

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

N.M.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner

January 24, 2023

Court of Appeals Case No.
22A-JV-1765

Appeal from the Allen Superior
Court

The Honorable Andrea R. Trevino,
Judge

The Honorable Carolyn S. Foley,
Magistrate

Trial Court Cause No.
02D07-2201-JD-21

Crone, Judge.

Case Summary

[1] Fifteen-year-old N.M. was adjudicated a juvenile delinquent for committing conduct that, if he were an adult, would constitute level 3 felony armed robbery and class A misdemeanor carrying a handgun without a license. He was placed on probation with electronic monitoring. He subsequently violated probation by possessing a handgun, and the State moved to modify his placement. The trial court held a dispositional hearing and modified his placement to the juvenile division of the Department of Correction (DOC). N.M. now appeals, claiming that the trial court abused its discretion by committing him to the DOC. We affirm.

Facts and Procedural History

[2] In early January 2022, at a birthday party held at the Bottle Works Lofts building in Fort Wayne, thirteen-year-old M.G. saw and shook hands with a boy known as “K Worthy.” Tr. Vol. 2 at 8. M.G. was familiar with K Worthy, later identified as N.M., through social media. Shortly thereafter, M.G. left the party and waited outside for a friend. Two masked individuals, each armed with a handgun, approached M.G., pointed the guns at him, and demanded, “Give me all your stuff.” *Id.* at 7, 9. M.G. gave them his one-week-old Jordan 11 shoes and his belt. M.G. ran across the street to a friend’s house, put on an extra pair of shoes, called his mother to tell her of the robbery, and began walking home.

[3] M.G.'s mother told his father, Truvarus Giddens, about the incident. When M.G. arrived home, Giddens drove M.G. back to the party. Giddens parked in front of the building, left M.G. in the vehicle, entered the building, and began asking who had robbed his son. Giddens dialed the police, and the boys and girls in attendance began to quickly scatter. Giddens saw N.M. approach the front door, drop a black handgun and a clip, run out of the building, slip and fall on an icy sidewalk, and disappear behind a garbage can. Around the same time, a boy at the party was shot in the foot, jumped into Giddens' vehicle, and asked for a ride to the hospital. On the phone with police, Giddens reported both the shooting of the boy and the armed robbery of M.G.

[4] Police arrived within minutes. One officer tended to the injured boy while the other officer searched for N.M. Less than two minutes later, approximately a half block from the Bottle Works Lofts building, an officer located N.M. He was carrying a satchel that was empty but for a single die. The officer handcuffed N.M. Meanwhile, another officer located an "Arcus 9-millimeter handgun" and a "30-round extended magazine" about twenty yards from where N.M. was apprehended. *Id.* at 33, 36, 37.¹ Law enforcement interviewed M.G. and Giddens and showed them a photo array of six individuals. From the array, M.G. identified N.M. as the perpetrator of the armed robbery, and Giddens identified N.M. as the person he saw drop the gun and run.

¹ The State asserts that an officer found a pair of shoes close to where N.M. was apprehended. Appellee's Br. at 6. We cannot locate support for this statement within the transcript, appendix, or exhibits.

- [5] The next morning, the trial court found probable cause to believe that then-fourteen-year-old N.M. committed armed robbery and carrying a handgun without a license. At the time of the offenses, N.M. was a ward of the Allen County Department of Child Services (DCS), lived with a foster parent, and was on informal administrative probation for two prior battery allegations. The foster parent provided few rules or consequences and did not believe that N.M. was involved in the armed robbery or the possession of the weapon. N.M. was identified as a dual status child pursuant to Indiana Code Section 31-41-1-2.
- [6] The court also found that N.M. was a violent offender and that reasonable efforts had been made to prevent the need for removal, including “[Detention Alternative Program]-Curfew Checks, Informal Adjustment-Administrative, Apology letter, [and] Community Service.” Appellant’s App. Vol. 2 at 11. The court further found that “[r]emaining in the [DCS foster home was] contrary to the welfare of the child” and that N.M. “[was] engaging in dangerous behaviors including failing to respond to the structure of probation supervision which jeopardize[d] the physical and/or mental health” of N.M. *Id.* Accordingly, the court ordered N.M. into temporary secure detention at the Allen County Juvenile Center (ACJC).
- [7] While detained at ACJC, N.M. received three disciplinary reports and tested positive for marijuana. The foster parent was unaware of the drug use. Toward the latter part of February 2022, N.M. was conditionally released with electronic monitoring to the custody of DCS and permitted to return to the same foster placement. The court ordered N.M. to participate in services,

