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

N.D.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

May 27, 2022

Court of Appeals Case No. 21A-JV-2556

Appeal from the St. Joseph Probate Court

The Honorable Jason A. Cichowicz, Judge

Trial Court Cause No.
71J01-1905-JD-175
71J01-2101-JD-1
71J01-2108-JD-258

Mathias, Judge.

[1] The St. Joseph Probate Court adjudicated N.D. a delinquent child in three separate causes for committing acts that would be misdemeanors if committed by an adult.

As a result of the third adjudication and N.D.'s continued violations of his probation, the juvenile court placed N.D. in a residential treatment facility. N.D. appeals, arguing that the juvenile court abused its discretion by ordering him placed at a residential treatment facility instead of a less-restrictive placement.

[2] We affirm.

Facts and Procedural History

[3] On May 23, 2019, the State filed a petition in cause number 71J01-1905-JD-175 alleging that thirteen-year-old N.D. was a delinquent child for committing criminal mischief, which would be a Class A misdemeanor if committed by an adult. N.D. admitted that he was a delinquent child,[1] and, specifically, that he broke windows of a home under construction causing damages exceeding $750. N.D. also tested positive for marijuana when he was initially detained for breaking the windows.

[4] The probation department prepared a predispositional report noting N.D.'s poor school performance, truancy, and repeated suspensions from school. During the dispositional hearing, the court concluded that N.D. was in need of additional supervision and placed N.D. on probation and home detention. The court also ordered N.D. to undergo substance abuse and family assessments and comply with any recommendations.

[1] In exchange for N.D.'s admission, the State dismissed a separate petition also alleging that N.D. was a delinquent child for committing criminal mischief.

[5] N.D. completed the substance abuse assessment at the Center for Positive Change and the ensuing recommendation was participation in their Moral Reconation Therapy program. In September 2019, N.D. was suspended from school, and, therefore, he was placed on GPS monitoring.

[6] N.D. tested positive for marijuana on February 18, 2020. The court held review hearings throughout 2020 and continued N.D. on probation at each hearing. Prior to a November 24, 2020, modification hearing, N.D. tested positive for marijuana on three more occasions. At the modification hearing, the court observed that N.D.'s case had not been closed because he continued to use marijuana. N.D. was ordered to complete sixty days on home detention and continue his probation. The court also ordered N.D. to continue to participate in counseling.

[7] On January 7, 2021, the State filed a petition in cause number 71J01-2101-JD-001 alleging that N.D. was a delinquent child for committing possession of paraphernalia, which would be a Class C misdemeanor if committed by an adult. N.D. admitted that he possessed a grinder, a homemade smoking device, and a rolling paper holder. Burn residue on the smoking device field-tested positive for marijuana.

[8] On February 23, 2021, the court held a joint dispositional hearing and modification hearing in both causes. The court ordered N.D. to be placed on home detention, complete sixty days of day reporting, and submit to drug screens. At the May 25 review hearing, the probation department reported that N.D. continued to use marijuana and was not consistently participating in day reporting or school.

The court observed that it might be time to impose more serious consequences on N.D. but continued him on probation. Tr. p. 55.

[9] On August 10, 2021, the State filed a petition in cause number 71J01-2108-JD-258 alleging that N.D. was a delinquent child for committing theft, which would be a Level 6 felony if committed by an adult. N.D. admitted that he possessed a bike that he knew was stolen. The court ordered N.D. placed on home detention.

[10] The trial court held a dispositional hearing (and modification hearings in the two prior causes) on September 28, 2021. The court reflected on N.D.'s continued marijuana use and the numerous opportunities N.D. had been given to address his behavior and marijuana use. The court concluded that N.D.'s home was not an appropriate environment for him because "[t]hat has been tried." Tr. p. 81. The court ordered N.D. placed on strict and indefinite probation and ordered him to participate in and successfully complete placement at White's Residential.

[11] N.D. now appeals.

Discussion and Decision

[12] N.D. argues that the juvenile court abused its discretion in committing him to White's Residential. The juvenile court is accorded "wide latitude and great flexibility in dealing with juveniles[.]" *C.T.S. v. State*, 781 N.E.2d 1193, 1203 (Ind. Ct. App. 2003), *trans. denied*. The specific disposition of a delinquent child is within the juvenile court's discretion. *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006). We reverse only for an abuse of discretion, that is, if the decision is clearly against the logic and effect of the facts and circumstances before the juvenile court, or the

reasonable, probable, and actual deductions to be drawn therefrom. *Id.* The juvenile court's discretion is "subject to the statutory considerations of the welfare of the child, the community's safety, and the Indiana Code's policy of favoring the least harsh disposition." *C.T.S.*, 781 N.E.2d at 1202 (quotation omitted); *see* Ind. Code § 31-37-18-6.

[13] The goal of the juvenile system is rehabilitation rather than punishment. *R.H. v. State*, 937 N.E.2d 386, 388 (Ind. Ct. App. 2010). Indiana Code section 31-37-18-6 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.

[14] "[T]he statute contains language that reveals that a more restrictive placement might be appropriate under certain circumstances." *J.S. v. State*, 881 N.E.2d 26, 29

(Ind. Ct. App. 2008). The law requires only that the disposition selected be the least restrictive disposition that is "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).

[15] N.D. claims that his placement at White's Residential is not the least restrictive disposition because there was no evidence that his placement was necessary to protect the community and his parents were supportive so it was not necessary to confine him to get him to stop smoking marijuana. Appellant's Br. at 8.

[16] N.D. was given numerous opportunities to be placed in less restrictive environments including probation, home detention, day reporting, substance abuse treatment, and counseling. But N.D. failed to respond to the less restrictive placements the court provided to him. And just before N.D. committed his last delinquent act, the court implied that it would consider a more restrictive placement if N.D continued to use marijuana and commit delinquent acts. *See* Tr. p. 55.

[17] For over two-years, now fifteen-year old N.D. has continued to use marijuana, has failed to comply with the terms of his probation, and has committed acts that would be criminal offenses if committed by an adult. N.D. has committed acts that are harmful to himself and to members of his community. N.D.'s placement in White's Residential serves the juvenile justice system's purpose to intervene to prevent N.D.'s behavior from further declining with the hope that he will not

commit criminal offenses as an adult. *See e.g.* *M.C. v. State*, 134 N.E.3d 453, 459 (Ind. Ct. App. 2019).

[18] For all of these reasons, we conclude that the trial court did not abuse its discretion when it ordered N.D. placed at White's Residential.

[19] Affirmed.

Brown, J., and Molter, J., concur.