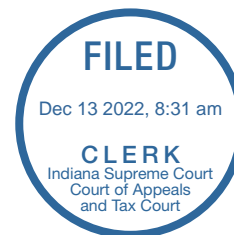


MEMORANDUM DECISION

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

C.B.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

December 13, 2022

Court of Appeals Case No.
22A-JV-1468

Appeal from the Wells Circuit
Court

The Honorable Kenton W.
Kiracofe, Judge

Trial Court Cause Nos.
90C01-2104-JD-10
90C01-2111-JD-27
90C01-2202-JD-2

Robb, Judge.

Case Summary and Issue

- [1] The juvenile court adjudicated C.B. a delinquent child in three separate causes for committing acts that would be misdemeanors if committed by an adult.¹ As a result of the third adjudication and C.B.’s continued violations of the probation she was serving in the first two causes, the juvenile court issued a single dispositional order for all three causes and awarded wardship of C.B. to the Indiana Department of Correction (“DOC”), but suspended commitment to the DOC – on the condition that C.B. comply with the terms of probation – and placed C.B. in a residential treatment facility. The State subsequently filed motions to modify the dispositional order, alleging that C.B. had repeatedly violated the terms of her probation, and after C.B. admitted to the allegations, the juvenile court committed C.B. to the DOC. C.B. now appeals, raising one issue for our review, namely: whether the juvenile court abused its discretion by ordering her placed in the DOC. Concluding the juvenile court did not abuse its discretion, we affirm.

Facts and Procedural History

- [2] In March 2021, sixteen-year-old C.B. participated in a fight in a park, during which C.B. struck another juvenile. As a result of the incident and other

¹ The State filed a petition alleging C.B. to be a delinquent child in a fourth cause, 90C01-2203-JD-7, for committing acts that would be battery, disorderly conduct, and intimidation if committed by an adult, but the State later dismissed the petition.

troubling behavior on C.B.'s part, the State, on April 21, filed a delinquency petition under cause number 90C01-2104-JD-10 ("JD-10"). The State alleged that C.B. was a delinquent child for committing battery, a Class A misdemeanor if committed by an adult; disorderly conduct, a Class B misdemeanor if committed by an adult; habitual disobedience of a parent, guardian, or custodian; and truancy. C.B. admitted to the disorderly conduct allegation and was adjudicated a delinquent. On June 4, the juvenile court issued its dispositional order in JD-10, directing C.B. to participate in probation for six months, participate in individual counseling, and attend school in person. *See* Appellant's Appendix, Volume III at 14. However, just over two months later, on August 18, the State filed a motion to modify the JD-10 dispositional order, alleging C.B. violated her probation by failing to "conduct herself according to school policy[.]" *Id.* at 16. On September 14, C.B. admitted to violating her probation in JD-10, and the juvenile court extended her probation by an additional sixty days. *See id.* at 24.

- [3] In October 2021, C.B. was visiting her friend, also a minor, at the friend's home. The girls consumed alcohol that had been provided by the friend's father, became intoxicated, and began to fight. C.B., at some point, broke the glass pane in the home's storm door. On November 1, as a result of the incident, the State filed a delinquency petition under a separate cause number, 90C01-2111-JD-27 ("JD-27"), alleging C.B. committed illegal consumption of alcohol as a minor, a Class C misdemeanor; disorderly conduct, a Class B misdemeanor if committed by an adult; and criminal mischief by damaging or

defacing property of another without consent, a Class B misdemeanor if committed by an adult. That same day, in the JD-10 cause, the State filed a second motion to modify the JD-10 dispositional order, alleging C.B. violated her probation in that cause.

[4] On November 16, C.B. admitted to the allegations in the JD-27 cause and was adjudicated a delinquent. C.B. also admitted to the allegations in the second motion to modify the JD-10 dispositional order. On January 18, 2022, the juvenile court placed C.B. on probation for six months in the JD-27 cause and ordered C.B. and her guardians to participate in home-based services. *See id.* at 67. In the JD-10 cause, the juvenile court ordered C.B.'s probation extended by an additional six months and ordered her to participate in "comprehensive services." Appellant's App., Vol. II at 111.

[5] In January 2022, C.B. got into a fight with her younger sister on the school bus. The two first exchanged words then began to punch each other. C.B. punched her sister more than twenty times. The bus driver intervened and separated the sisters. As a result of the incident, on February 17, 2022, the State filed a delinquency petition under cause number 90C01-2202-JD-2 ("JD-2"), alleging C.B. committed battery and disorderly conduct, Class B misdemeanors if committed by an adult. On February 18, in the JD-10 cause, the State filed a third motion for modification of the JD-10 dispositional order, alleging that C.B. was charged with new offenses, namely, battery and disorderly conduct. On February 23, the State filed a motion to modify the disposition in the JD-27

cause, alleging C.B. violated her probation in that cause by failing to comply with home-based services.

