## MEMORANDUM DECISION




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# IN THE COURT OF APPEALS OF INDIANA

C.H.,
*Appellant-Respondent,*

v.

State of Indiana,
*Appellee-Petitioner.*

December 21, 2022

Court of Appeals Case No. 22A-JV-1167

Appeal from the Noble Superior Court

The Honorable Steven T. Clouse, Judge

Trial Court Cause No. 57D01-2112-JD-031

**Riley, Judge.**

## STATEMENT OF THE CASE

[1] Appellant-Respondent, C.H., appeals his delinquency adjudication for disorderly conduct, which would be a Class B misdemeanor if committed by an adult, Ind. Code § 35-45-1-3(a)(1); and violating curfew, I.C. § 31-37-3-2.

[2] We affirm.

## ISSUES

[3] C.H. presents this court with one issue on appeal, which we restate as the following two issues:

(1) Whether the juvenile court's placement of C.H. in the Department of Correction (DOC) for disorderly conduct and a curfew violation is the least restrictive and most appropriate placement available; and

(2) Whether C.H.'s delinquency adjudication comports with the proportionality principle of Article 1, Section 16 of the Indiana Constitution.

## FACTS AND PROCEDURAL HISTORY

[4] Sometime after 1:00 a.m. on August 26, 2021, C.H. got into a physical altercation with another juvenile in Noble County, Indiana. On December 5, 2021, the State filed a delinquency petition alleging that C.H. was a delinquent for committing what would be a Class B misdemeanor disorderly conduct and a Class B misdemeanor battery, if committed by an adult. The State also alleged that C.H. was a delinquent for a curfew violation and habitual disobedience of

a parent, guardian, or custodian. At a dispositional hearing on April 22, 2022, C.H. admitted to being a delinquent for committing disorderly conduct and violating curfew. After his admission, the juvenile court questioned C.H., who admitted to using marijuana once or twice every two to three days and to having quit school.

[5] C.H.'s pre-dispositional report indicated that he had a prior delinquency petition filed on November 7, 2017, for possession of marijuana, a Class B misdemeanor if committed by an adult, and possession of paraphernalia, a Class B misdemeanor if committed by an adult, which had resulted in an informal adjustment. C.H. was adjudicated a delinquent for what would be Level 6 felony possession of a schedule IV controlled substance if committed by an adult on February 20, 2019. On July 17, 2019, C.H. was alleged to be a delinquent for intimidation, a Level 6 felony if committed by an adult, and leaving home without the permission of a parent, guardian, or custodian, which did not result in a delinquency adjudication. The probation department advised that C.H. had previously received services, including an informal adjustment, substance abuse evaluation, random drug screens, counseling, home detention, a residential placement at White's Residential, and that wardship was granted to the DOC in 2019.

[6] The juvenile court noted that C.H. was a couple of months shy of turning eighteen and that prior attempts at rehabilitation had failed. In light of these prior failures, the juvenile court determined that a community-based placement and services were unlikely to be successful and granted wardship of C.H. to the

DOC, stating that placement at the Indiana Boy's School was the "only place to get [C.H.] the services to assist in the very short time we have, to have [C.H.] rehabilitated." (Transcript Vol. II, p. 26).

[7] C.H. now appeals. Additional facts will be provided if necessary.

# DISCUSSION AND DECISION

## I. *Placement at the DOC*

[8] C.H. contends that the juvenile court abused its discretion when it failed to place C.H. in the least restrictive and most appropriate setting available. Dispositional decrees where a juvenile is adjudicated as a delinquent are intended to promote rehabilitation. *R.J.G. v. State*, 902 N.E.2d 804, 806 (Ind. 2009). This is in keeping with the legislative policy that juveniles are to be "treated as persons in need of care, protection, treatment, and rehabilitation." *Id.* The goal of the juvenile justice system is to rehabilitate juveniles so that they do not become adult criminals. *R.H. v. State*, 937 N.E.2d 386, 388 (Ind. Ct. App. 2010). Thus, the juvenile court is provided with a myriad of dispositional alternatives to permit the court to find the disposition that best fits the unique and varying circumstances of each child's problems. *A.A.Q. v. State*, 958 N.E.2d 808, 813-14 (Ind. Ct. App. 2011). Because of the need to tailor dispositions for each individual child, the juvenile court is accorded great latitude and flexibility in its choice of specific dispositions for a juvenile adjudicated delinquent. *M.T. v. State*, 928 N.E.2d 266, 268 (Ind. Ct. App. 2010), *trans. denied*.

[9] In fashioning its decree, 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. *C.C. v. State*, 831 N.E.2d 215, 216-17 (Ind. Ct. App. 2005); *see* I.C. § 31-37-18-6. However, "[t]he [juvenile] court is only required to consider the least restrictive placement *if* that placement comports with the safety needs of the community and the child's best interests." *J.B. v. State*, 849 N.E.2d 714, 717 (Ind. Ct. App. 2006) (emphasis in original); *J.S. v. State*, 881 N.E.2d 26, 29 (Ind. Ct. App. 2008) (recognizing that the best interests of the child may be better served by a more restrictive placement).

