MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

D.B.,

Appellant-Respondent,

v.

State of Indiana,

Appellee-Petitioner

March 3, 2023

Court of Appeals Case No. 22A-JV-2383

Appeal from the Elkhart Circuit Court Juvenile Division

The Honorable Michael A. Christofeno, Judge

The Honorable Elizabeth A. Bellin, Magistrate

Trial Court Cause Nos. 20C01-2207-JD-240 20C01-2207-JD-241

Memorandum Decision by Judge Kenworthy
Judges Robb and Crone concur.

Kenworthy, Judge.

Case Summary

[1] After D.B. was twice adjudicated a delinquent child for conduct that would be Level 3 felony rape if committed by an adult,[1] the trial court placed D.B. in the Indiana Department of Correction ("DOC"). D.B. challenges his placement. We affirm.

Facts and Procedural History

[2] In July 2022, the State filed two delinquency petitions concerning D.B., who was fourteen years old. D.B. was already subject to an informal adjustment due to an allegation he possessed marijuana. In the new causes, the State alleged D.B. committed acts on June 18 and July 17 that would be Level 3 felony rape if committed by an adult. D.B. was detained in the juvenile detention center.

[3] D.B. eventually admitted to being a delinquent child. As to the first petition, D.B. admitted he was at the home of T.W.—who was about fifteen years old—where he grabbed T.W. by the throat or neck area, exposed his penis, and rubbed his penis on T.W.'s vagina. As to the second delinquency petition, D.B. admitted that, around one month later, he pinned down A.J., who was the daughter of his mother's then-boyfriend. D.B. admitted he engaged in sexual

[1] Ind. Code §§ 35-42-4-1(a) (2022) & 35-42-4-1(a) (2014).

acts with A.J.—who was about thirteen years old—trying to have sexual intercourse with her and grabbing A.J.'s head to force her to perform oral sex.

[4] The trial court adjudicated D.B. a delinquent child in both matters. After the court scheduled a dispositional hearing and ordered a predispositional report, the State asked whether the trial court was also ordering a psychosexual assessment. The court gave D.B.'s counsel the opportunity to comment, at which point defense counsel neither requested the assessment nor objected to ordering an assessment, remarking: "[T]hat assessment could lead to other recommendations that, again, I don't know if would be ready by then, but I have no objection[.]" *Tr. Vol.* 2 at 44. The court ultimately decided to first get "the full background information, the full analysis that a predispositional report provides and then . . . make determinations from there." *Id.* at 44–45.

[5] At the dispositional hearing, the trial court heard evidence about the preceding school year, when D.B. engaged in disruptive conduct that was at times violent or sexually inappropriate. In that seventh-grade year, D.B. was suspended for "fighting, physical aggression, and touching a female student's breast." *Appellant's App. Vol. 2* at 73. At one point, D.B. remarked to a teacher: "[A]re you going to go home and suck the stick?" *Id.* D.B. also told multiple staff members to "shut the fuck up." *Id.* When asked about comments he made to another student, D.B. stated: "You walk up to me, I will kick your ass." *Id.*

[6] While D.B. was at the juvenile detention center, he continued to engage in disruptive conduct that was also violent or sexually inappropriate. All in all,

D.B. had been disciplined at least eight times. D.B. arranged a fight. He blew kisses to a female staff member. He displayed gang signs and told a juvenile he would "really smack the fuck out of you." *Id.* at 76. After being told not to speak to a female peer, D.B. began touching himself under his desk. D.B. was also disciplined for yelling: "[W]e made her eat a bunch of dicks." *Id.*

[7] The State sought placement in the DOC, noting D.B. failed to conform his behavior within the structured environment of the juvenile detention center. The State asserted D.B.'s "inability to follow law and structure . . . makes him a risk to himself outside of the community, or in any other type of facility that you put him in." *Tr. Vol. 2* at 85–86. The State was especially concerned D.B. would "engag[e] in fighting," creating a "high risk" in "any facility . . . other than [the DOC]" of D.B. being unable to remain in that placement. *Id.* at 86. The State contended "it is so vital . . . at this point in time in [D.B.'s] life, that he not be bounced out of the program[.]" *Id.* The State also presented evidence about the effectiveness of DOC programming for children like D.B., asserting D.B. was a "very good candidate" because of his admissions to the delinquent conduct, with the DOC offering "his best chance for rehabilitation." *Id.* at 85.

[8] In the predispositional report, the probation department recommended placing D.B. in the DOC. The probation department reiterated this recommendation at the dispositional hearing, which included the following exchange:

> THE COURT: . . . [D]o you believe that any sort of alternative therapeutic intervention that would be less restrictive than the

[DOC] . . . would adequately address the security concern with [D.B.] and the violent nature of these two separate acts?

[PROBATION OFFICER]: No, Your Honor.

. . . .

THE COURT: From what you previously told me, this is somewhat of a pattern of conduct . . . in and of itself in that we have two separate rapes within a short period of time, would that be accurate?

[PROBATION OFFICER]: Yes.

THE COURT: We have a pattern of sexualized conduct even while at the Juvenile Detention Center by flashing gang signs . . . and doing other sexualized, inappropriate behavior, is that correct?

[PROBATION OFFICER]: Yes, Your Honor.

. . . .

THE COURT: Is it your position that any less restrictive placement for [D.B.] would not adequately address any sort of repeated act in this instance?

