MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Anne Medlin Lowe
Fugate Gangstad LLC
Carmel, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Eric S. Sullivan
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

P.H.,
Appellant-Respondent

v.

State of Indiana,
Appellee-Petitioner.

March 21, 2023

Court of Appeals Case No. 22A-JV-2219

Appeal from the LaGrange Circuit Court

The Honorable William R. Walz IV, Judge

Trial Court Cause No. 44C01-2202-JD-5

Memorandum Decision by Judge Pyle

Chief Judge Altice concurs.

Judge Riley dissents with separate opinion.

Pyle, Judge.

Statement of the Case

[1] Sixteen-year-old P.H. ("P.H.") appeals the juvenile court's order that committed him to the Indiana Department of Correction ("the DOC") for placement at the Logansport Juvenile Correctional Facility. P.H. specifically argues that the juvenile court abused its discretion when it committed him to the DOC. Finding no abuse of the juvenile court's discretion, we affirm the juvenile court's judgment.

[2] We affirm.

Issue

Whether the juvenile court abused its discretion when it committed P.H. to the DOC.

Facts

[3] In February 2022, fifteen-year-old P.H. left diarrhea on the bathroom toilet and rug at his home. P.H.'s stepfather ("Stepfather"), who discovered the diarrhea when he was getting ready for work, told P.H. to clean up the mess. P.H. became angry while cleaning the rug in the kitchen sink and called Stepfather "a fucking retard" and "a piece of shit." (App. Vol. 2 at 45). P.H. then began smashing glassware in the kitchen sink. When Stepfather attempted to restrain P.H., P.H.'s twin brother, F.H., hit Stepfather from behind. Following a physical altercation involving Stepfather, P.H., and F.H., Stepfather pushed

both young men outside, locked the door, and called 911. While outside, P.H. threw a pan at the back door.

[4] Law enforcement officers arrived at the scene and transported the two young men to the probation department. Later that afternoon, as the two young men were being placed in a van to be transported to the juvenile center, P.H. yelled that "when he g[ot] out of th[at] fucking place, [he] w[ould] kill [his] mom, dad, and step dad, fuck you all." (App. Vol. 2 at 46).

[5] Three days later, the State filed a delinquency petition alleging that P.H. had committed what would be Class A misdemeanor domestic battery, Class B misdemeanor criminal mischief, and Class B misdemeanor disorderly conduct if committed by an adult. At a March 2022 hearing, the parties told the juvenile court that they had reached an agreement whereby P.H. would admit to committing acts that, if committed by an adult, would be Class B misdemeanor criminal mischief and Class B misdemeanor disorderly conduct, and the State would dismiss the domestic battery allegation. The parties had also agreed that P.H. would, among other things, receive a suspended commitment to the DOC, serve probation for six months with the first month served on home detention, and participate in mental health and substance abuse assessments and follow all recommendations. The juvenile court accepted the parties' agreement and entered an agreed dispositional order.

[6] In May 2022, P.H.'s probation officer ("P.H.'s probation officer") filed a petition for probation violation alleging that P.H. had violated probation by

testing positive for marijuana on April 21, 2022, and by failing a high school course. One month later, P.H.'s probation officer filed an addendum to the probation violation petition alleging that P.H. had further violated probation by testing positive for marijuana on May 13, 2022, and May 26, 2022, and by being terminated from a mental health group because of his behavioral issues.

[7] At an August 2022 hearing, P.H. admitted the violations without an agreement on disposition. Also, at the hearing, P.H. admitted that he had tested positive for marijuana again on July 11, 2022, and July 22, 2022. At the end of the hearing, the juvenile court stated as follows:

> And at this point in time, based upon everything I'm hearing, the Court is inclined to, based upon the substance abuse, the issues with grades and . . . other issues we've addressed in the past, the Court believes that . . . at this point in time, DOC would be the most appropriate comprehensive . . . facility available right now so that you can . . . move forward and continue with your education[.] One of the biggest concerns we have here is to make sure you can . . . work through your education, have treatment, . . . maintain a consistent discipline where you're . . . living at this point, DOC. Based upon all the evidence the Court has heard, [DOC] would be the . . . the best option for [you] . . . at this point, unfortunately. The Court is going to . . . order dispositional that you are placed . . . in the Indiana Department of Corrections.

(Tr. Vol. 2 at 36).

[8] P.H. now appeals his commitment to the DOC.

Decision

[9] P.H. argues that the juvenile court abused its discretion when it committed him to the DOC. We disagree.

