MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

J.H.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner

February 18, 2022

Court of Appeals Case No. 21A-JV-1928

Appeal from the Lake Superior Court

The Honorable Robert G. Vann, Magistrate

The Honorable Thomas P. Stefaniak, Jr., Judge

Trial Court Cause No. 45D06-2011-JD-479

May, Judge.

[1] J.H. appeals his pre-adjudication detention after the State filed a delinquency petition alleging he committed acts that, if committed by an adult, would constitute Level 5 felony reckless homicide,[1] Level 6 felony criminal recklessness,[2] Level 5 felony possession of an altered handgun,[3] and Class A misdemeanor carrying a handgun without a license.[4] He also appeals his current placement at the Department of Correction (DOC) following his admission of acts that would be criminal recklessness and carrying a handgun without a license. We affirm.

Facts and Procedural History

[2] On November 7, 2020, J.H., J.P., and J.Z. were at J.Z.'s house. At some point during the visit, J.H. possessed a handgun and that handgun discharged, striking J.Z., who later died at the hospital. Someone at the residence called the police, and J.H. and J.P. fled the scene.

[3] On November 16, 2020, police arrested J.H., and he was placed in the Lake County Juvenile Center ("Juvenile Center"). On November 25, 2020, the State filed a petition of delinquency alleging J.H. committed acts that, if committed by an adult, would constitute Level 5 felony reckless homicide, Level 6 felony

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[1] Ind. Code § 35-42-1-5.

[2] Ind. Code § 35-42-2-2(b)(1).

[3] Ind. Code § 35-47-2-18(b).

[4] Ind. Code § 35-47-2-1(e).

criminal recklessness, Level 5 felony possession of an altered handgun, and Class A misdemeanor carrying a handgun without a license. On January 12, 2021, the trial court held an omnibus hearing to determine if J.H. should remain detained at the Juvenile Center until his delinquency hearing.

[4] At the hearing, J.H. requested release to home detention pending the delinquency hearing due to discovery delays in the case. J.H. requested placement "out of the jurisdiction of Whiting, just for everybody's sake." (Tr. Vol. II at 6.) J.H. indicated placement outside of Whiting was preferred because "small community, high emotion, we're trying to avoid any kind of additional issues, and quite honest, [sic] I think the father is more of a disciplinarian, in order to ensure that this young man does not get involved in any further incidents." (*Id.* at 8.)

[5] The State did not object to J.H.'s release on monitored house arrest. However, Probation Officer Enith Jo Walters testified:

> Your Honor, probation has some concern in reference to the young man possibly being released to the custody of his father in Illinois. It is not usually our practice to have a juvenile on In-House Arrest (Level 2) with a monitor and living out of our state. Also, [J.H.] has eleven pending charges, eight of which are felonies that have happened over the last year, and his actions have led to the death of an individual, so, probation finds this to be highly criminogenic, and the minor to be a danger to himself and the community. Also, we had a staffing on this matter on December the 30th, and, um, we sent out placement packets to three placement facilities . . . Two of those facilities have denied his entry at this time indicating that he's not appropriate for their milieu and they agree with the recommendation of the DOC,

> that is the recommendation of the psychologist as well. So, at this time, probation's recommendation is that he remain detained as a danger to himself and the community.

(*Id*. at 7.) Citing the difficulty of monitoring J.H. on house arrest outside of Indiana and the issues associated with releasing J.H. into the Whiting community, the trial court ordered J.H. to remain detained at the Juvenile Center.

