

# MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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# IN THE COURT OF APPEALS OF INDIANA

A.J.,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

February 16, 2022

Court of Appeals Case No.  
21A-JV-1983

Appeal from the Noble Superior  
Court

The Honorable Robert E. Kirsch,  
Judge

Trial Court Cause No.  
57D01-2002-JD-14

**Bailey, Judge.**

## Case Summary

- [1] A.J. appeals the trial court’s order, following her fourth probation violation, making her a ward of the Indiana Department of Correction (“DOC”) rather than placing her in a less-restrictive alternative. She raises one issue on appeal, namely, whether the juvenile court abused its discretion when it ordered her placed with the DOC.
- [2] We affirm.

## Facts and Procedural History

- [3] At school on January 14, 2020, then-sixteen-year-old A.J. was found in possession of a stolen pair of Apple AirPods earbuds. A.J.’s boyfriend at the time had stolen the earbuds from D.O., one of A.J.’s classmates, and given them to A.J. A.J. knew at the time she received the earbuds that her boyfriend had stolen them. When A.J. subsequently was discovered in possession of the earbuds, she initially told school officials that she received them as a Christmas present. A subsequent check of the device’s serial number, however, revealed them to be D.O.’s stolen earbuds.
- [4] The State filed a delinquency petition alleging A.J. committed what would be theft, as a Class A misdemeanor,<sup>1</sup> if committed by an adult. A.J. admitted to

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<sup>1</sup> Ind. Code § 35-43-4-2(a).

the allegations in the delinquency petition. Based on A.J.'s admission, the trial court found A.J. to be delinquent and, in an order dated June 24, 2020, the court placed A.J. on probation for one year and ordered her to complete twenty hours of community service. As part of the terms and conditions of probation, A.J. was required to refrain from violating any laws or ordinances, attend school regularly, and refrain from drug use and possession.

[5] At her first meeting with her probation officer, A.J. disclosed that she smoked marijuana on a daily basis. From the time she entered probation in June 2020, A.J. continued to use marijuana regularly. In October of that year, A.J.'s probation officer made a referral for A.J. to obtain substance abuse treatment at the Northeastern Center; however, A.J. failed to complete a substance abuse evaluation and attend follow-up appointments. Additionally, A.J. missed multiple days of school. When A.J. subsequently enrolled in a virtual school program, she logged on for her classes but failed to complete much of the coursework assigned to her. By the beginning of 2021, A.J. was approximately 20 assignments behind in her school work.

[6] On November 18, 2020, the Noble County Probation Department ("NCPD") filed its first report alleging that A.J. had violated the conditions of her probation by repeatedly smoking marijuana, failing to attend treatment, and missing school. At her initial hearing on the probation violation, held January 6, 2021, A.J. admitted the allegations of the NCPD's report. The trial court ordered the preparation of a pre-dispositional report and a psychiatric evaluation and set the matter for a dispositional hearing.

[7] On March 5, 2021, the NCPD filed its second report alleging that A.J. violated the conditions of her probation by continuing to smoke marijuana, failing to attend her therapy sessions at the Northeastern Center, and failing to complete her schoolwork. On March 8, the NCPD filed with the court the psychiatric evaluation of A.J. on February 25 in which she was diagnosed with “Major depressive disorder (with anxiety) (in early improvements with medication), Victim of domestic abuse, Marijuana use disorder, Conduct disorder.” App. at 82.

[8] At the March 10, 2021, dispositional hearing, A.J. admitted the allegations in the second violation report. A.J.’s probation officer informed the court that A.J. had been prescribed medication through the Northeastern Center and that, although she was “doing very well” on the medication, she had recently stopped taking it and started to “slide back downhill” around the time of a hearing on a separate probation case pending in another county. Tr. at 38. The trial court modified A.J.’s dispositional order, placing her on probation until her eighteenth birthday with a period of up to six months on home detention.

[9] On May 19, 2021, the NCPD filed its third report alleging that A.J. violated the conditions of her probation by continuing to smoke marijuana, failing to complete her schoolwork, failing to attend therapy sessions at Northeastern Center, and failing to keep her home detention ankle monitor charged. On June 2, 2021, the trial court held A.J.’s initial hearing on her third probation violation, and A.J. admitted to the new violations. A.J. testified that she had not attended Moral Reconciliation Therapy (“MRT”) sessions at Northeastern

Center because she had failed to do community service work prescribed by her therapist. A.J. testified that she had failed to do the community service work on the weekends because she “just [had] a lot of stuff on [her] plate,” and she “didn’t want to get up at seven o’clock in the morning and go” to community service “just basically due to laziness the past couple weekends.” Tr. at 55.