[6] On March 1, while attending an alternative high school, C.B. got into a fight with another student and struck the student. As C.B. was being escorted away from the student, C.B. told the student that she was going to die and that C.B. was going to kill her. *Id.* at 217. That same day, C.B. submitted to a urine screen and tested positive for marijuana. Sometime thereafter, the State filed a delinquency petition under cause number 90C01-2203-JD-7 (“JD-7”),² alleging C.B. committed battery, disorderly conduct, and intimidation when she got into the fight with the student at the alternative high school. C.B. was placed on home detention and electronic monitoring. On May 5, the juvenile court granted the State’s motion to dismiss the delinquency petition filed in the JD-7 cause.

[7] C.B. was expelled from her high school on March 7. At that time, she was in the tenth grade and had earned only eleven credits toward graduation. She had missed thirty-three days of school and had been tardy seven times. She had received write-ups on ten occasions – four times for insubordination, twice for possession of a vaping device, twice for inappropriate language, and twice for

² C.B. did not include in her Appendix a copy of the chronological case summary from cause number 90C01-2203-JD-7.

fighting. She had been fired from her job at a fast-food restaurant for calling a customer a derogatory name and spitting in the customer's food.

[8] On March 8, the State amended its third motion to modify the JD-10 dispositional order, as well as its motion to modify the dispositional order in the JD-27 cause, adding allegations that C.B. violated her probation in both causes by committing new offenses, namely, battery and disorderly conduct; failing a drug screen; using marijuana; failing to regularly attend school and being expelled from school; and failing to participate in services. Also, on that day, the juvenile court held a hearing during which C.B. admitted that she committed disorderly conduct, a Class B misdemeanor if committed by an adult in the JD-2 cause that involved the fight with her sister on the school bus. The State agreed to dismiss the battery allegation listed in the JD-2 cause. C.B. entered denials to the allegations listed in the amended pleadings the State had filed in cause numbers JD-10 and JD-27.

[9] On April 12, 2022, the juvenile court held a hearing to address the outstanding matters in C.B.'s causes. At the hearing, the juvenile court accepted C.B.'s admission to the allegation that she committed disorderly conduct under the JD-2 cause and adjudicated her a delinquent child in that cause. C.B. also admitted that she had violated her probation under causes JD-10 and JD-27 by

being expelled from school, failing to participate in services, failing a drug screen, and using marijuana.³

[10] The juvenile court then proceeded to the dispositional portion of the hearing for causes JD-10 and JD-27 and heard testimony from C.B., C.B.'s probation officer, and C.B.'s guardian. The probation officer offered testimony regarding C.B.'s delinquency history and C.B.'s lack of participation in the services offered to her, stating:

[W]e have done probation, violation, probation, violation; services, not gonna do services; then we're gonna try a different service provider. It's always somebody else's fault. It's always, "That provider didn't do this," "I don't like that provider[,] . . . I don't know when the appointments are." There's always some excuse of why it's not getting done, and it's never has [sic] anything to do with [C.B.'s] accountability.

We are five months from her being eighteen. Something's gotta change here. [W]e need some kind of accountability for her to do her part in her treatment. We can't keep giving her options, and her not taking the opportunities. . . .

[S]he's a smart girl – she tells you what you wanna hear; she knows the right answer. She has no intentions of following through with it unless it benefits her. She'll tell you what you wanna hear; that's what's gonna get her the outcome she wants

³ At the April 12, 2022, hearing, C.B. entered a denial to the allegations listed in the JD-7 cause that involved C.B. striking another student at the alternative school C.B. attended. The JD-7 cause was dismissed on May 5, 2022.

at that time. When she has time to reflect on it, . . . she might change her mind. . . .

[S]he says, “I’m not a violent person”; all of her charges involve fighting. No, she might not be pinning someone down to the ground, punching them in their face, but it’s always aggressive; there’s always a fight. There’s always fist[s] involved. And I think that’s – she just downplays her entire situation.

Transcript, Volume 2 at 96-97.

[11] The probation officer recommended that C.B. be placed with the DOC. *See id.* at 87. But both C.B. and her guardian asked the juvenile court to allow C.B. to remain on home detention. *See id.* at 110, 116. The juvenile court ultimately determined that C.B. should be placed with the DOC but that the commitment would be suspended. The court then warned C.B. as follows:

DOC is not completely off the table at this point, and that’s why it is a suspended commitment; so if there is a violation, if you violate the rules of your placement . . . committing a new delinquent act, things like that, those are gonna be . . . violations, and you’re subject to being placed back at DOC . . . and removed [from] the residential program I’m . . . trying to find [for you].