[6] The trial court held hearings on J.H.'s detention on March 1, 2021, and April 22, 2021. During those hearings, the State presented evidence of continually high scores on the Indiana Youth Assessment Detention Tool, which indicated J.H. should remain in detention until his delinquency hearing. The State also noted other pending delinquency petitions against J.H. that involved allegations of sexual battery, drug dealing and possession, and resisting law enforcement. In addition, the State presented a report from Dr. Jill A. Miller, a psychologist who completed an assessment of J.H. in November 2020. Dr. Miller stated in her report:

> Based on the results of this evaluation, it is this examiner's opinion that [J.H.] would benefit from referral to the Department of Corrections [sic] (DOC). Within this setting, he would have access to multiple forms of treatment including therapy, psychiatric intervention, substance abuse treatment, education services, and aftercare planning. The severity of his charges and the fact that he has accumulated multiple referrals to the juvenile court within a short period of time suggest that he is in need of a higher level of structure than can be provided in the community. Despite being involved with the court, he expressed to this examiner that he is unwilling to participate in treatment as he

> does not feel it will be helpful. It was reported that he was previously prescribed psychiatric medication and referred to therapy due to his symptoms of depression following psychiatric hospitalizations for suicidal ideation and planning. He poses a significant risk to himself if he is unwilling to engage in treatment as untreated depression can have serious consequences. Additionally, if he continues to demonstrate the current behavioral issues without intervention, he is at risk for developing Conduct Discover which would further complicate his presentation and worsen his prognosis. Further, [J.H.] reported a history of ongoing marijuana use and experimenting with other substances such as Xanax, Percocet, and ecstasy. This is likely an attempt to self-medicate his symptoms as he is not participating in treatment. Overall, referral to DOC is warranted in order for him to obtain the necessary intervention and treatment at this time.

(App. Vol. II at 14.) Based thereon, the trial court continued J.H. in detention until his delinquency hearing.

[7] On June 28, 2021, J.H. admitted committing what would be Level 6 felony criminal recklessness and Class A misdemeanor carrying a handgun without a license. The trial court adjudicated J.H. a delinquent based upon J.H.'s admissions. On July 13, 2021, the trial court held its dispositional hearing. The State presented testimony from Dr. Miller, who recommended J.H. be placed in the DOC based on his need for a structured environment and treatment available through DOC. The State also presented evidence from Probation Officer Kimberly Zakutansky, who recommended placement at the DOC because of J.H.'s history of delinquency referrals, his substance abuse, and his high-risk scores on the Indiana Youth Assessment Detention Tool as well as a

Victim Impact Statement from J.Z.'s mother. J.H. presented statements from his mother and father, and argument asking the trial court to place him with one of his parents with monitoring. On August 4, 2021, the trial court issued its dispositional decree, awarding wardship of J.H. to the DOC, noting that "the modification of any dispositional decree will be considered at any periodic review hearing or permanency hearing." (*Id*. at 173.)

Discussion and Decision

[8] Our standard of review in juvenile delinquency matters is well-settled:

> The juvenile court system is founded on the notion of *parens patriae*, which allows the court to step into the shoes of the parents. The *parens patriae* doctrine gives a juvenile court the power to further the best interests of the child, which implies a broad discretion unknown in the adult criminal court system. The juvenile court therefore has wide latitude and great flexibility in its dealings with juveniles.

K.A. v. State, 938 N.E.2d 1272, 1274 (Ind. Ct. App. 2010) (internal citations omitted) (emphases in original), *trans. denied*.

1. Pre-Adjudication Detention

[9] J.H. argues the trial court abused its discretion when it denied his four requests to be placed on home detention pending his delinquency hearing. As an initial matter, we note J.H. is no longer detained at the Juvenile Center, and thus we are unable to render him meaningful relief concerning that placement. Thus, his claim is technically moot. *See R.A. v. State*, 770 NE.2d 376, 378 (Ind. Ct.

App. 2002) ("When a court is unable to render effective relief to a party, the case is deemed moot and usually dismissed."). However, "Indiana courts have long recognized that a case may be decided on its merits under an exception to the general rule when the case involves questions of 'great public interest.'" *Matter of Lawrance*, 579 NE.2d 32, 37 (Ind. 1991). "Cases found to fall within the public interest exception typically contain issues likely to recur." *Id*. We consider the issue before us to be one of great public interest, and thus we address it on the merits.

