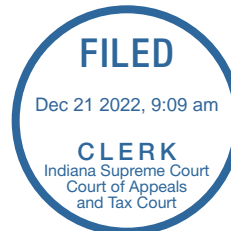


## MEMORANDUM DECISION

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

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L.W.,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 21, 2022

Court of Appeals Case No.  
22A-JV-1680

Appeal from the Vanderburgh  
Superior Court

The Honorable Brett J. Niemeier,  
Judge

The Honorable Renee A.  
Ferguson, Magistrate

Trial Court Cause No.  
82D04-2104-JD-533

**Brown, Judge.**

[1] L.W. appeals the trial court's order awarding wardship of him to the Indiana Department of Correction (the "DOC") for housing in a facility for children. We affirm.

### *Facts and Procedural History*

[2] On April 13, 2021, the State filed a petition alleging that L.W., who was born in December 2007, committed delinquent acts on or about April 4, 2021, which would constitute theft as a level 6 felony, resisting law enforcement as a class A misdemeanor, and false informing as a class B misdemeanor if committed by an adult. On April 16, 2021, the court held a hearing at which L.W.'s counsel stated that L.W. would be admitting to the allegations in the petition. Upon questioning, L.W. agreed that, on or about April 4, 2021, he had possession of a cell phone without the owner's permission and that, when he encountered law enforcement, he "wasn't totally candid with them when they asked [his] name" and he "didn't respond exactly as he was supposed to at the time and became [sic] resisting." Transcript Volume II at 7.

[3] A predispositional report prepared on May 11, 2021, was filed with the court and included, under a heading for the official version of the offense, a report prepared by a law enforcement officer who detained L.W. on April 4, 2021. The report stated that officers were dispatched to a theatre regarding a fight, upon arrival they met the juvenile victim who stated that she was in line at the ticket counter and was jumped by another juvenile, she dropped her phone, and the phone was stolen by someone. The report stated another person had

recorded the fight and showed the video recording to the officer, the video depicted the person who picked up the victim's phone, and the officers ultimately identified L.W. as that person. It stated that the officer located L.W. and asked for the phone which he had stolen, L.W. began to walk backwards away from the officer, the officer reached to grab him and he forcefully jerked away and attempted to flee down the stairs, the officer took L.W. to the floor and another officer controlled his legs, L.W. began to reach toward his waistband, and the officer was able to pry his hand from his waistband and place him in handcuffs. The report stated that, after L.W. was secured, the officers discovered two cell phones, one of which belonged to the victim, and a loaded handgun on the floor. It stated that a theater employee witnessed the incident and stated that, while the officer was wrestling with L.W., he observed two phones and a handgun fall on the ground near where L.W. was standing.

[4] In addition, the predispositional report provided, under a heading for a summary of legal history, that L.W. was on probation in another cause when the instant offenses occurred, he had been placed on an informal adjustment with an order to comply with an Ireland Home Based Services mentor, and he violated informal adjustment by being suspended from school due to engaging in a physical fight on the school bus on October 8, 2020. It stated L.W. and his family have a history with the Department of Child Services ("DCS") including substantiated assessments in 2007 and 2009. The predispositional report also stated L.W. "surrounds himself with negative peers" and he "is not

forthcoming with information as to who his friends are but he is rumored to be associated with the ‘Trustnone’ gang.” Appellant’s Appendix Volume II at 54.

[5] On May 17, 2021, the court held a hearing. The court issued an order stating it had reviewed the predispositional report and ordered that L.W. remain at the Youth Care Center (the “YCC”) until transportation could be arranged and then that he be placed at Transitions Academy (“Transitions”). At a hearing in December 2021, Probation Officer Rebecca Helm stated that L.W. had a pass for Thanksgiving and that, when he returned to Transitions, he tested positive for marijuana.