therapy, and random drug and alcohol testing. Additionally, the court forbade him from being in the presence of or having any communication with M.G. or two other individuals.

[8] In mid March 2022, N.M. was adjudicated a delinquent child due to the armed robbery and handgun offenses yet allowed to remain on electronic monitoring in the custody of DCS. The foster parent was required to participate in the probation program and inform the team of any violations. In late April, the foster parent filed a thirty-day notice requesting that N.M. be removed from his home because the foster parent suspected him of allowing friends to sell marijuana from the foster home. In early May, N.M. used another juvenile's phone to contact and threaten a DCS family case manager. Specifically, N.M. asked the case manager why she mentioned his name at a meeting and stated, "[B]itch keep my name out your mouth before I whoop yo ass," and "[Y]ou bitch, you heard what the fuck I said." *Id.* at 46.

[9] In a May 11, 2022 predispositional report, DCS noted a rise in negative behaviors from N.M. and recommended placement on formal probation with electronic monitoring. The next day, a dispositional hearing was held, and formal probation with monitoring began. The probation rules included a prohibition on possessing weapons and a requirement to report any interactions with law enforcement. Shortly after formal probation began, M.G.'s family made several reports that N.M. was continuing to "make threats" and cause problems. *Id.* at 68. At a May 17, 2022 initial staffing, N.M. was reminded of the no-contact provision.

[10] On May 23, N.M.'s foster parent contacted police to report that someone broke into his office and stole "\$300-\$400, coins, a wallet, and drugs." *Id.* Though only N.M. and one other foster child were at the home when the incident occurred, no arrest was made. The foster parent informed neither DCS nor probation officials of the break-in and theft. The next day, probation officials learned that a report had been filed indicating M.G.'s "house had been shot at" and that M.G. had received "numerous threats and pictures from" N.M. *Id.* One of the pictures showed N.M. holding a handgun; another showed N.M. referring to M.G. as "a rat"; and a third displayed a gun for sale. *Id.* The alleged possession of the weapon prompted the State to begin dispositional modification procedures. N.M. was arrested and detained in ACJC.

[11] N.M. admitted violating the dispositional order's rules. Following a hearing in late June 2022, the court issued a modified dispositional order "award[ing] wardship of [N.M.] to the [DOC] for housing in a correctional facility for children." *Appealed Dispositional Order at 2.* N.M. appeals.

Discussion and Decision

[12] N.M. asserts that the trial court abused its discretion in modifying his placement. The disposition of a juvenile adjudicated a delinquent is a matter committed to the trial court's discretion, subject to the statutory considerations of the child's welfare, community safety, and the policy favoring the least harsh disposition. *R.H. v. State*, 937 N.E.2d 386, 388 (Ind. Ct. App. 2010); *see also* Ind. Code § 31-37-18-6. We review the trial court's dispositions and modification

thereof for an abuse of discretion, which occurs if its decision is clearly against the logic and effect of the facts and circumstances before it or the reasonable inferences that may be drawn therefrom. *R.H.*, 937 N.E.2d at 388; *see also K.A. v. State*, 775 N.E.2d 382, 386 (Ind. Ct. App. 2002) (applying abuse of discretion standard where juvenile challenged modification of placement to DOC following her violation of terms of suspended commitment), *trans. denied*. In determining whether a trial court has abused its discretion, we do not reweigh evidence or judge witness credibility. *J.S. v. State*, 110 N.E.3d 1173, 1175 (Ind. Ct. App. 2018), *trans. denied* (2019).