[10] When considering the detention of a child subject to a petition of delinquency prior to the delinquency hearing:

> (a) The juvenile court shall release the child on the child's own recognizance or to the child's parent, guardian, or custodian upon the person's written promise to bring the child before the court at a time specified. However, the court may order the child detained if the court finds probable cause to believe the child is a delinquent child and that:
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> > (1) the child is unlikely to appear for subsequent proceedings;
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> > (2) detention is essential to protect the child or the community;
> >
> > (3) the parent, guardian, or custodian:
> >
> > > (A) cannot be located; or

> (B) is unable or unwilling to take custody of the child;
>
> (4) return of the child to the child's home is or would be:
>
> (A) contrary to the best interests and welfare of the child; and
>
> (B) harmful to the safety or health of the child; or
>
> (5) the child has a reasonable basis for requesting that the child not be released.

Ind. Code § 31-37-6-6(a). The statute is written in the disjunctive, and thus the trial court was required to find only one of the enumerated elements set forth in the statute. *See In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008) (statute written in the disjunctive requires proof of only one of the elements stated therein), *trans. denied*. The trial court found J.H.'s continued detention was "essential to protect the community." (App. Vol. II at 63, 103, 113, 116.)

[11] J.H. contends the facts of his case are similar to those in *C.T.S. v. State*, 781 N.E.2d 1193 (Ind. Ct. App. 2003), *trans. denied*, in which we held the trial court abused its discretion when it denied C.T.S.'s four requests for release from detention pending his delinquency hearing. *Id*. at 1200. In that case, the State alleged C.T.S. committed acts that would be, if committed by an adult, Class D felony pointing a firearm and Class C felony battery. *Id*. at 1196. The allegation stemmed from an incident during which C.T.S. pulled a gun on D.A.O. during an argument at a party. *Id*. One of C.T.S.'s friends took the gun

away, and the fight dispersed. *Id.* A few days later, C.T.S. went to D.A.O.'s house and attacked him, resulting in an injury requiring stitches to D.A.O.'s face. *Id.*

[12] After his arrest, C.T.S. was detained in the Marion County Juvenile Detention Center. Before his delinquency hearing, C.T.S. petitioned the trial court multiple times for release from detention pending his hearing. *Id.* at 1199. During two hearings on C.T.S.'s continued detention, his parents testified they would be able to supervise C.T.S. while he awaited his delinquency hearing. *Id.* Specifically, the evidence indicated that C.T.S.'s mother had employed a nanny as an extra person to supervise C.T.S. and C.T.S.'s stepfather, who had an "extensive law enforcement background" would take a leave of absence to help with C.T.S.'s care. *Id.* The trial court eventually granted C.T.S.'s request for pre-hearing release and he was placed on electronic monitoring under his parents' care after four months in detainment. *Id.* The trial court ultimately adjudicated C.T.S. as a delinquent for acts that would be Class A misdemeanor pointing a firearm and Class A misdemeanor battery. *Id.* at 1197.

[13] On appeal, C.T.S. argued the trial court abused its discretion when it denied his multiple requests for release from detention into electronic monitoring in his parents' care. *Id.* at 1199. We agreed:

> There is ample evidence in the record demonstrating that C.T.S.'s parents were willing to go to great lengths so that C.T.S. could be released to their care while the proceedings were pending. Mother employed a nanny who would be available to supervise C.T.S. while Mother and Stepfather were at work.

> Also, Stepfather indicated that he was willing to take a leave of absence from work to be with C.T.S. at all times. Given the willingness of C.T.S.'s parents to provide adult supervision of C.T.S. at all times, which became evident to the trial court after the November 21, 2001 pretrial hearing, a less restrictive alternative, such as home detention, would have likely ensured C.T.S.'s appearance for subsequent proceedings and negated the need to detain C.T.S. for reasons of his protection or that of the community.

Id. at 1200. The same is not true in the case before us.

