revealed R.T. to be positive for amphetamines and marijuana. Keys Academy reported that R.T. is not amenable to treatment because he is “not engaged and does not communicate with his providers.” (Appellant’s App. Vol. II, p. 168).

[11] On December 29, 2022, the probation department filed a modification report, alleging that R.T. had violated the terms and conditions of his probation and recommended placement at the DOC. On January 3, 2023, the juvenile court conducted a modification hearing and awarded wardship of R.T. to the DOC. The court determined that it was in R.T.’s best interest to be placed at the DOC because he “continues to disregard reasonable rules,” was “uncooperative with [p]robation [s]ervices and recommendations,” he “continues to abuse illegal substances,” and “continues to engage in aggressive and/or violent behavior.” (Appellant’s App. Vol. II, p. 173). The juvenile court further concluded that “[i]t is in the best interest of the child to be removed from the home environment and remaining in the home would be contrary to the health and welfare of the child because: [] [m]other is unable to provide the level of supervision necessary at this time to keep [R.T.] safe nor prevent his danger to others.” (Appellant’s App. Vol. II, p. 173). Furthermore, in support of its decision to award wardship of R.T. to the DOC, the juvenile court determined that “[R.T] is in need of supervision, care, treatment and services which are NOT available in the local community. [R.T.] is in need of services beyond those which can be provided through probation services. There is no available

person or facility in St. Joseph County Indiana which can provide [R.T.] with the necessary services.” (Appellant’s App. Vol. II. p. 173).

[12] R.T. now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[13] R.T. contends that the trial court abused its discretion by modifying his probation and admitting him to the DOC because “commitment to the [DOC] is not the least restrictive setting.” (Appellant’s Br. p. 8). “The choice of the specific disposition of a juvenile adjudicated to be delinquent is a matter within the sound discretion of the juvenile court.” *A.C. v. State*, 144 N.E.3d 810, 812-13 (Ind. Ct. App. 2020) (citing *J.S. v. State*, 881 N.E.2d 26, 28 (Ind. Ct. App. 2008)). “The juvenile court is accorded wide latitude and great flexibility in its dealings with juveniles.” *Id.* “This discretion is, however, subject to the statutory considerations of the welfare of the child, the safety of the community, and the policy of favoring the least harsh disposition.” *Id.* (citing *M.C. v. State*, 134 N.E.3d 453, 458 (Ind. Ct. App. 2019); Ind. Code § 31-37-18-6 (setting forth factors juvenile court must consider when entering a dispositional decree)). “We will reverse a juvenile disposition only for an abuse of discretion, which occurs when the juvenile court’s action is clearly erroneous and against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual inferences drawn therefrom.” *Id.* (citing *C.C. v. State*, 831 N.E.2d 215, 217 (Ind. Ct. App. 2005)).

[14] We apply the same standards with respect to the revocation of probation for minors as we do for adults. *See, e.g., T.W. v. State*, 864 N.E.2d 361, 364 (Ind. Ct. App. 2007). “A probation revocation proceeding is in the nature of a civil proceeding, and, therefore, the alleged violation need be proved only by a preponderance of the evidence.” *Id.* (citing *J.J.C. v. State*, 792 N.E.2d 85, 88 (Ind. Ct. App. 2003)). “Violation of a single condition of probation is sufficient to revoke probation.” *Id.* “As with other sufficiency issues, we do not reweigh the evidence or judge the credibility of witnesses.” *Id.* “We look only to the evidence which supports the judgment and any reasonable inferences flowing therefrom.” *Id.* “If there is substantial evidence of probative value to support the trial court's decision that the probationer committed any violation, revocation of probation is appropriate.” *Id.*

[15] Indiana Code section 31-37-18-6 sets forth the factors that a juvenile court must consider in entering a dispositional decree and provides that:

If consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that:

(1) is:

- (A) in the least restrictive (most family like) and most appropriate setting available; and
- (B) close to the parents’ home, consistent with the best interest and special needs of the child;