[13] In its modified dispositional order, the court found:

1. The act committed by [N.M.] would constitute a felony if committed by an adult.
2. [N.M.'s] delinquent conduct is chronic and escalating and [N.M.] has been offered ample opportunities to alter such behavior.
3. [N.M.] must learn the logical and natural consequences of delinquent behavior.
4. [N.M.] is in need of rehabilitation and will benefit from a highly structured environment.
5. [N.M.] maintains negative peer relationships in the local community.
6. The Court also finds that the disposition set forth hereinafter is appropriate due to the seriousness of the offense.

7. It is the majority recommendation of the Placement Board that [N.M.] be committed to the [DOC].

Appealed Dispositional Order at 1. In awarding wardship of N.M. to the DOC, the court found that “detention is essential to protect [N.M.] or community and is in [N.M.’s] best interests.” *Id.*

[14] N.M. claims not to contest the findings of fact, “only whether the findings support the judgment.” Appellant’s Br. at 17. N.M. argues that being detained at ACJC with probation and electronic monitoring would fulfill the court’s findings that he receive natural and logical consequences. He places significant emphasis upon a “positive family support unit,” test results that predict his risk level for reoffending at low or moderate, recent clean drug screens, and his “expressed remorse.” *Id.* at 17, 18. Finally, he characterizes his possession of the handgun as “the least egregious violation with a handgun possible.” *Id.* at 18.

[15] Ordering a juvenile to the DOC is not a decision that judges relish or take lightly. However, as our detailed factual recitation demonstrates, this was not N.M.’s first foray into delinquent behavior, nor was this the first attempt to provide services² designed to alter his path. Rather, N.M.’s prior alleged

² In its modified dispositional order, the court cataloged the reasonable efforts that had been attempted to that point: “DAP-Curfew Checks, Informal Adjustment-Administrative, Apology letter, Community Service, Mental Health and Substance Abuse Assessment, thinking errors, drug and alcohol classes, home-based casework, no contact order, comply with CHINS order, DAP-Anklet, EMP, and Random Urinalysis.” Appealed Dispositional Order at 2.

batteries progressed to armed robbery of another child for a pair of shoes and a belt, possession of a handgun at a party attended by several children (one of whom was shot), disciplinary reports, a positive marijuana screen, possibly facilitating drug sales at his foster home, threatening a DCS worker with bodily harm, being present when money and drugs were stolen from his foster home, and then making multiple threats to his robbery victim's family despite a no-contact order. Along the way, a variety of graduated disciplinary and rehabilitative measures were attempted, yet N.M. continued down a serious negative road that endangered himself and others.

[16] In light of N.M.'s history of delinquent behavior, the prior placements and services that have not modified his behavior, and the recommendations of his placement board, we find no abuse of discretion in N.M.'s placement in the DOC. N.M.'s focus upon what he terms a positive family support unit, low risk levels, some negative drug screens, and one letter claiming remorse is unavailing. To conclude otherwise would be to impermissibly reweigh the evidence, which we will not do.³ The placement is consistent with N.M.'s best interest and the safety of the community, thus we affirm. *See Madaras v. State*, 425 N.E.2d 670, 672 (Ind. Ct. App. 1981) (noting that while juvenile code

³ Indeed, we note considerable evidence against N.M.'s characterizations. For instance, while N.M.'s foster parent exhibited some admirable traits, structure in the home was at times lacking, and teamwork with DCS and probation was inconsistent. As for risk levels, N.M. omits the categories where he was assessed at a high level: peers and social support network as well as education and employment. Finally, the court was free to determine that N.M. sending a threatening photo (of himself holding a gun) to the victim of his robbery was not as benign of an offense as N.M. tried to make it seem.

creates presumption in favor of disposing of juvenile matters using least severe disposition available that will serve needs of case, “the code explicitly recognizes that in some instances commitment may be in the best interests of the child and society in general”).

[17] Affirmed.

May, J., and Weissmann, J., concur.