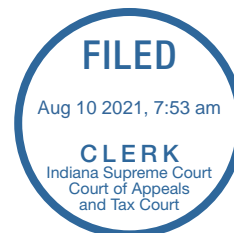


MEMORANDUM DECISION

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

E.M.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner

August 10, 2021

Court of Appeals Case No.
21A-JV-387

Appeal from the
Lake Superior Court

The Honorable
Thomas P. Stefaniak, Jr., Judge

The Honorable
Jeffrey Miller, Magistrate

Trial Court Cause Nos.
45D06-1807-JD-387
45D06-1904-JD-232
45D06-2012-JD-561

Vaidik, Judge.

Case Summary

- [1] E.M. appeals his placement in the Indiana Department of Correction (DOC) following a juvenile adjudication. We affirm.

Facts and Procedural History

- [2] Between July 2018 and May 2019, when E.M. was thirteen and fourteen years old, the State filed four petitions in Lake County alleging he was a delinquent child: (1) in July 2018, alleging he committed theft, Cause No. 45D06-1807-JD-387; (2) in November 2018, alleging he committed theft, Cause No. 45D06-1811-JD-602; (3) in April 2019, alleging he committed domestic battery on his grandmother, Cynthia Sheehy, Cause No. 45D06-1904-JD-232; and (4) in May 2019, alleging he committed fraud, Cause No. 45D06-1905-JD-290. In June 2019, E.M. admitted to committing conversion under JD-387 and battery under JD-232, and the State dismissed the theft and fraud allegations under JD-602 and JD-290. The juvenile court placed E.M. on probation and sent him to residential care at Rite of Passage in South Bend.
- [3] E.M. spent nine months in residential care, where he received therapeutic and educational services. He completed the program, and upon his discharge on April 15, 2020, he returned to live with Sheehy. He remained on probation and was ordered to participate in Transition from Restrictive Placement services. Two weeks later, Sheehy reported that E.M. had stolen and crashed her car and that when she confronted him about it, he ran away. The State then filed a

motion to modify E.M.'s disposition in JD-387 and JD-232, which sat idle because he was missing.

- [4] By October 2020, E.M. had made his way to Indianapolis, where his mother lived. On October 9, E.M. approached Aniece Lee at a gas station while she was in the passenger seat of her car. E.M. opened the driver-side door, pointed a handgun at Lee, and ordered her out of the car. Lee exited the car, and E.M. drove off in it. An officer saw the car and activated his emergency equipment, but E.M. refused to stop. A police pursuit began, and stop sticks were used to deflate the tires of the car. E.M. continued to evade the police even after the front right tire was destroyed. He struck another car and the curb before stopping. E.M. was arrested, and the driver of the other car was transported to a hospital.
- [5] The State filed a delinquency petition in Marion County, alleging E.M. committed what would be Level 3 felony armed robbery and Level 6 felony resisting law enforcement if committed by an adult. After a hearing, the Marion County court adjudicated E.M. to be a delinquent child. The matter was transferred to Lake County for disposition. Around the same time, the Lake County court held a hearing on the motion for modification filed in JD-387 and JD-232 in April 2020. E.M. admitted to stealing and crashing Sheehy's car and running away.
- [6] On January 26 of this year, the Lake County court held a joint dispositional hearing on all three matters. E.M. had been accepted at a Rite of Passage

facility in Arizona and requested to be placed there. The Arizona program is virtually the same program he completed in South Bend with the addition of vocational training and sports. The court found that residential placement would be contrary to E.M.'s best interest as he is engaging in dangerous behaviors that jeopardize his and the community's health and well-being. The court placed E.M. in the DOC, finding it is in his best interest.

[7] E.M. now appeals.

Discussion and Decision

[8] E.M. contends the juvenile court should not have placed him in the DOC. The disposition of a juvenile adjudicated a delinquent is within the discretion of the juvenile court and is reviewed on appeal for an abuse of discretion. *J.S. v. State*, 881 N.E.2d 26, 28 (Ind. Ct. App. 2008). "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.* The court has "wide latitude" in dealing with juveniles. *Id.*

[9] The court's discretion is subject to the statutory considerations in Indiana Code section 31-37-18-6: the welfare of the child, the safety of the community, and the policy favoring the least harsh disposition. *Id.* The statute favors the least harsh placement only if "consistent with the safety of the community and the

best interest of the child.” *Id.* at 29. The statute recognizes that more restrictive placement is sometimes in the best interest of the child. *Id.*

[10] E.M. contends the juvenile court should have placed him in the Arizona facility instead of the DOC because the Arizona facility has sports and vocational training and he has completed a “similar program that worked for him,” demonstrating he “[is] capable of successfully completing a residential program.” Appellant’s Br. p. 10. It is true that E.M. has successfully completed a Rite of Passage program before. However, he committed more harmful and dangerous offenses after he was released from that program than he did before he was placed there. Two weeks after being discharged from that program, E.M. stole his grandmother’s car, crashed it, and ran away. He then remained on runaway status for five months before committing his next offenses of armed robbery and resisting law enforcement. The Rite of Passage program clearly did not “work.” E.M. has not responded to the type of program offered by the facility he is requesting placement in. He is demonstrating a pattern of offenses that is growing in severity and poses a risk to the community as well as himself. He has been adjudicated a delinquent for multiple violent offenses and has had multiple opportunities to change his behavior. The record demonstrates that residential placement will not correct the problem. The juvenile court acted well within its discretion by placing E.M. in the DOC.

[11] Affirmed.

Kirsch, J., and May, J., concur.