[14] Here, J.H. and his mother agreed placement with her was not in his best interests, as she lived in the small community in which the underlying incident occurred. J.H. asked to be placed with his father, who was "home all day" because his employer had been temporarily shut down and it was "slow at work." (Tr. Vol. II at 18.) However, J.H.'s father lived in Illinois, and Probation Officer Walters testified it was "not usually [their] practice to have a juvenile on In-House Arrest (Level 2) with a monitor and living out of our state" (*id*. at 7), and probation had never "released a child on In-House to Illinois." (*Id*. at 8.) Additionally, Probation Officer Walters testified the probation department had contacted multiple placement facilities who denied to allow J.H. entry because "he's not appropriate for their milieu[.]" (*Id*.) Finally, unlike C.T.S., J.H. faced felony-level allegations stemming from an incident that resulted in the death of his friend. Therefore, it would seem, based on the seriousness of the allegations against J.H. and the lack of availability of an alternative placement, *C.T.S*. is inapposite, and the trial court did not abuse

its discretion when it denied J.H.'s request for release from detention pending his delinquency hearing. *See*, *e.g.*, *C.L.Y. v. State*, 816 N.E.2d 894, 900 (trial court did not abuse its discretion when it denied juvenile's request for release from detention prior to his delinquency trial based on the seriousness of the allegations against him despite his family member's availability to supervise him), *trans. denied*.

2. Placement in DOC

Our review of the trial court's dispositional decision is well-settled:

> The 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 be reversed only 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.

K.A., 938 N.E.2d at 1274. Regarding the purpose of the juvenile justice system, our Indiana Supreme Court has stated:

> The nature of the juvenile process is rehabilitation and aid to the juvenile to direct his behavior so that he will not later become a criminal. For this reason the statutory scheme of dealing with minors is vastly different than that directed to an adult who commits a crime. Juvenile judges have a variety of placement choices for juveniles who have delinquency problems, ranging from a private home in the community, a licensed foster home, a

> local juvenile detention center, to State institutions such as the Indiana Boys School and Indiana Girls School. None of these commitments are considered sentences. A child can become a juvenile delinquent by committing acts that would not be a violation of the law if committed by an adult, such as incorrigibility, refusal to attend public school, and running away from home. A child can also become a delinquent by committing acts that would be a crime if committed by an adult. In the juvenile area, no distinction is made between these two categories. When a juvenile is found to be delinquent, a program is attempted to deter him from going further in that direction in the hope that he can straighten out his life before the stigma of criminal conviction and the resultant detriment to society is realized. In contrast, when an adult is convicted of a crime, the conviction is a stigma that follows him through life, creating many roadblocks to rehabilitation. In addition to the general stigma of being an "ex-con", or a felon, the conviction subjects him to being found a habitual criminal if he later commits additional felonies, and affects his credibility as a witness in future trials. The Legislature purposely designed the procedures of juvenile determinations so that these problems are not visited on those found to be juvenile delinquents in a juvenile court.

Jordan v. State, 512 N.E.2d 407, 408-9 (Ind. 1987).

[15] Indiana Code section 31-37-18-6 lists the factors the trial court should consider when determining the appropriate disposition for a juvenile adjudicated a delinquent:

> 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.

J.H. argues the trial court abused its discretion when it ordered him placed in the DOC because Dr. Miller's testimony relied upon stale information, there were less restrictive placements available, and the trial court's decision to place him in the DOC was intended to be "punitive as opposed to rehabilitative[.]" (Br. of Appellant at 14.)

[16] During J.H.'s disposition hearing, Dr. Miller recommended J.H. be placed in the DOC because

> I view Department of Corrections [sic] as a place to get, um, treatment. I think it's a misnomer that it's about punishment. They, they actually have lots of things that I thought were helpful for him, therapy, psychiatric intervention, the substance abuse treatment, educational services. Um, he needed all those things, and some after planning, which I think the Department of

