

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

L.H.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner

February 20, 2023

Court of Appeals Case No.
22A-JV-2319

Appeal from the Dearborn Circuit
Court

The Honorable James D.
Humphrey, Judge

Trial Court Cause Nos.
58C01-2207-JD-10, 58C01-2205-
JD-8, 58C01-2203-JD-3

Memorandum Decision by Chief Judge Altice
Judges Riley and Pyle concur.

Altice, Chief Judge.

Case Summary

- [1] While on reporting probation in two other causes, fourteen-year-old L.H. committed a new delinquent act – Level 5 burglary if committed by an adult. This resulted in his fifth delinquency adjudication. Thereafter, the trial court entered a joint dispositional order for all three causes and granted wardship of L.H. to the Indiana Department of Correction (the DOC). On appeal, L.H. contends that the trial court abused its discretion by placing him in the DOC.
- [2] We affirm.

Facts & Procedural History

- [3] L.H.'s contacts with the juvenile justice system did not begin with these underlying causes. Rather, after years of receiving extensive services and having multiple residential placements,¹ L.H.'s first delinquency adjudications came in December 2018 when he was eleven years old. These involved an adjudication for battery followed quickly by one for criminal recklessness. As a result, L.H. was ordered into residential treatment in early 2019. He was placed in treatment centers in Indiana and Georgia until September 2, 2021. After his release, L.H. and his mother (Mother) received six months of intensive home-based services, which was followed by wrap-around services.

¹ Between June 2017 and October 2018, L.H. had nine residential placements, the last of which was four months at Evansville Psychiatric Children's Center. L.H.'s mental health diagnoses include, among others, intermittent explosive disorder, disruptive mood dysregulation disorder, and oppositional defiant disorder.

The events leading to the instant delinquency causes followed soon after the probationary period ended.

[4] On March 26, 2022, L.H. took Mother's car without permission and drove around town. L.H. advised the responding police officer that he took the car because he was upset with Mother. He further expressed that "it was funny" and that he was "ready to go back to 'juvy.'" *Appellant's Appendix Vol. 2* at 35. The State filed a delinquency action, Cause No. 58C01-2203-JD-3 (JD-3), alleging that L.H. committed acts that if committed by an adult would be Class A misdemeanor conversion and Class C misdemeanor operating a motor vehicle without ever receiving a license. At the fact-finding hearing on April 21, 2022, L.H. admitted to the second allegation, and the trial court scheduled the dispositional hearing for June. L.H. was placed with Mother on conditional release.

[5] On the evening of May 24, 2022, Mother contacted the police to report that L.H. was out past curfew and had stolen another individual's riding lawnmower. An officer located L.H. on a roadway sitting in a disabled truck. L.H. lied to the officer regarding his situation, but the owner of the truck, Everett Boggs, eventually arrived on the scene. Apparently, L.H. had come to Boggs's home on a lawnmower and asked to test drive the truck, which was for sale. L.H. had told Boggs that he was going to drive to Mother's residence for the money, but L.H. then drove past that location and the truck broke down. As a result of these events, L.H. was taken into custody and the State filed Cause No. 58C01-2205-JD-8 (JD-8), alleging that L.H. committed acts that if

committed by an adult would be Class A misdemeanor conversion and Class C misdemeanor operating a motor vehicle without ever receiving a license. At the initial hearing on June 2, 2022, L.H. entered an admission to the second allegation. The trial court ordered L.H. to remain in the custody of the Dearborn County Juvenile Center (the DCJC) until disposition.

[6] On June 14, 2022, the trial court held a consolidated dispositional hearing in JD-3 and JD-8. At the conclusion of the hearing, the trial court approved of the dispositional recommendations made by the probation department. That is, the trial court ordered L.H. to be placed in the DCJC for 60 days under each cause and for the entire 120 days to be suspended to reporting probation. L.H. was released, conditionally, to the custody of Mother.

[7] L.H. initially did well on probation and was permitted to attend a six-day church camp in Michigan with his local youth group. At a review hearing on July 8, L.H. reported to the trial court that he “felt moved” and was baptized in Lake Michigan at his own request. *Transcript* at 50. He indicated that his responsibility was now “[t]o follow God.” *Id.* The trial court commended L.H. on his positive behavior and continued probation as previously ordered.

[8] On July 20, 2022, police received a report that a young teenager – later identified as L.H. – was driving a white van and almost struck the complainant’s vehicle. The responding officer found L.H. driving the van in a nearby gravel parking lot. The officer activated his lights and pulled behind the van. L.H. then left the driver’s seat and moved toward the rear seats of the van.

In doing so, L.H. failed to put the van in park, causing the van to continue forward and crash into a shelter building. The shelter and the van were both damaged by the crash. The van was a “church bus” owned by Rising Sun Church of Christ, the church L.H. had been attending. *Appellant’s Appendix Vol. 2* at 202. A portion of the identifying stickers on the side of the van had been peeled off and the remaining stickers had been painted over with white paint.

[9] L.H. admitted to the officer that he entered the church on July 19 and took the keys to the van. He returned the next morning for the van and then attempted to remove and cover up the stickers. L.H. advised the officer that he “drove around town and may have hit a mailbox on 4th Street” and that he took the van “because he was mad that his mom yelled at him.” *Id.* at 203. Church staff informed the officer that L.H. did not have permission to enter the church on July 19 or to take the van and that they suspected he had taken other property from the church two weeks prior.

