

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

C.H.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner

October 20, 2022

Court of Appeals Case No.
22A-JV-1089

Appeal from the
Gibson Circuit Court

The Honorable
Jeffrey Meade, Judge

Trial Court Cause No.
26C01-2203-JD-43

Vaidik, Judge.

Case Summary

- [1] C.H. was adjudicated a delinquent child after he admitted committing what would be, if committed by an adult, Level 6 felony theft of a firearm, Class A misdemeanor carrying a handgun without a license, Class C misdemeanor operating without a license, and Class C infraction speeding. The trial court ordered him committed to the Department of Correction (DOC). C.H. appeals that disposition.
- [2] We agree with C.H. that the trial court abused its discretion by sending him to the DOC. Unlike with adult offenders, commitment to the DOC is a last resort for juvenile offenders, and it was not appropriate here. This was C.H.'s first delinquency adjudication, so no alternative to DOC commitment has ever been tried. His most serious offense was a low-level felony. The director of the juvenile detention center where C.H. was held for over a month while the case was pending reported that his behavior was exemplary. An assessment of C.H. showed a low risk of reoffending, and the probation officer assigned to the case recommended that any commitment to the DOC be suspended to probation. For these reasons, we reverse the dispositional order and remand this matter to the trial court to order a suspended DOC commitment and probation.

Facts and Procedural History

- [3] C.H. was born in February 2005. At some point, his parents divorced and began sharing custody of him. In late 2019 or early 2020, C.H.'s parents let him

choose where to live, and he chose to live with his father. Over the next two years, he had behavioral issues, including sneaking out at night, being expelled from school, and possessing a stolen purse and laptop. However, he never had a delinquency petition filed against him.

[4] In November 2021, C.H., who didn't have a driver's license, was pulled over for speeding. Three months later, in February 2022, C.H. was involved in an altercation in which his friend was shot by another person and C.H. then drew and fired a handgun, allegedly in self-defense. The Gibson County Sheriff's Department investigated the shooting and recovered personal belongings of the shooting victim.

[5] On March 3, C.H. and his friend went to the sheriff's office to get the friend's belongings. C.H. stayed in the car. When a sergeant went to talk to C.H., the car smelled like marijuana, and C.H. gave a false name. A handgun that had been reported stolen was found near where C.H. was sitting. C.H. said he had bought the gun from a person whose full identity he didn't know. C.H. was taken into custody and placed in the Vigo County Juvenile Detention Center.

[6] Based on the November and March incidents, the State filed a petition alleging that C.H. is a delinquent child because he committed what would be, if committed by an adult, Level 6 felony theft of a firearm, Class A misdemeanor carrying a handgun without a license, Class C misdemeanor operating without a license, and Class C infraction speeding. (C.H. was not charged with anything in relation to the February shooting.) At a hearing on March 28, C.H. admitted

the allegations. The court set a dispositional hearing for April 7. C.H.'s mother asked that he be released to her pending disposition. The court denied the request and ordered that C.H. remain in the Vigo County Juvenile Detention Center. But the court said it would consider a disposition under which C.H. would be released to his mother and told C.H., "You have to be on your best behavior between now and disposition. This is crucial to what happens at disposition." Tr. pp. 41-42.

[7] After a one-week continuance, the disposition hearing was held on April 14. C.H. provided a letter from the director of the detention center stating that he: had made "remarkable progress" and "amazing strides"; "has shown maturity and a [sense] of responsibility"; "always volunteers to clean and do chores helping the staff when asked"; "is always polite and respectful when treated with respect"; and "is well liked by his peers and gets along with everyone, always avoiding confrontations when they arise." Appellant's App. Vol. II p. 78. C.H. also presented his report card from his time in detention showing he had earned an A, two Bs, and two Cs. An assessment using the Indiana Youth Assessment System (IYAS) placed C.H. at low risk of reoffending. The juvenile probation officer recommended that the trial court order one year of probation and a suspended commitment to the DOC, fifteen hours of community service, schooling, and in-home services. C.H.'s mother asked that he be released to her care. She said she would make him find a job and would take him to and from work; she would talk to the school about educational options; and she would not hesitate to call police or probation if C.H. misbehaved.

[8] The State argued that C.H. should be committed to the DOC because it “offers him the best chance of rehabilitation” and “this family has had an inability to control this young man.” Tr. p. 68. The trial court agreed with the State and committed C.H. to the DOC, with the “duration of stay determined by [the DOC].” Appellant’s App. Vol. II p. 85.

[9] C.H. now appeals.

Discussion and Decision

[10] C.H. contends the trial court should not have committed him to the DOC. Trial courts have discretion in determining the disposition of a delinquent child, and we review such a decision only for an abuse of that discretion. *M.M. v. State*, 189 N.E.3d 1163, 1166 (Ind. Ct. App. 2022).

[11] As C.H. notes and the State concedes, Indiana law requires that the disposition of a delinquent child be the least restrictive option consistent with the safety of the community and the best interest of the child. *D.S. v. State*, 829 N.E.2d 1081, 1085 (Ind. Ct. App. 2005). The statute governing delinquency dispositions provides:

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.

Ind. Code § 31-37-18-6. Commitment to the DOC is the most restrictive disposition available. *E.L. v. State*, 783 N.E.2d 360, 367 (Ind. Ct. App. 2003). Therefore, it should be treated as a last resort. *Id.*

[12] To be sure, in some situations a commitment to the DOC, while the harshest disposition, is also the most appropriate. *See M.C. v. State*, 134 N.E.3d 453, 459 (Ind. Ct. App. 2019) (holding that commitment to the DOC was “necessary to prevent M.C. from continuing to commit acts that are harmful to himself and the community” where M.C. continued to use marijuana, committed additional offenses, and was suspended from school “*after* his involvement with the juvenile justice system”), *trans. denied*. This is not one of those situations. First, this was not only C.H.’s first delinquency adjudication but the first time a

delinquency petition had been filed against him. He had other behavioral issues that led up to the misconduct at issue here but none that led to formal court proceedings. As such, no other dispositional alternatives have ever been tried with C.H. Second, his most serious misconduct (theft of a firearm) would have been a Level 6 felony if committed by an adult, the lowest felony level in Indiana. No felony is minor, but there are much worse offenses than those C.H. committed. Third, C.H. was held in a juvenile detention center for more than a month before his dispositional hearing, and the director wrote a glowing review of his behavior and progress. The trial court had advised C.H. that his behavior at the detention center would be “crucial to what happens at disposition.” Fourth, the juvenile probation officer recommended that C.H.’s commitment to the DOC be suspended to probation. That recommendation was not binding on the trial court, but it is an important consideration. And fifth, an IYAS assessment showed that C.H. presents a low risk of reoffending.

[13] For these reasons, we conclude the trial court abused its discretion by committing C.H. to the DOC. We reverse that order and remand this matter to the trial court to order a suspended DOC commitment and probation.

[14] Reversed and remanded.

Riley, J., and Bailey, J., concur.