

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Mark F. James
Mark James Legal, LLC
South Bend, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Samuel J. Dayton
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

J.T.H.
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

July 5, 2023

Court of Appeals Case No.
22A-JV-2594

Appeal from the
St. Joseph Probate Court

The Honorable
Graham C. Polando, Magistrate

Trial Court Cause No.
71J01-2205-JD-193

Memorandum Decision by Judge Foley
Judges Vaidik and Tavitias concur.

Foley, Judge.

[1] J.T.H. appeals his placement with the Indiana Department of Correction (“the DOC”) following the modification of his placement from probation and home detention to the DOC after he admitted to violating the terms of his probation. J.T.H. raises the following issue for our review: whether the juvenile court abused its discretion when it assigned his wardship to the DOC. Finding no abuse of discretion, we affirm.

Facts and Procedural History

[2] On May 29, 2022, J.T.H. was detained by South Bend Police after fleeing from the scene where there had been a report of shots fired minutes before he fled. After an on-foot pursuit through an alley, officers caught up with J.T.H and placed him under arrest. Officers found a semiautomatic gun in the backyard of one of the houses along the alley. On June 13, 2022, the State filed a delinquency petition alleging that J.T.H. committed dangerous possession of a firearm,¹ a Class A misdemeanor if committed by an adult. During the evidentiary hearing, J.T.H. admitted to the allegation. The juvenile court placed J.T.H. on probation, home detention electronic monitoring service, in a Day Reporting program, and case management.

The terms of J.T.H.’s probation required him to:

“attend school or an approved educational program regularly with no unexcused absences, tardies, or suspensions, and obey all

¹ Ind. Code § 35-47-10-5(a).

school rules and regulations; [] abstain from the use and/or possession of any illegal substances, alcohol, or synthetic designer drugs; [] obey all applicable laws; [] be subject to random home visits; to participate in developing a Probation Case Plan and complete the directions, potentially including case management, therapy, parenting classes, tutoring, or a further evaluation for substance abuse treatment; and [] refrain from purchasing, using, possessing, or exerting control over any firearm, loaded and unloaded.”

Appellant’s App. Vol. 2 pp. 27-30.

- [3] Between July 2022 and September 2022, J.T.H. accumulated seven unexcused absences from the Day Reporting program, twenty-one individual class absences, and tested positive for marijuana on two occasions. On August 23, 2022, Keys Counseling found J.T.H in non-compliance and reported that in two sessions, he failed to participate and spent the session using his phone. Brianne Tretheway (“Tretheway”), a probation officer with the Juvenile Justice Center, characterized the nature of her contacts with J.T.H. as “be[ing] mostly negative.” Tr. Vol. 2 p. 36. Tretheway testified that J.T.H. was very combative, would not complete the casework, would often fall asleep during sessions, would rile up other students, and was not engaged in the rehabilitative program. Tretheway stated that while she was trying to create a case management plan with J.T.H., he told her that she was “wasting [her] time.” *Id.* at 39. Further, J.T.H. displayed physical violence and aggression toward other students. On September 6, 2022, J.T.H. physically assaulted a classmate from behind without warning and was suspended from school for forty-five days.

[4] J.T.H. continued this pattern of non-compliance by committing another offense involving a firearm. On September 9, 2022, while conducting a random home visit, an officer found an empty holster in J.T.H.'s bedroom. After obtaining a warrant, South Bend police found a .45-caliber firearm hidden under clothing in a storage bin that was in the basement storage room. Officers determined that the gun had been reported as stolen from someone in Flint, Michigan.

[5] On September 21, 2022, the State filed a petition for modification of J.T.H.'s placement alleging that he violated the terms of his probation. On October 3, 2022, the juvenile court held an evidentiary hearing, at which J.T.H. admitted to violating his probation. The juvenile court assigned J.T.H.'s wardship to the DOC. J.T.H. now appeals.

Discussion and Decision

[6] J.T.H. argues that the juvenile court abused its discretion when it assigned his wardship to the DOC because the determination was not supported by sufficient evidence. Specifically, J.T.H. asserts that the juvenile court should have used a less harsh disposition and, "given [him] an opportunity to show how he would respond to residential treatment [b]ased on [his] limited delinquency history." Appellant's Br. p. 5. Further, J.T.H. contends that his behavior "was not repetitive or serious" and his commitment to the DOC, "greatly disrupted his family life, is the most restrictive and provides little opportunity for family participation." *Id.*

[7] A juvenile court is given “wide latitude” and “great flexibility” in its dealings with juveniles. *J.T. v. State*, 111 N.E.3d 1019, 1026 (Ind. Ct. App. 2018), *trans. denied*. The choice of a specific disposition of a juvenile adjudicated a delinquent child is a matter within the sound discretion of the juvenile court and will only be reversed if there has been an abuse of that discretion. *Id.* The juvenile court’s discretion in determining a disposition 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 it. *Id.*

[8] 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). Juvenile courts have a variety of placement choices for juveniles who have delinquency problems, none of which are considered sentences. *Id.* Indiana Code section 31-37-18-6 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.

“[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).

[9] J.T.H.'s placement in the DOC was in his best interest and in the interest of the safety of the community because his actions posed a danger to himself and others. J.T.H.'s willingness and ability to unlawfully acquire firearms, history of aggressive and violent behavior toward others, and his reluctance to participate in less restrictive probation services establishes that there was sufficient evidence to modify his disposition to the DOC. Thus, it was not unreasonable for the juvenile court to conclude that the structure provided by the DOC is necessary to assist J.T.H. in furthering his rehabilitative efforts.