[10] As a result of his actions, L.H. was immediately taken into custody and placed in the DCJC. The next day, a petition for modification of the dispositional decree in JD-3 and JD-8 was filed, alleging that L.H. had committed new delinquent acts. Another delinquency petition, Cause No. 58C01-2207-JD-10 (JD-10), also followed. JD-10 contained four counts alleging that L.H. committed the following acts that would be crimes if committed by an adult: Level 5 felony burglary; Level 6 felony theft; Class B misdemeanor criminal mischief; and Class C misdemeanor operating a motor vehicle without ever receiving a license.

- [11] At a fact-finding hearing on August 11, 2022, which addressed all three pending cases, L.H. admitted to violating probation in JD-3 and JD-8 and to the burglary allegation in JD-10. L.H. was ordered to continue to be held in the DCJC pending disposition.
- [12] The dispositional hearing was held on August 26, 2022. The probation department recommended that L.H. be committed to juvenile division of the DOC. L.H., through counsel, indicated agreement with this recommendation because “he understands that the previous placements have not gotten us where we need to be.” *Transcript* at 75. L.H.’s guardian ad litem similarly expressed at the hearing, based on her discussions with him, that “[L.H.] does really think that this is the only avenue that the Court has at this point.” *Id.* at 76. Mother also concurred, stating: “I can’t believe we are back here. And I agree with the Probation Department. This is absolutely the last thing that we can do for him.” *Id.* at 75.
- [13] Ultimately, the trial court accepted probation’s recommendation and ordered L.H. to be placed in the DOC. The court noted L.H.’s recent poor behavior in the DCJC and “all the previous attempts that have been made to provide this young man help.” *Id.* at 76. The court indicated a general reluctance to place someone so young in the DOC but determined that given L.H.’s history of treatment and residential placements, the potential for harm his delinquent acts presented both to himself and others, and his high risk to reoffend, there was no alternative left except placing L.H. in the DOC.

- [14] L.H. now appeals, arguing that the trial court abused its discretion by granting wardship of L.H. to the DOC. Additional information will be provided below as needed.

Standard of Review

- [15] The choice of a specific disposition of a juvenile adjudicated a delinquent child is a matter within the sound discretion of the juvenile court. *R.H. v. State*, 937 N.E.2d 386, 388 (Ind. Ct. App. 2010). “That discretion, however, is subject to the statutory considerations of the child’s welfare, the community’s safety, and the policy of favoring the least-harsh disposition.” *J.B. v. State*, 849 N.E.2d 714, 717 (Ind. Ct. App. 2006). An abuse of discretion occurs if the trial court’s action is clearly erroneous and against the logic and effect of the facts and circumstances before the court, or against the reasonable, probable, and actual deductions to be drawn therefrom. *Id.*

Discussion & Decision

- [16] L.H. frames the issue on appeal as whether the trial court abused its discretion “when it placed a fourteen (14) year old child in the Department of Corrections [sic] for, on three occasions, taking a vehicle without permission and driving it around.” *Appellant’s Brief* at 4. This is not a fair characterization of the matter.
- [17] The goal of the juvenile process is rehabilitation so that the juvenile will not become a criminal as an adult. *R.H.*, 937 N.E.2d at 388. We have held that commitment of a juvenile to the DOC should be resorted to only if less severe dispositions are inadequate. *E.L. v State*, 783 N.E. 2d 360, 366 (Ind. Ct. App.

2003); *see also* Ind. Code § 31-37-18-6(1)(A) (“If consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that is in the least restrictive (most family like) and most appropriate setting available.”) (cleaned up). In other words, there are times when commitment to the DOC is in the best interest of the juvenile and society. *See J.S. v. State*, 881 N.E.2d 26, 29 (Ind. Ct. App. 2008); *see also J.T. v. State*, 111 N.E.3d 1019, 1026 (Ind. Ct. App. 2018) (“The law requires only that the disposition selected be the least restrictive disposition that is ‘consistent with the safety of the community and the best interest of the child.’”) (quoting *D.S. v. State*, 829 N.E.2d 1081, 1085 (Ind. Ct. App. 2005)), *trans. denied*.

- [18] All agreed below – including L.H. and Mother – that prior less-restrictive alternatives had not been effective in rehabilitating L.H. Even before his first juvenile adjudication, L.H. had received years of services, including multiple, months-long stints of inpatient treatment. Despite this extensive early intervention, L.H. proceeded to commit acts at the age of eleven that resulted in two delinquency adjudications for battery and criminal recklessness. Residential placements in Indiana and Georgia followed, lasting a total of two and a half years. Shortly after his period of probation ended in those first two cases, L.H. committed, in a matter of four months, three separate delinquent acts. His actions were dangerous to himself and others, and each time they became more serious – ultimately rising to the level of burglary, a Level 5 felony if committed by an adult, which he perpetrated against his church and while on probation in JD-3 and JD-8.

[19] We agree with the State that the trial court was under no obligation to revisit failed strategies. *See M.C. v. State*, 134 N.E.3d 453, 459 (Ind. Ct. App. 2019) (holding that juvenile’s wardship to the DOC was warranted where multiple less restrictive rehabilitative efforts did not produce positive changes in his behavior), *trans. denied, cert. denied* (2020); *C.C. v. State*, 831 N.E.2d 215, 218-19 (Ind. Ct. App. 2005) (observing that a juvenile’s repeated involvement with the juvenile justice system and repeated failures at rehabilitation efforts, coupled with the failure to alter behavior despite several placements by the court, were appropriate considerations for a grant of wardship to the DOC). This is especially true where L.H. expressed agreement below with the recommended disposition and acknowledged that past placements had not worked. Under the circumstances, the trial court did not abuse its discretion by granting wardship of L.H. to the DOC.

[20] Judgment affirmed.

Riley, J. and Pyle, J. concur.