[PROBATION OFFICER]: Yes, Your Honor.

Id. at 65–66.

[9] In selecting a placement, the court orally found D.B. met the statutory criteria for being a sex or violent offender. The court also found the "circumstances presented . . . indicate[] a necessity for a more restrictive placement that would be consistent with the safety of the community and in the best interest of the child." *Appellant's App. Vol. 2* at 82 & 159. The trial court further noted "[p]lacement in the community would be a safety risk, and testimony was provided that [D.B.] can receive the help he needs at [the DOC]." *Id.* at 83 & 160. The court ultimately placed D.B. in the DOC for a fixed period of three years, retaining jurisdiction to "determine whether transitional services need to be put in place so [D.B.] can transition back into the community successfully." *Tr. Vol. 2* at 91.

[10] D.B. appeals.

Discussion and Decision

[11] In matters of juvenile delinquency, Indiana trial courts have broad discretion in fashioning a dispositional decree. *See, e.g.*, I.C. §§ 31-37-19-1(a), -5(b) & -(6)(b). As to where to place a child, one option is to "order wardship of the child to the [DOC] for a fixed period that is not longer than the date the child becomes eighteen[.]" I.C. § 31-37-19-9. This option is available where—as here—(1) the child is between thirteen and sixteen years old; (2) the trial court determines the child meets the criteria for being a sex or violent offender under Indiana Code section 11-8-8-5, and (3) the child committed an act that would be the criminal offense of rape if committed by an adult. I.C. § 31-37-19-9.

[12] Even when the DOC is a viable placement option, there is a statutory safeguard that prevents placing a delinquent child in a needlessly restrictive setting. Indeed, in placing a child, the court must comply with the following statute:

> *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:
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> (A) in the least restrictive (most family like) and most appropriate setting available; and
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> (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.

I.C. § 31-37-18-6 (emphasis added). This statute is consistent with the purpose of our juvenile justice system, which is to rehabilitate children rather than punish them. *See* I.C. § 31-30-3-2 (preventing a child from being tried as an adult if the child is not beyond rehabilitation under the juvenile justice system);

Jordan v. State, 512 N.E.2d 407, 408 (Ind. 1987) (identifying the goal of helping a child "direct his behavior so that he will not later become a criminal").

[13] We review a trial court's placement decision for an abuse of discretion, which occurs when the decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006) (quoting *In re L.J.M.*, 473 N.E.2d 637, 640 (Ind. Ct. App. 1985)).

[14] Here, D.B. seeks a new dispositional hearing, arguing the trial court abused its discretion by placing him in the DOC. D.B. argues the trial court erred because the DOC was "the most restrictive placement that was available" and the "record does not reflect that less restrictive placement options were considered by the trial court." *Appellant's Br.* at 10–11. D.B. focuses on testimony about non-DOC programs "that could try to address, or would try to address, therapeutically" his rehabilitative needs. *Tr. Vol. 2* at 62. He asserts "there were service providers that could offer the kind of counseling that D.B. likely needed" and "perform assessments to specifically evaluate him and identify what [his] needs were and how to 'safety plan' for those needs." *Appellant's Reply Br.* at 7. D.B. also cites portions of the dispositional hearing where his counsel suggested D.B. could not be expected to conform his behavior in the

juvenile detention center when D.B. had not yet received therapy.[2] D.B. ultimately contends the court did not adequately explore all placement options.

[15] D.B.'s appellate arguments revolve around statutory language contemplating placement "in the least restrictive (most family like) and most appropriate setting available[.]" I.C. § 31-37-18-6. Yet the trial court must apply that portion of the statute only "[i]f consistent with the safety of the community and the best interest of the child[.]" *Id.* The trial court addressed these issues in its order: "Placement in the community would be a safety risk, and testimony was provided that [D.B.] can receive the help he needs at [the DOC]." *Appellant's App. Vol. 2* at 83 & 160. Moreover, at the hearing, the trial court specifically asked about D.B.'s pattern of conduct, which the State fairly characterizes on appeal as "extraordinarily concerning and dangerous." *Appellee's Br.* at 11. The evidence before the court indicates "any less restrictive placement . . . would not adequately address any sort of repeated act[.]" *Tr. Vol. 2* at 66. The evidence also indicates placing D.B. in the DOC aligns with his best interest. That is, the State spoke about the DOC's success rate with children like D.B. The State also asserted the DOC offered the "best chance for rehabilitation," in part because of the risk D.B. would later act out, jeopardizing his eligibility to remain in a less-restrictive placement. *Tr. Vol. 2* at 85. The State further

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[2] To the extent D.B. suggests the court should have ordered an assessment and corresponding therapeutic services before selecting a placement, D.B. declined to request an assessment when given the opportunity before the hearing. *See, e.g.*, *Durden v. State*, 99 N.E.3d 645, 651 (Ind. 2018) (noting a party generally must give the trial court "an opportunity to cure the alleged error" to preserve a claim for appellate review).

asserted continuity in the rehabilitative environment was "vital" at this point in D.B.'s life. *Id.* at 86.

[16] Ultimately, the trial court's decision to place D.B. in the DOC is not clearly against the logic and effect of the facts and circumstances before the court.

Conclusion

[17] The trial court did not abuse its discretion in placing D.B. in the DOC.

[18] Affirmed.

Robb, J., and Crone, J., concur.