

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

T.P.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

December 8, 2022

Court of Appeals Case No.
22A-JV-1228

Appeal from the Gibson Circuit
Court

The Honorable Jeffrey F. Meade,
Judge

Trial Court Cause Nos.
26C01-2012-JD-237
26C01-2101-JD-9

Robb, Judge.

Case Summary and Issue

- [1] When T.P. was adjudicated a delinquent child in February 2021, the juvenile court awarded wardship of him to the Indiana Department of Correction (“DOC”) but suspended the commitment and placed T.P. on probation. The State subsequently filed a petition to revoke probation, and after T.P. admitted to violating his probation, the juvenile court committed T.P. to the DOC. T.P. now appeals, raising one issue for our review, namely: whether the juvenile court abused its discretion in granting wardship of him to the DOC. Concluding the juvenile court did not abuse its discretion, we affirm.

Facts and Procedural History

- [2] On December 9, 2020, seventeen-year-old T.P. and a friend exited their high school and immediately began to hit a boy who was standing outside. T.P. and his friend then pulled the boy to the ground, kicked the boy, and hit him in the head and body. As a result of the incident, the State filed a delinquency petition on December 31, alleging that T.P. had committed what would be Class A misdemeanor battery and Class B misdemeanor criminal mischief if committed by an adult.
- [3] The same day the State filed the delinquency petition, T.P. and four of his acquaintances traveled to Princeton, Indiana, to watch a fistfight between two other juveniles that was supposed to take place on a public street. However, the fight was moved to Zack Fithian’s backyard at the invitation of an adult who

lived at Fithian's home. When Fithian's daughter attempted to record the fight with her cell phone, one of T.P.'s friends grabbed her wrist and knocked the phone from her hand. Fithian's daughter screamed, and Fithian then exited his home and entered the backyard. Once Fithian reached the backyard, he was attacked and beaten by T.P. and two of T.P.'s acquaintances – one of whom tore off a portion of Fithian's ear. T.P. stomped on Fithian's head. As a result of that incident, on January 8, 2021, the State filed a second delinquency petition, alleging that T.P. had committed what would be Level 3 felony aggravated battery if committed by an adult.

[4] On February 5, T.P. admitted he was delinquent for committing what would be Class A misdemeanor battery under his first delinquency case and what would be Level 6 felony battery in his second delinquency case. In exchange, the State dismissed the remaining charges in the two cases.¹ On February 19, the juvenile court issued a dispositional decree in which it awarded wardship of T.P. to the DOC but suspended his commitment to the Indiana Boys' School and, instead, placed T.P. on probation for two years on the condition that T.P. complete an anger management and behavior modification program at Transitions Academy.

¹ The State agreed to dismiss the criminal mischief charge in T.P.'s first delinquency case and also agreed to a lesser charge in T.P.'s second delinquency case – that is, what would be Level 6 felony battery rather than Level 3 felony aggravated battery. Appellant's Appendix, Volume 2 at 79.

- [5] T.P. completed the program at the academy and continued his probation. Under the terms of his probation, T.P. was to “stay in school”; keep all appointments made with his probation officer; obey all laws; abstain from consuming drugs; and submit to random drug testing. Appellant’s Appendix, Volume 2 at 84. However, on April 21, 2022, the State filed a petition to revoke T.P.’s probation in both of his delinquency cases, alleging T.P. had missed school, failed to report to his probation officer, failed to call the drug screen line on a daily basis for random drug testing, and tested positive for marijuana.
- [6] On April 29, the juvenile court held a hearing on the State’s petition to revoke T.P.’s probation. T.P. admitted to violating his probation by missing school, failing to call the drug screen line on a daily basis, and testing positive for marijuana. But he did not admit to the allegation that he failed to report to his probation officer. The juvenile court accepted T.P.’s admission and proceeded to the dispositional portion of the hearing.
- [7] At the hearing, both T.P. and T.P.’s grandfather (“Grandfather”) provided oral statements to the juvenile court, but neither the State nor T.P. presented additional testimony. T.P. told the juvenile court that his participation in the Transitions Academy program “change[d] [him].” Transcript of Evidence, Volume 2 at 32. He told the court, “I kind of get mad still sometimes, but I didn’t get in no fights within the three months [after] I was out [of the program]. I was doing better.” *Id.* T.P. asked the court to give him a second chance, stating, “[I]f I get another chance, I won’t smoke [marijuana] no more.” *Id.* He

added: “[T]he reason . . . I was missing school some days is I was being treated like I was still a bad kid. . . . I [have] changed. My mindset is different now. I’m sorry I smoked, but if I get another chance, I’ll promise I won’t smoke. I’ll call [the drug screen line] every day.” *Id.* at 32-33.

[8] The juvenile court asked for Grandfather’s statement, and Grandfather told the court that he had “seen a big difference in [T.P.] since he [had] been to Transitions. He’s not as angry as he used to be. . . . I have seen a big change in the way he acts around everybody and his anger issues [-] everything has changed dramatically, and I have been proud of him for that[.]” *Id.* at 34.

[9] Before making its final decision on the matter, the juvenile court made the following remarks:

I can tell you, [T.P.] that the placement [at Transitions Academy] that I put you in was really the break. Okay? Based on what – the nature of the charges, which you admitted to, you should have went [sic] to DOC then, to be honest with you.