[6] On June 14, 2022, Probation Officer Helm filed a Motion to Modify Disposition and attached a violation report, email messages, and a letter from the Executive Director of Transitions. The violation report stated that L.W. “violated his Court Ordered placement by injuring a staff member at Transitions, resulting in the staff member having a fractured humerus and requiring surgery” and his “actions make him a threat to the safety of the staff and residents of Transitions and inappropriate for continued placement in a residential facility.” *Id.* at 127. An email sent by the Executive Director of Transitions to Officer Helm stated “[t]wo residents were in an altercation over a missing book,” “[a] staff member attempted to break the physical altercation up and [L.W.] body slammed the staff to the floor where he could not provide assistance,” and “[w]hat we do know at the time of this documentation is that the staff member is receiving outside medical treatment and the supervisor was

extremely concerned as the staff member could not move when he was on the floor.” *Id.* at 135.

[7] The letter from Transitions indicated that L.W. was admitted on June 1, 2021, and discharged on June 10, 2022. The letter stated that L.W. was detained on June 10th following an incident “in which [he] interfered with a staff intervention compromising the safety and risk [sic] of residents and staff.” *Id.* at 131. It stated that, throughout his treatment, L.W. had always struggled with taking accountability, in review of the incident it was very clear that L.W. and another resident had planned an event which would allow two residents to fight, “[t]his is not at all uncommon for [L.W.] to involve himself and perhaps, at times, to orchestrate incidences and he will simply sit back and observe the created chaos,” and when asked about his involvement, L.W. presented as completely innocent and oblivious to the incident. *Id.* The letter stated that, in processing the incident, “this writer shared that information was provided indicating [L.W.] and another resident set up the situation in which the missing book was placed in another resident’s room,” “[t]his writer then discussed the importance of working a program and indicated that if there are residents in the program that truly have no intention of working, they simply need to raise their hand and let this writer know,” and L.W. “immediately raised his hand and indicated that he was done working the program and that he felt that this program cheated him because he should be on passes and he should be discharged.” *Id.*

[8] The letter further stated that L.W. “fails to acknowledge the fact that he has failed drug screens when he goes on pass and rather than simply come in and acknowledge the fact that he used while on pass, he indicates that he cannot urinate to give the sample for the screen and will put tremendous effort in to creating a story and lying about the fact that he used while on pass.” *Id.* at 132. It stated that L.W. “continues to present with a high level of criminal thinking,” “has little to no regard for telling the truth,” indicated “the staff must have tripped and that [he] was trying to see if the staff was ok,” “truly believes that he can manipulate his way out of any situation,” and “does not believe that he should be in treatment which is why he has worked at such a superficial level.” *Id.* It stated “[i]t should be noted that [L.W.’s] lack of success in the completion of this program, is based on [his] choice,” “[h]e presents as a 14 year old youth that doesn’t seem to think he has to follow rules that he doesn’t agree with,” his “high level of manipulation has afforded him to get away with many of his actions because unless he is carefully monitored or unless others around him are more accountable, [he] does not get caught,” and “[a] large part of [L.W.’s] frustration with the program has been his inability to get away with many of his poor choices.” *Id.*

[9] On June 15, 2022, the court held a hearing. L.W.’s counsel stated that L.W. “would admit that he was kicked out of Transitions.” Transcript Volume II at 28. Probation Officer Helm stated that Probation was asking the court to either commit L.W. to the DOC or that he be ordered to serve ninety days in secure detention. She stated L.W. had been in placement at Transitions since June 1,

2021, “my biggest concern is that he was there that long and then we still have these behaviors,” “[h]e injured a staff member to the point that they fractured their humerus and had to have surgery,” “[t]here’s details in the report that Transitions believes he kind of orchestrated a fight between two residents with another peer. It wasn’t just [L.W.],” and “then allegedly when that staff member tried to break up that fight between those other two kids that’s when the staff member was injured by [L.W.] trying to stop that staff member from intervening in the fight.” *Id.* at 29. She further stated “I don’t feel like he’s appropriate for anymore residential treatment at this time,” “he’s been in placement for over a year,” and “I don’t know what benefit that would do for him at this time.” *Id.* L.W.’s counsel argued “I think him being committed to the DOC at this point on this case, since he’s been in placement so long, I think would be a bit egregious” and “I think 90 days at YCC would be appropriate in this case.” *Id.*