[10] Based on the facts before us and in light of C.H.'s admission to delinquency for disorderly conduct and a curfew violation, we find that the juvenile court properly concluded that granting wardship to the DOC was in C.H.'s best interests as previous less restrictive attempts at rehabilitation had failed. C.H. had previously unsuccessfully received an informal adjustment, substance abuse evaluations, random drug screens, counseling, home detention, residential placement at White's Residential, and a placement in the DOC in 2019. After receiving substantial services in the community without rehabilitative success to C.H., the juvenile court noted that "[it] does not give me any encouragement at all that to keep [C.H.] in this community would be an assist (sic) to [C.H.]" (Tr. Vol. II, p. 26). Recognizing "the pattern of [C.H.'s] behavior of committing delinquent acts[,]" not attending school, and smoking marijuana on

a frequent basis, the trial court acknowledged that C.H. required additional rehabilitative services. (Tr. Vol. II, p. 25).

[11] C.H. argues that the juvenile court's disposition was an abuse of discretion because during the hearing, the dispositional officer changed her recommendation from probation in the pre-dispositional report to wardship at the DOC. However, rather than basing its recommendation on the probation officer's recommendation alone, the juvenile court took C.H.'s juvenile history into account to determine that previous attempts at rehabilitation had failed. In light of these unsuccessful rehabilitative services, the juvenile court concluded that the structured setting provided by the DOC was the only available option to ensure C.H.'s rehabilitation, especially in light of C.H.'s approaching eighteenth birthday. Despite C.H.'s argument to the contrary, his guardians were provided with information on how to participate in his treatment as the record indicates that the DOC sent his guardians a letter explaining that they would be contacted by the treatment unit at the facility where C.H. was sent.

[12] Rather than attempt community-based services or a residential placement, which had previously failed, and in light of C.H.'s limited remaining time in the juvenile justice system, the juvenile court made the reasonable conclusion that granting wardship to the DOC was the least restrictive placement available under the circumstances and was in C.H.'s best interests. *See K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006) (wardship with DOC was not an abuse of discretion after juvenile had violated probation despite a mentoring program, community service, counseling, and intensive probation); *L.L. v. State*, 774 N.E.

2d 554, 559 (Ind. Ct. App. 2002) (no abuse of discretion where juvenile is committed to the DOC after previous opportunities, including probation, had failed). Accordingly, the juvenile court did not abuse its discretion by granting wardship of C.H. to the DOC.

## II. *Article 1, Section 16 of the Indiana Constitution*

[13] In a single paragraph and without any application to the facts, C.H. contends that his "sentence," as determined by the juvenile court, "is not graduated and proportioned to the nature of the offense." (Appellant's Br. p. 10).

[14] Article 1, Section 16 of the Indiana Constitution explicitly requires that "[a]ll penalties shall be proportioned to the nature of the offense." The United States Supreme Court has recognized that juvenile proceedings are not criminal prosecutions. *McKeiver v. Pennsylvania,* 403 U.S. 528, 541, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971). Similarly, in Indiana, "juvenile delinquency is not a crime and juvenile dispositions are not criminal sentences." *M.C. v. State*, 134 N.E.3d 453, 463 (Ind. Ct. App. 2019) (citing *D.M. v. State*, 949 N.E.2d 327, 333 n.6 (Ind. 2011) (observing that juvenile proceedings are civil, not criminal, and are based on a philosophy of social welfare rather than criminal punishment)), *trans. denied, cert. denied*. *See also T.K. v. State,* 899 N.E.2d 686, 687-88 (Ind. Ct. App. 2009) (declining to apply Indiana Rule of Appellate Procedure 7 to juvenile dispositions because juvenile disposition orders are not the same as criminal sentences).

[15] The goal in Indiana is rehabilitation for its juvenile offenders and a juvenile delinquency petition is not about the State seeking to punish a young offender. *M.C.,* 134 N.E.3d at 463. Rather, our General Assembly has codified the goal of the juvenile system by requiring juvenile courts to consider the needs of the child, to make efforts to prevent removal from the parents, and to offer various services to juvenile offenders. I.C. § 31-37-18-9.1. Furthermore, our legislature has imposed strict requirements on juvenile facilities to provide recreation, education, counseling, and health care that must be operated by qualified staff to provide such programs and treatment. *See* I.C. § 31-37-19-21. Hence, delinquency actions are designed to rehabilitate and correct, and they encourage juveniles to "straighten out [their lives] before the stigma of criminal conviction and the resultant detriment to society is realized." *Jordan v. State*, 512 N.E.2d 407, 409 (Ind. 1987).

[16] Therefore, inasmuch as the juvenile court's dispositional order was not a penalty or punishment within the meaning of Article 1, Section 16 of the Indiana Constitution, C.H.'s claim that awarding wardship to the DOC was disproportionate to the nature of his adjudication for disorderly conduct and a curfew violation, is unavailing.

## CONCLUSION

[17] Based on the foregoing, we hold that the juvenile court's placement of C.H. in the DOC for disorderly conduct and a curfew violation is the least restrictive and most appropriate placement available and that, as juvenile proceedings are

not criminal in nature, the proportionality principle of Article 1, Section 16 of the Indiana Constitution is not implicated.

[18] Affirmed.

[19] Bailey, J. and Vaidik, J. concur