* * *

So the break was given when I put you in the alternative placement. . . .

* * *

[What] I want you to take away is two of the seven laws of the harvest. The first one is you reap what you sow, right? Actions have consequences. But here’s the second one. You reap in a different season tha[n] you sow. . . .

* * *

So why am I telling you that? Okay. One, because I don't want you to be discouraged because I agree with your [Grandfather]. I see some progress here.

* * *

You cannot – there has to be consequences for violation of boundaries. Okay. So when I'm talking about the different seasons is [sic] I don't want you to become discouraged. Okay? Because I want to – I, really, honestly, want you to continue your progress. . . .

Back to the second law of the harvest. When I'm talking about not discouraging you, you got to be patient. Every day, you're sowing seeds. Actions. Okay?

* * *

Don't expect an immediate result from good words and from good actions or from not doing bad things. . . . It's always in a different season.

* * *

I'm trying to encourage you to every day recognize you're planting seeds and there will be – make no mistake, there will be a harvest. . . .

Id. at 37-40.

[10] The juvenile court then determined that T.P.'s probation should be revoked, explaining:

You knew that was coming. . . . You know how it is in this court, right? Any one of those violations, and how many were there? Any one is enough on a suspended commitment, when you're on probation, to go. Okay? So you are going to go [to the] DOC. Now, the reason I'm spending this extra time with you and not just saying, revoked, DOC, next case, okay, [is] because I do want to encourage you to start planting good seeds, expect a harvest, just not immediately. Okay? . . . And then, when you get out, get on the straight and narrow.

* * *

I tried the alternative placement. . . . I cut you a break the first time. I'm not going to cut you a break the second time.

* * *

I've tried to encourage you. You were doing better. You got to do better When you're on probation, you have to follow every single rule or else – and here's your or else[.]

Id. at 40-41, 44-45.

[11] After the hearing concluded, the juvenile court issued its written dispositional order, awarding wardship of T.P. to the DOC for commitment to the Indiana Boys' School. The court ordered the probation department to "look into aftercare services for [T.P.] upon release from [the Indiana Boys' School] if any services are available." Appealed Order at 1. T.P. now appeals.

Discussion and Decision

I. Standard of Review

[12] The juvenile court has wide latitude and great flexibility in its dealings with juveniles, and the choice of the specific disposition of a juvenile adjudicated a delinquent child is a matter within the sound discretion of the juvenile court. *In re M.T.*, 928 N.E.2d 266, 268 (Ind. Ct. App. 2010), *trans denied*. The juvenile court's discretion is 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.* An abuse of discretion 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 that can be drawn therefrom. *Id.*

II. Placement at DOC

[13] T.P. contends that the juvenile court abused its discretion by ordering wardship of him to the DOC for commitment to the Indiana Boys' School, a commitment that, according to T.P., "was not the least restrictive and least disruptive dispositional alternative available." Brief of the Appellant at 7. T.P. maintains that despite the progress he made toward rehabilitation, the juvenile court imposed "the most harsh disposition available . . . without identifying how [the] commitment would continue his rehabilitation." Reply Brief of the Appellant at 6.

[14] 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) (quotation marks and citations omitted), *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).

[15] In this case, T.P. claims that there was no evidence that wardship with the DOC was necessary to keep the community safe or was in his best interest, especially in light of the progress he has made with his anger management and the fact that none of his probation violations were “for new [criminal] offenses or other violent acts[.]” Br. of the Appellant at 10. He argues that none of the probation violations to which he admitted – missing school, failing to call the drug screen line on a daily basis, and testing positive for marijuana – “showed a continuation of his violent behavior or [an] additional threat to the community at large.” Reply Br. of the Appellant at 6. According to T.P., even though he admitted to his probation violations, accepted responsibility for his actions, expressed remorse, and expressed a desire to continue his rehabilitation, the juvenile court “disregarded [his] progress toward rehabilitation and did not examine his need for treatment or care.” *Id.* We cannot agree.

[16] After T.P. committed two violent offenses that would be battery and criminal mischief if committed by an adult, the juvenile court showed T.P. leniency by placing him on probation and ordering him to participate in the Transitions Academy program when the court could have committed him to the DOC. Under the terms of his probation, T.P. was required to remain in school; obey all laws; not consume drugs; and submit to random drug testing. Knowing the terms of his probation, T.P. committed the acts underlying the instant

adjudication by missing school, failing to call the drug screen line on a daily basis, and testing positive for marijuana.

[17] During his dispositional hearing, T.P. asked for a second chance. However, the juvenile court noted the “nature of the charges” that formed the basis of T.P.’s delinquency adjudication and determined instead that T.P. should be committed to the DOC. Tr., Vol. 2 at 38. The court explained that it had first tried the more lenient, alternative placement at Transitions Academy, but was not inclined to “cut [T.P.] a break the second time.” *Id.* at 44. And the court reminded T.P. that while he was on probation, he was required to “follow every single rule or else[,]” but T.P. failed to do so. *Id.* at 45. Under these circumstances, we cannot say commitment of T.P. 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

[18] We conclude that the juvenile court did not abuse its discretion by ordering wardship of T.P. to the DOC for commitment to the Indiana Boys’ School after T.P. violated the terms of his probation. Therefore, we affirm the juvenile court’s judgment.

[19] Affirmed.

Mathias, J., and Foley, J., concur.