The juvenile court imposed a suspended commitment to the Indiana Department of Correction (“DOC”) and ordered A.J. to continue on home detention until her eighteenth birthday. The trial court judge informed A.J. that this new dispositional order meant “you are going to Girls’ School the next time you screw up,” to which A.J. responded, “Okay.” *Id.* at 67.

[10] On July 9, 2021, the NCPD filed its fourth report alleging that A.J. violated the conditions of her probation by continuing to smoke marijuana. At the probation department’s request, A.J. was taken into custody and held pending the August 11, 2021 initial hearing on her fourth probation violation. At the August 11, 2021 hearing, A.J. admitted to the new allegations. At the conclusion of the hearing, the court noted A.J.’s past failure to attend court-ordered therapy and refrain from drug use. The court concluded, “But we’ve got to get you ... some treatment and frankly at this point Girls[’] School is the only option reasonably available.” Tr. at 87. The trial court modified A.J.’s dispositional order to an indeterminate commitment to the DOC “for housing in any correctional facility for children or any community-based correctional facility for children.” *Appealed Order* at 1. The court further recommended that A.J. “receive substance abuse treatment” and “educational classes toward

obtaining her HSE [high school equivalency credential]” while committed to the DOC. *Id.* The court concluded that such disposition is consistent with the safety and best interest of A.J. and is the least restrictive and most appropriate setting. This appeal ensued.

## Discussion and Decision

[11] A.J. contends that the trial court erred in making her a ward of the DOC rather than placing her in less restrictive alternative placements such as “inpatient treatment, home-based therapy, medication management, and mentoring.” Appellant’s Br. at 11.

[T]he choice of the specific disposition of a juvenile adjudicated a delinquent child is a matter within the sound discretion of the juvenile court and will only be reversed if there has been an abuse of that discretion. 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. 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. Hence, the juvenile court is accorded wide latitude and great flexibility in its dealings with juveniles.

*R.A. v. State*, 936 N.E.2d 1289, 1291 (Ind. Ct. App. 2010) (citations and quotations omitted). “With respect to the abuse of discretion standard, we give substantial weight to a trial court’s judgment as to the credibility of witnesses based on its observance of evidence first[-]hand.” *Gado v. State*, 882 N.E.2d

827, 830-31 (Ind. Ct. App. 2008) (citing *Pruitt v. State*, 834 N.E.2d 90, 104 (Ind. 2005)), *trans. denied*.

[12] The statutory considerations are contained in Indiana Code Section 31-37-18-6:

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.

[13] Thus, Indiana policy favors the least harsh disposition that is consistent with community safety and the best interest of delinquent juveniles. *See id.*

However, in certain circumstances, the best interest of the child will be better served by a more restrictive placement. *K.A. v. State*, 775 N.E. 382, 387 (Ind.

Ct. App. 2002). The trial court found that this case presents such circumstances, and we cannot say the trial court abused its discretion in so concluding.

[14] The trial court’s best interest conclusion is supported by A.J.’s admissions that she continued to smoke marijuana on a daily basis throughout most of her time on probation; each of A.J.’s four probation violations involved either failed drug screens or her self-reported use of marijuana. In addition, A.J. received multiple different services while on probation, including a psychiatric evaluation, medical treatment to address her mental health problems, MRT through Northeastern Center, counseling, and home detention. Yet, A.J. admittedly failed to consistently take advantage of these services and none of them produced a change in her consistent marijuana use, despite the trial court’s warnings that continued marijuana use would result in her placement in the DOC. *See, e.g., K.S. v. State*, 114 N.E.3d 849, 854 (Ind. Ct. App. 2018) (affirming placement in the DOC where the juvenile was offered multiple services and opportunities to change his behavior yet failed to do so after being informed of the consequences for such failure), *trans. denied*. As A.J.’s probation officer expressed at A.J.’s final modification hearing, A.J. has “a significant drug problem” and her record suggests that she “does not have the will power [sic]” to discontinue drug use “without the structure” provided in the more restrictive environment of the DOC. Tr. at 83-84. Those are “compelling reasons for a more closely-supervised and restrictive environment than a setting that would permit [the juvenile to continue] to reoffend and



disregard the juvenile court's rules." *M.C. v. State*, 134 N.E.3d 453, 459 (Ind. Ct. App. 2019), *trans. denied*.

[15] The trial court did not abuse its discretion when it concluded—after four probation violations—that it was in A.J.'s best interest to be placed in the DOC where she could obtain the drug treatment and education services she needed but was not getting in less restrictive environments. Those conclusions were supported by the logic and effect of the facts and circumstances before the court. *R.A.*, 936 N.E.2d at 1291.

[16] Affirmed.

Mathias, J., and Altice, J., concur.