Id. at 133. C.B. was immediately placed in the Delaware County Juvenile Detention Center until a less-restrictive placement could be arranged. On April 18, C.B. was moved from the detention center and placed in emergency shelter care at Paddock View residential facility.

- [12] On May 5, 2022, the court issued one written dispositional order for cause numbers JD-2, JD-10, and JD-27. The court ordered that C.B. be removed from her home and committed to the wardship of the DOC but suspended the commitment on the condition that C.B. comply with the rules of probation and placed C.B. in residential care. The court found that it was “in the best interests of [C.B.]” to be removed from her home environment and that “remaining in the home would be contrary to the welfare of [C.B.] and the community because [C.B.] continues to commit acts of aggression to others and members of her household.” Appellant’s App., Vol. II at 241.
- [13] On May 22, at 11:08 p.m., C.B. ran away from the Paddock View residential facility. She was found around 2:05 a.m. the next morning. C.B. had decided to turn herself in to the authorities because the other juvenile who was supposed to run away with her changed her mind.
- [14] While C.B. resided at the residential facility, between April 18 and May 23, she received 131 write-ups, eleven behavior reports, and one critical incident report. Her 131 write-ups included thirty-seven for her use of profanity, thirty-four for disrespecting staff, fourteen for not following directions, eleven for refusing to work, eight for banging on walls, five for sleeping, four for entering without asking, four for sitting next to a male resident, four for having inappropriate conversations with a male resident, three for disrespecting a peer, two for making inappropriate comments, two for instigation, one for walking out of her unit, one for running and falling, and one for drawing inappropriate pictures. See Appellant’s App., Vol. III at 9.

- [15] Her behavior reports were for verbal aggression towards staff, physical aggression, running from the room, inappropriate comments, aggression, punching a wall, and being in the dayroom after bedtime. Her critical incident report was for running away from the facility on May 22. *See id.*
- [16] During her time at the residential facility, she was placed on suicide watch twice, and she self-harmed twice. The facility thought that C.B. would “benefit from a psychiatric residential treatment facility where she w[ould] receive treatment in a secure environment that can keep her safe while she addresses her many trauma experiences.” *Id.* at 11.
- [17] On May 23, 2022, the State filed a fourth motion for modification of the JD-10 dispositional order, a second motion to modify the disposition in the JD-27 cause, and a motion to modify the dispositional order in the JD-2 cause, alleging in all three causes that C.B. ran away from her residential facility placement. The next day, May 24, the juvenile court held a hearing on the State’s motions, during which C.B. admitted to the allegation in each of the three causes. C.B. also admitted that she had violated her probation. The court proceeded to the dispositional portion of the hearing and heard testimony from C.B.’s probation officer and two case managers from the residential facility. The probation officer recommended that C.B. be placed with the DOC. *See Tr.*, Vol. 2 at 143. One of the case managers testified that commitment to the DOC was not in C.B.’s best interest and that C.B. needed a placement where her mental health issues could be addressed. *See id.* at 149. At the conclusion of the hearing, the juvenile court ordered that C.B. be released from Paddock

View residential facility and placed at the county juvenile detention center while the probation department searched for other residential facilities that would be willing to admit C.B. At the conclusion of the hearing, the court stated:

[C.B.], . . . there's nothing else I can do for you at this point. You . . . made your bed. [T]he recommendation here was to place you at a non-secure . . . facility . . . and get you the help that everyone around you says you need; and when you run away and do these things, . . . you essentially tie my hands, and there's nothing else, at that point, to do[.] . . .

I . . . would've been more than willing to . . . [give] you a chance here out of some . . . mercy and some . . . sympathy towards you and your situation that you're in, but . . . I'm done at this point.

Id. at 170. The court then set the matter for a status hearing to take place on June 14.

[18] At the status hearing, the juvenile court heard testimony from C.B. and C.B.'s probation officer. On June 21, the court issued one written dispositional order for causes JD-2, JD-10, and JD-27, finding that “[d]espite the efforts made by the probation department to rehabilitate [C.B.], she continues to commit delinquent acts that pose a risk of harm to herself and the community.”
Appealed Order at 4.⁴ The court executed C.B.'s previously suspended

⁴ Citations to the Appealed Order are to the .pdf pagination.

commitment to the DOC and awarded wardship of C.B. to the DOC for “housing in any correctional facility for children.” *Id.* C.B. now appeals. Additional facts will be provided as necessary.