> Corrections [sic] does well. He had untreated depression, which I was not comfortable with him going home in anyway, or a residential facility with untreated depression. As you know, it could have serious consequences. He was not willing to engage in medication, he was not willing to engage in therapy. The good news is, he has weekly met with our therapists over the last eight months, since he's been there. So that, that, at that time, when I saw him in November, that's what he verbalized, but since then, he has regularly met with our therapist, which is positive. I do think he was going down a road with the substance abuse, which the Department of Corrections [sic] has a very specific substance abuse program that's five to six months long. It's um, it's called ROC, it's the Recovery Orientated Community. I thought he would benefit from it, because this, I know I only diagnosed him for the marijuana, but he also admitted to going down the more hardcore road of experimenting with Ecstasy, Xanax, some other drugs, in additional to the marijuana, which he self-reported, and I appreciate he was honest, um, and I thought he could benefit from Department of Corrections [sic], having that piece, and they are housed separately from the rest of the population at DOC, if they do get accepted into that program, and it's tiered so not every kid has to do every section of it, but it's a very specialized program. So, the Department of Corrections [sic] for me was about this youth getting what he needed all in one place, in a safe environment, and that's why I gave the recommendation.

(Tr. Vol. II at 53-4.) Additionally, Dr. Miller not only reviewed her findings regarding J.H. from her November 2020 assessment, but also testified, regarding J.H.'s current status:

> [Dr. Miller]: He is not prescribed medication at this point; he was just seeing our therapist; and he's attending group with the rest of the youth. I did speak with the therapist to, you know, checked [sic] on his, I do read all the notes and the things, I'm the

psychologist over at the juvenile center, he does participate, um, in, so, Scott is a master's level therapist, so he does participate, but no medication, and the groups are not specific to substance abuse, which he has not gotten that piece.

[State]: Okay. So, he hasn't received any substance abuse counseling or programming while he's been detained; is that correct?

[Dr. Miller]: Just general substance abuse education, which would be in a group format with other kids, and maybe some brief conversation with the therapist, but nothing like they have to offer at DOC.

[State]: Do you have any concerns that he's at risk for developing any kind of conduct disorder?

[Dr. Miller]: Uh, as you can see in the report, I had considered that diagnosis. He met two of the criteria, um, he did not meet some of the other ones, and in eight months being at the juvenile center, he has programed well. We have a phase program there, where I think he does respond to treatment. He's been on phase four multiple times, he has not been in any incidents in eight months, so if the conduct disorder was going to come out, I feel it would've in the last eight months with somebody. He's had no fighting, um, he's done fairly well with the high structure and I looked up the incident reports that he's had, they've been very minor, um, such as contraband of peanut butter, and things that are not significant. So, I think I considered it, but I do not see that at this point, and I didn't see it then. The behavior that I saw was related to this case. So at this point, I don't have that concern at this exact moment. I cannot diagnose that he does not meet the criteria of conduct disorder.

(*Id*. at 54-5.)

[17] J.H. admitted to committing acts that would be, if committed by an adult, Level 6 felony criminal recklessness and Class A misdemeanor carrying a handgun without a license based on an incident during which his friend was accidentally shot and killed. At the time of his delinquency hearing, he was facing additional unrelated delinquency petitions alleging he committed acts that, if committed by an adult, would be sexual battery, resisting law enforcement, and dealing of a controlled substance. In taking the matter of J.H.'s placement under advisement, the trial court stated:

> If you've heard the lawyers speak of placement, that's kind of a parlanced [sic] term, because that's how the juvenile justice system works. It's not based on punishment, where the adult system is based on rehabilitation also, but it's, it has a punishment component. The juvenile system recognizes that juveniles, their brain's not fully developed; their maturity level is not fully developed; and therefore they're, they're looked at on sort of a different level than what an adult would be looked at if they had committed a crime. So, the whole purpose of the juvenile justice system is to identify needs that an offender would have, and that's kind of what you heard with the testimony of the psychologist and the probation supervisor was, you take a look at [J.H.] and what's gone on in his teen years, and what's gone on, you know, at, in his family and what's happened, and you see a child who has had some, some issues, to say the least. So, what their job is to try and identify those needs, and then having identified those needs, they have to make recommendations on how to fix it – what services could be done, or what can we do to try and help, help this young man. Now, I know, as I saw that, you know, your family suffered an incalculable loss, I understand that, and I have great sympathy for that. I'm saying all these things because what the law requires us to do as a group, or, and to me, finally, a judge, is, what are those needs and what do we do to service those needs. The law goes one step further and it

