

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

J.H.,

Appellant-Respondent,

v.

State of Indiana,

Appellee-Petitioner.

November 12, 2021

Court of Appeals Case No.
21A-JV-1735

Appeal from the Lake Superior
Court

The Honorable Jeffrey Miller,
Magistrate

Trial Court Cause No.
45D06-1911-JD-649

Baker, Senior Judge.

Statement of the Case

- [1] J.H. appeals the juvenile court's denial of his motion for relief from judgment, in which he had challenged the court's decision to place him in the custody of

the Indiana Department of Correction (DOC). Among other claims, he argues the court deprived him of his right to counsel. The State concedes J.H. was entitled to the appointment of counsel when the juvenile court found facts related to the delinquency determination and entered a disposition of the case. We reverse and remand with instructions.

Issue

- [2] J.H. raises four issues, one of which is dispositive: whether the juvenile court erred in denying J.H.'s claim that he was deprived of his right to counsel?

Facts and Procedural History

- [3] On November 8, 2019, the State filed a petition alleging J.H. was a delinquent child for acts that, if committed by an adult, would have constituted battery resulting in moderate injury, a Level 6 felony, and disorderly conduct, a Class B misdemeanor. The case arose out of an altercation at school.
- [4] On December 6, 2019, J.H. and his mother appeared before the juvenile court for an initial hearing. Before the hearing, they watched a recording that advised them of their rights. Next, the juvenile court read the charges set forth in the State's petition, and J.H. and his mother both indicated they understood the charges.
- [5] At that point, the juvenile court asked J.H.'s mother whether she intended to hire an attorney, or whether she wanted "to go forward today without an attorney being present?" Tr. Vol. 2, p. 5. She indicated she wanted to go

forward without an attorney. The court informed mother she would need to sign a form stating she “wish[ed] to waive his rights to an attorney for this hearing and this hearing only.” *Id.* J.H. and his mother signed the form.

[6] Next, upon further questioning by the court, J.H. admitted to committing both acts as alleged in the State’s petition. The court determined J.H. had committed a juvenile act and asked the parties and the probation department for their recommendations on disposition. At the end of the hearing, the court placed J.H. on probation for six months and ordered him to serve forty hours of community service.

[7] On May 22, 2020, the State filed a request to extend J.H.’s period of probation. The court granted the State’s petition without holding an evidentiary hearing, extending J.H.’s period of probation by three months.

[8] The State subsequently filed several petitions to modify J.H.’s placement, claiming that he had repeatedly violated the terms of his probation. The court appointed counsel for J.H. during subsequent proceedings. The court ultimately determined J.H. had violated the terms of his probation, and, on April 12, 2021, placed him in the DOC’s custody. J.H. filed an appeal, which proceeded under Cause Number 21A-JV-825. The appeal was later dismissed without prejudice at J.H.’s request.

[9] J.H. filed a motion for relief from judgment, which the juvenile court denied after a hearing. This appeal followed.¹

Discussion and Decision

[10] J.H. claims the trial court improperly deprived him of his right to counsel when the initial hearing on the delinquency petition turned into a factfinding and dispositional hearing. A trial court has discretion to grant or deny a motion for relief from judgment. *N.M. v. State*, 791 N.E.2d 802, 804 (Ind. Ct. App. 2003). We reverse a trial court's decision only for an abuse of that discretion. *Id.*

[11] A child who has been charged with a delinquent act is entitled to representation by counsel. Ind. Code § 31-32-4-1 (1997). Further, counsel “must be appointed” when the juvenile court convenes a hearing to find facts on the basis of which the court may place the child in a setting outside the home, such as the DOC or a juvenile detention center. Ind. Crim. Rule 25(B). A child may waive the right to counsel after counsel has been appointed under Indiana Criminal Rule 25(B), but such waiver must be made in open court, on the record and in writing, and “in the presence of the child’s attorney.” Ind. Crim. Rule 25(C).

[12] In J.H.’s case, the State concedes that the juvenile court should have appointed counsel for J.H. during the December 6, 2019 hearing after the court and parties moved from discussing initial hearing matters to finding facts and addressing

¹ J.H. represents to the Court that he was released from the DOC on October 25, 2021.

disposition. The State further concedes J.H. did not validly waive his right to counsel during the factfinding and dispositional portion of the hearing. We agree with the parties. *See J.G. v. State*, 83 N.E.3d 1263, 1264 (Ind. Ct. App. 2017) (reversing modification order placing juvenile at DOC; juvenile was not represented by counsel during factfinding and dispositional hearing and did not waive his right to counsel).

[13] The trial court abused its discretion in denying J.H.'s motion for relief from judgment. As a result, we reverse the trial court's December 6, 2019 order on initial hearing and dispositional decree, and we remand to the juvenile court with instructions to: (1) vacate its order placing J.H. in the custody of the DOC; and (2) hold a new factfinding and dispositional hearing on the original delinquency petition.²

Conclusion

[14] For the reasons stated above, we reverse the judgment of the juvenile court and remand for further proceedings.

[15] Reversed and remanded with instructions.

May, J., and Weissmann, J., concur.

² J.H. argues that the Court should also address his claim that the juvenile court erred when it granted the State's request to extend his probation without holding a hearing. We disagree, concluding that the matter is moot.