[10] The evidence showed that during a random home visit, officers determined that J.T.H. was in possession of a firearm that was stolen from someone in Flint, Michigan. This is particularly concerning, given that this is J.T.H.'s second alleged offense related to possession of a firearm. J.T.H.'s willingness and ability to illegally acquire firearms presents significant concern for his safety and community safety. "[T]he statute . . . reveals that a more restrictive placement might be appropriate under certain circumstances." *J.S.*, 881 N.E.2d at 29. The serious and dangerous nature of J.T.H.'s behavior demonstrates that there is a need for a more restrictive placement.

[11] J.T.H.'s display of aggression and violence toward other youth strongly suggests that he would pose a danger to other youth at a residential treatment facility. On September 6, 2022, J.T.H. was suspended from school for forty-five days after he physically assaulted another student. J.T.H. "punch[ed] [another student] in the back of the head, [] knocked [the student] to the ground, and then str[uck] [the student] one more time." Tr. Vol. 2 p. 23. The record further indicates that J.T.H. tends to engage in "combative and outright violent behavior." Appellant's App. Vol. 2 p. 39. Tretheway testified that she witnessed J.T.H. engage in a verbal altercation with another juvenile, and there was an "exchange of a lot of curse words between the two." Tr. Vol. 2 p. 37. J.T.H.'s pattern of aggression and violence demonstrates that he poses a significant risk of endangering other youths at a residential facility and that he needs a level of supervision that a more secure environment provides.

[12] Further, J.T.H. was unresponsive to the rehabilitative services provided to him. Testimony from Tretheway indicated that during sessions J.T.H. was often asleep, used his phone, did not complete assignments, would not positively engage in discussions, and would “work up other students” by asking provocative questions. Tr. Vol. 2 pp. 39, 40. On one occasion, J.T.H. told Tretheway that she was wasting her time while trying to create his case management plan. J.T.H.’s behavior gives a strong indication that he is uninterested in further rehabilitative efforts. Moreover, J.T.H. consistently violated the directives of the juvenile court and the mandates of the probation department. J.T.H. was required to refrain from using any illegal substances and was not permitted to have unexcused absences from school or the Day Reporting program. However, J.T.H. accumulated seven unexcused absences from the Day Reporting program, had twenty-one individual class absences from school, and tested positive for marijuana on two occasions. These are clear violations of his probation directives and demonstrate his disregard for the conditions of the less restrictive placement alternatives.

[13] Nevertheless, J.T.H. asserts that the juvenile court should have given him an opportunity to show how he would respond to residential treatment. However, J.T.H.’s behavior in less restrictive placement alternatives does not indicate that he would be cooperative in residential treatment. Heretofore, J.T.H. has indicated both verbally and behaviorally, that he is unwilling to participate in further rehabilitative efforts. The juvenile court provided J.T.H. with a reasonable opportunity to respond to less restrictive placement alternatives by

placing him on probation, in the Day Reporting program, in home detention electronic monitoring services, and in case management. However, as previously discussed, J.T.H. did not demonstrate that he was amenable to the less restrictive placement alternatives. In light of these facts, it was not erroneous for the juvenile court to decide that it is unlikely that J.T.H. would have been compliant in a less restrictive residential program.

[14] J.T.H. contends his case is similar to *D.P. v. State*, 783 N.E.2d 767 (Ind. Ct. App. 2003), where this court reversed the juvenile court’s “overly harsh” commitment of D.P. to the DOC because D.P. only had “one prior contact with the juvenile justice system,” suffered from “diminished cognitive capacity and impulsive behavior,” “did not show an unresponsiveness to less restrictive alternatives,” and his conduct did “not rise to the level of repetitive and serious misconduct.” *Id.* at 771. We disagree with J.T.H.’s characterization that his behaviors are similar to that in *D.P.*

[15] Contrary to *D.P.*, J.T.H.’s violations were continual over his probationary term and demonstrated his unresponsiveness to less restrictive alternatives. The record contains multiple instances in which J.T.H. resisted participating in the rehabilitative services offered to him. Additionally, J.T.H.’s decision to illegally possess a firearm poses a significant safety threat to himself and the community. Furthermore, J.T.H. did not demonstrate that he suffered from diminished mental capacity and impulsive behavior. J.T.H.’s actions, when aggregated, are clearly distinguishable from the juvenile’s behavior in *D.P.*

[16] Although this court acknowledges that J.T.H. has a relatively limited delinquency history, compelling interests were raised regarding community safety and his need to be in a secure and structured environment. As the juvenile court properly noted, the statute does not mandate that “every step [on] the ladder [] be ascended.” Tr. Vol. 2 p. 45. A juvenile court is given “wide latitude” and “great flexibility” in its dealings with juveniles. *J.T.*, 111 N.E.3d at 1026. The juvenile court complied with the mandates of the statute by providing J.T.H. with a reasonable opportunity to be in less restrictive placement alternatives. However, J.T.H. demonstrated that he was unwilling to participate in these efforts. The dangerous nature of J.T.H.’s second offense suggests that he needs to be in rehabilitative placement that is more restrictive than a residential treatment facility. The juvenile court was not erroneous in concluding that a less restrictive placement would not provide J.T.H. with the level of security and structure that he needs.

[17] We, therefore, conclude that the juvenile court did not abuse its discretion when it assigned J.T.H.’s wardship to the DOC.

[18] Affirmed.

Vaidik, J., and Tavitas, J., concur.