(2) least interferes with family autonomy;

(3) is least disruptive of family life;

(4) imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian; and

(5) provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

The statute thus requires placement in the least restrictive setting only “[i]f consistent with the safety of the community and the best interest of the child[.]” *Id.* This language “reveals that a more restrictive placement might be appropriate under certain circumstances.” *J.T. v. State*, 111 N.E.3d 1019, 1026 (Ind. Ct. App. 2018), *trans. denied*. We have held that commitment to the DOC “should be resorted to only if less severe dispositions are inadequate.” *E.L. v. State*, 783 N.E.2d 360, 366-67 (Ind. Ct. App. 2003).

[16] Despite an abundance of evidence to the contrary, R.T. claims that “[b]ased on [his] limited delinquency history[,] the [c]ourt should have used a less harsh disposition because his behavior was not repetitive or serious.” (Appellant's Br. p. 6). The record reflects that the juvenile court afforded R.T. several opportunities to reform in less-restrictive placements—all to no avail. R.T. was initially placed on probation and home detention for several months but violated the terms of probation by illegally carrying a handgun. At that time the probation department recommended that R.T. be placed in residential treatment, but the juvenile court showed leniency and allowed R.T. to remain at home, on the condition that he participated in day reporting, despite the probation department's caution that R.T. would fail due to his mother's lack of interest in the program. R.T. squandered the opportunity. In response, the juvenile court placed R.T. at Transitions Academy, followed by an aftercare

program upon his return home. Although he did complete the residential program at Transitions Academy successfully, R.T.'s reform was short-lived. Barely two months after his return in the community, R.T. was discharged from the aftercare program at Keys Academy for failure to attend. He began using illegal substances and tested positive for amphetamines and marijuana.

[17] R.T. claims that his case is analogous to *D.P. v. State*, 783 N.E.2d 767, 771 (Ind. Ct. App. 2003), in which we overturned a juvenile's detention at the DOC. In *D.P.*, the juvenile admitted to fraud and theft, both class D felonies if committed by an adult. *Id.* at 768. Because D.P.'s only other contact with the juvenile justice system had occurred five years prior, for which he had successfully completed probation, D.P.'s conduct was not repetitive or amounted to serious misconduct, and D.P. had previously responded positively to probation, we concluded that D.P.'s placement with the DOC was not the least harsh disposition available. *Id.* Although this was R.T.'s first contact with the juvenile system too, unlike D.P., R.T. did not respond positively to the juvenile court's attempt to rehabilitate him. He violated the terms and conditions of his probation numerous times by committing conduct that would constitute additional crimes if committed by an adult and failed to comply with home detention and day reporting. Despite the juvenile court's leniency and imposition of less restrictive measures, R.T.'s conduct was repetitive and escalated into illegal drug use.

[18] R.T.'s behavior in the community reflects that R.T. was unable or unwilling to comply with the less-restrictive rules and regulations of community supervision.

As noted by the trial court during the modification hearing, “I don't see that a whole lot has changed despite [] an immense amount of time and an immense amount of services.” (Transcript Vol. II, p. 17). Because less-restrictive placements had failed to curb R.T.’s behavior, and with R.T.’s mother being unable or unwilling to ensure R.T.’s compliance with the court-imposed rules, the juvenile court acted within its discretion by awarding wardship of R.T. to the DOC. Under these circumstances, we cannot say that the juvenile court’s commitment of R.T. to the DOC was an abuse of discretion. *See K.A. v. State*, 775 N.E.2d 382, 387 (Ind. Ct. App. 2002) (finding placement of juvenile in the DOC was not an abuse of discretion when previous less restrictive rehabilitation efforts were unsuccessful), *trans. denied*.

CONCLUSION

[19] Based on the foregoing, we hold that the juvenile court did not abuse its discretion when it modified the dispositional decree and ordered R.T. committed to the DOC.

[20] Affirmed.

[21] Bradford, J. and Weissmann, J. concur