says that, and this is why you know Attorney Mullins keeps pointing out that [J.H.] hasn't had the benefit of prior services. One of the things that the law requires is that the Court consider a lesser restrictive and more family-like structure prior to considering like, the Department of Corrections [sic], which it's not like the Department of Corrections [sic] is like a jail sending someone to Michigan City or Westville, as Dr. Miller described, it's, it's more of a boys' school situation where they would provide the services that she outlines that she thinks that this young man needs. Can these type of services in some situations be provided in a lesser restrictive environment? The answer to that is yes. There are other alternatives. There are residential facilities throughout the state that would provide services that are somewhat similar to the services that would be provided by the DOC. The probation department as part of their investigation and part of their determination on what their recommendation would, would be, they did send out those packets, seeking a possible residential placement. The testimony was that out of the three facilities that they sent packets to, two of the facilities rejected [J.H.]. Normally they would say, why, I'm quite surprised that there was no reason given. Normally, when it would come back, they would say the reason that that child would not be appropriate for that particular program. The third one has come back with not an answer as of yet, but a one month wait list. So, when we, when I look at a case, I have to determine, okay, what are the needs and can, can, you know, on the other hand, can those services be provided in the home of one of the parents. That's also something that I would have to consider, and that's the argument at Attorney Mullins is pointing out, saying he's never been offered services before, if you, I have to determine how those services can be provided to him in the least restrictive, most family-like way; in other words, allowing the family to participate in the rehabilitation of the child while it's going on. So, in that, in that regard, a lot of times, we're looking at, you know a residential, a residential placement that's closer to home that would allow the parents to participate in the rehabilitative process. So, I just wanted to explain to everyone

> involved where, what the Court's thought process is, what I'm required to do in taking the information that I was given today at this hearing and, and kind of putting that information into the lens of what is required of me. So, I want all of you to have a full understanding of what I'm going to be considering. I can't rule today, because I have not read [the victim's] mother's impact statement, I could not read that in advance of the hearing, because I didn't know if it would be admitted. I assumed it would be, but now that it's admitted, I can read that. I would like to re-read the psychological evaluation because as Attorney Mullins pointed out, it was submitted several months ago. So, I am going to review those, those things and go through all of it to come up with the best decision that I can make as guided by the legal guideposts that I just explained to you.

(*Id*. at 81-3.)

[18] J.H.'s mother admitted she was not a good placement because she "let him do more than [she] probably should" (*id*. at 76), and J.H.'s father lives out of state, which probation had previously indicated was problematic for electronic monitoring. Two of the three residential treatment facilities rejected J.H., and a third had a one month waiting list. Dr. Miller and the probation officer testified to the rehabilitative services available within the DOC, and how the type of structure offered in a DOC facility would benefit J.H. Finally, the court was concerned about releasing J.H. into the small community in which the incident occurred. Based thereon, we cannot say the trial court abused its discretion when it ordered J.H. placed in the DOC. *See J.B. v. State*, 849 N.E.2d 714, 718-9 (Ind. Ct. App. 2006) (trial court did not abuse its discretion when it placed

J.B. in the DOC based on his arrest record, community safety concerns, and his need for structured rehabilitation).

Conclusion

[19] The trial court did not abuse its discretion when it denied J.H.'s multiple requests for release from detention prior to his delinquency hearing because he could not be released safely into the small community in which the incident occurred, probation could not provide proper monitoring out of state, and there was not a residential treatment facility available. For these reasons, we also conclude the trial court did not abuse its discretion when it placed J.H. in the DOC. Accordingly, we affirm the judgment of the trial court.

[20] Affirmed.

Brown, J., and Pyle, J., concur.