[10] A juvenile court is accorded wide latitude and great flexibility in its dealings with juveniles. *J.T. v. State*, 111 N.E.3d 1019, 1025 (Ind. Ct. App. 2018), *trans. denied*. The choice of a specific disposition of a juvenile adjudicated to be a delinquent child will only be reversed if the juvenile court abuses its discretion. *Id*. The juvenile court's discretion in determining a disposition is subject to the statutory considerations of the welfare of the child, the safety of the community, and the policy favoring the least harsh disposition. *Id*. An abuse of discretion occurs when the juvenile court's action is clearly 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. *M.C. v. State*, 134 N.E.3d 453, 458 (Ind. Ct. App. 2019), *trans. denied*.

[11] INDIANA CODE § 31-37-18-6 sets forth the following factors that a juvenile court must consider when entering a dispositional decree in a juvenile matter:

> 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.

I.C. § 31-37-18-6.

[12] Although the statute requires the juvenile court to select the least restrictive placement, the statute allows for a more restrictive placement under certain circumstances. *M.C.*, 134 N.E.3d at 459. That is, the statute requires placement in the least restrictive setting only "[i]f consistent with the safety of the community and the best interest of the child." *See* I.C. § 31-37-18-6. Thus, the statute recognizes that, in certain situations, the best interest of the child is better served by a more restrictive placement because "commitment to a public institution is in the best interest of the juvenile and society." *M.C.*, 134 N.E.3d at 459 (internal quotation marks and citation omitted).

[13] Here, our review of the evidence reveals that less restrictive rehabilitative efforts have failed to produce positive changes in P.H.'s behavior. Specifically, after P.H. had been involved in the physical altercation with Stepfather and had admitted that he had committed what would have been Class B misdemeanor criminal mischief and Class B misdemeanor disorderly conduct if committed by

an adult, the State dismissed the domestic battery allegation. Thereafter, the juvenile court accepted the parties' agreement wherein P.H. agreed to receive a suspended commitment to the DOC, serve probation for six months with the first month served on home detention, and participate in mental health and substance abuse assessments and follow all recommendations. Six weeks later, P.H. violated probation by testing positive for marijuana and failing a high school course. Then, one month after committing these violations, P.H. again violated probation by testing positive for marijuana two additional times and by being terminated from a mental health group because of his behavioral issues. P.H. later admitted that he had also twice tested positive for marijuana in July 2022. In light of P.H.'s history and the failure of these less restrictive measures, the juvenile court did not abuse its discretion when it committed P.H. to the DOC. *See, J.T.*, 111 N.E.3d at 1027.

[14] Affirmed.

Altice, C.J., concurs.

Riley, J., dissents with separate opinion.

Riley, J., dissents.

I respectfully dissent from the majority's opinion affirming the juvenile court's placement of P.H. at the Department of Correction as the least restrictive setting available. Pursuant to Indiana Code section 31-37-18-6, a juvenile court, if consistent with the safety of the community and the best interest of the child, shall place the juvenile "in the least restrictive and most appropriate setting available." Although less harsh options than commitment to an institution are available for the juvenile court to utilize, "there are times when commitment to a suitable public institution is in the best interest of the juvenile and of society." *S.C. v. State*, 779 N.E.2d 937, 940 (Ind. Ct. App. 2002), *trans. denied*

Despite the complete absence of a juvenile history until this incident, the juvenile court placed P.H. in the Department of Correction—the most restrictive option available. The juvenile court reasoned that the "DOC would be the most appropriate comprehensive . . . facility available right now so that you can . . . move forward and continue with your education[.]" (Tr. Vol. II, p. 36). Contrary to the dictates of the statute by which the juvenile court may only impose a more restrictive placement if consistent with the safety of the community AND the child's best interest, the juvenile court only touched upon the latter prong of the statute and remained completely silent with respect to the community safety requirement. *See* I.C. § 31-37-18-6.

Although P.H. had contacts with the justice system during the pendency of these proceedings, P.H. showed remorse for his conduct, admitted to the facts underlying both the initial charges and the probation violation allegations, and the juvenile court recognized his "good attitude." (Tr. Vol. II, p. 14). P.H. himself requested, "I need structure. I need mental help. [] I don't want to go to DOC and have to fight my way out there for six months." (Tr. Vol. II, p. 35). In light of P.H.'s lack of juvenile adjudications, his apparent lack of being a danger to the community, and his acknowledgment of his mental health and emotional needs, I believe the juvenile court should have followed Indiana's public policy of favoring the least-harsh disposition and placed him in an intensive treatment facility. *See* E.H. v. State, 764 N.E.2d 681, 684 (Ind. Ct. App. 2002), *trans. denied*. Therefore, I would reverse the juvenile court's placement of P.H. in the DOC and remand for placement in an appropriate rehabilitative setting.