[10] The court stated that it had spent time thoroughly reviewing L.W.’s case, that L.W. and his family have received services from DCS throughout the years, “[t]his Court has provided . . . probation. He’s been allowed to be at home. We’ve also had him involved with Ireland. He has problematic behavior when he has been in this community. He’s had problems at home, school, and within the community,” and “[h]e also had alleged possible gang affiliation within Evansville.” *Id.* at 30. The court stated that “Transitions Academy is probably about the most intensive placement that we have for children to really dig down deep and address issues and attitudes” and noted that it looked at L.W.’s

history, the fact the offense involved a handgun, how long he had been in placement, and “the fact that he directly caused a staff member to have a broken bone that required surgery - and this was all at his instigation.” *Id.* The court then read from the letter it received from Transitions. The court found that L.W. “still continues to engage in very serious criminogenic thinking.” *Id.* at 31. In its written order, the court found that L.W. is beyond the control of his parent/guardian, there does not exist any viable options for the care and treatment of L.W. in the community, it is in the best interest of L.W. and the community that he receive DOC services, the offense involved a firearm, L.W. continues to engage in criminogenic thinking, and he has a history of behavioral issues at home, in the community, and at school. The court awarded wardship of L.W. to the DOC for housing in any facility for children or any community-based correctional facility for children.

### *Discussion*

[11] L.W. asserts the court abused its discretion in awarding wardship to the DOC. He argues that placement at YCC for ninety days was the least-restrictive placement and that placement at the DOC was significantly harsher than placement at the YCC. He argues, “[g]iven the length of [his] placement at Transitions; his limited criminal history; no involvement with drugs or alcohol, excepting one incident while at Transitions; and the improvements that he made while at Transitions, [he] has not engaged in a sustained period of criminal conduct” and that “[t]he care, protection, treatment, and rehabilitation



that [he] needed should have been provided in a less restrictive and less harsh setting than the DOC.” Appellant’s Brief at 12-13.

[12] The juvenile court is given wide latitude and great flexibility in determining the disposition of a delinquent child. *D.A. v. State*, 967 N.E.2d 59, 65 (Ind. Ct. App. 2012). Ind. Code § 31-37-18-6 provides:

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.

We will not reverse the court’s disposition absent a showing of an abuse of discretion, which occurs if its actions are clearly against the logic and effect of the facts and circumstances or the reasonable inferences that can be drawn from them. *R.H. v. State*, 937 N.E.2d 386, 388 (Ind. Ct. App. 2010).

[13] The record reveals that L.W. was placed on an informal adjustment and violated his placement by being suspended from school due to engaging in a fight on the school bus in October 2020. In April 2021, he committed acts of theft of a cell phone, resisting law enforcement, and false informing. When he was detained by officers, he was in possession of a gun. The court ordered that L.W. be placed at Transitions, where he was placed from June 1, 2021, until he was discharged on June 10, 2022, following his involvement in an incident resulting in a serious injury to a member of the Transitions staff. The Executive Director of Transitions explained the reasons for L.W.'s lack of success in the program and eventual discharge, noted L.W.'s statement that he "was done working the program," and described L.W. as having a high level of criminal thinking and as being highly manipulative. Appellant's Appendix Volume II at 131. Under the circumstances as described above and in the record, we conclude the placement ordered by the court is consistent with L.W.'s best interest and the safety of the community and find no abuse of discretion. *See D.E. v. State*, 962 N.E.2d 94, 97 (Ind. Ct. App. 2011) (holding the court did not abuse its discretion in placing D.E. in a DOC facility even though a less restrictive option was available where previous attempts to rehabilitate his behavior were unsuccessful).

[14] For the foregoing reasons, we affirm the court's order.

[15] Affirmed.

Altice, J., and Tavitas, J., concur.