Discussion and Decision

I. Standard of Review

[19] The juvenile court has wide latitude and great flexibility in its dealings with juveniles, and the choice of the specific disposition of a juvenile adjudicated a delinquent child is a matter within the sound discretion of the juvenile court. *In re M.T.*, 928 N.E.2d 266, 268 (Ind. Ct. App. 2010), *trans denied*. 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. *Id.* 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. *Id.*

II. Placement at DOC

[20] C.B. contends that the juvenile court abused its discretion by ordering wardship of her to the DOC, a commitment that, according to C.B., would expose C.B. to persons who “typically would have horrendous criminal histories, are unreformable, and [are] potentially dangerous [to C.B.’s] own health, safety and welfare[.]” Appellant’s Brief at 14-15. C.B. maintains that during the

commitment, she would “potentially [be] taught the criminal lifestyle” and would be “deprived of the typical rehabilitative services found in normal placement facilities[,] . . . such as therapy, job coaching[,] high school diploma classes, etc.” *Id.* at 15.

[21] Indiana Code section 31-37-18-6 sets forth the factors that a juvenile court must consider in entering a dispositional decree and provides that:

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.

The statute thus requires placement in the least restrictive setting only “[i]f consistent with the safety of the community and the best interest of the child[.]” *Id.* This language “reveals that a more restrictive placement might be appropriate under certain circumstances.” *J.T. v. State*, 111 N.E.3d 1019, 1026 (Ind. Ct. App. 2018) (quotation marks and citations omitted), *trans. denied*. We have held that commitment to the DOC “should be resorted to only if less severe dispositions are inadequate.” *E.L. v. State*, 783 N.E.2d 360, 366-67 (Ind. Ct. App. 2003).

[22] C.B. claims that her commitment to the DOC was not in her best interests and was not the least restrictive nor the most “family-like environment . . . for her needs” and that in light of her testimony during the disposition hearing, the juvenile court should have placed her on house arrest or returned her to her placement at Paddock View residential facility. Appellant’s Br. at 16. At the June 14 status hearing, C.B. testified that she had “worked hard enough to keep [her] anger under control”; her mental health had “gotten a lot better with . . . the depression and everything”; and she had not had “any suicidal thoughts, nothing like that.” Tr., Vol. 2 at 179. She told the court, “I feel like if I go home on house arrest, I can get into . . . counseling; my counselor that I was with before my last court date, . . . she said that she would take me back[.] . . . We had two sessions together, and from the very start, I felt a connection.” *Id.* She asked the juvenile court to give her a second chance because she wanted to “get a job” and had “job applications lined up.” *Id.* at 181.

[23] However, C.B. has an extensive history of juvenile delinquency having been adjudicated a delinquent three times for offenses that would be disorderly conduct and criminal mischief if committed by an adult and for consuming alcohol as a minor; was referred to probation four times in the year leading up to the June 14, 2022, status hearing; and has been given opportunities in less restrictive placements including residential treatment and home detention. C.B. was in the tenth grade when she was expelled from her high school, had earned only eleven credits toward graduation, and had received ten write-ups – two of which were for fighting. During the five weeks that C.B. resided at Paddock View residential facility, her behavioral issues “die[d] down a little bit[,]” but, ultimately, she made no sustained progress with her treatment. *Id.* at 148. She received 131 write-ups, eleven behavior reports, and one critical incident report for running away from the facility. *See Appellant’s App.*, Vol. III at 9. Shortly before the June 14 status hearing was held, C.B. punched a sink and broke her hand. And of the three fast-food restaurant jobs that she held, she was fired from two of the jobs and quit the third because her boyfriend wanted her to spend more time with him. *See Appellant’s App.*, Vol. II at 187.

[24] In addition, C.B. failed to take advantage of the numerous services that were provided to her, including individual and family therapy, home-based case management, motivational interviewing, and medication management. *See id.* at 192. Only one treatment facility had agreed to interview C.B. for possible admission, due to C.B.’s behavioral issues, but the facility had a four to six month waiting list. No other less-restrictive placement options were available

to C.B. And, when the June 14 status hearing was held, C.B. was just three months away from her eighteenth birthday.

[25] Given the facts and circumstances of this case, the juvenile court did not abuse its discretion by ordering commitment of C.B. to the DOC. *See J.J. v. State*, 925 N.E.2d 796, 802 (Ind. Ct. App. 2010) (affirming commitment of juvenile to DOC where juvenile had been offered numerous means for rehabilitation but “has continued to reoffend and disrespect the rule of law and [juvenile’s] fellow citizens”), *trans. denied*; *see also K.A. v. State*, 775 N.E.2d 382, 387 (Ind. Ct. App. 2002) (finding placement of juvenile in the DOC was not an abuse of discretion when previous less-restrictive rehabilitation efforts were unsuccessful), *trans. denied*.

Conclusion

[26] We conclude that the juvenile court’s commitment of C.B. to the DOC was not an abuse of discretion. Therefore, we affirm the juvenile court’s judgment.

[27] Affirmed.

Mathias, J., and Foley, J., concur.