

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Joel C. Wieneke
Wieneke Law Office, LLC
Brooklyn, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Erica S. Sullivan
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

G.W.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 16, 2023

Court of Appeals Case No.
22A-JV-3076

Appeal from the Rush Circuit
Court

The Honorable David E. Northam,
Judge

Trial Court Cause No.
70C01-2208-JD-62

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

- [1] G.W. appeals his commitment to the Indiana Department of Correction (“DOC”). We affirm and remand.

Facts and Procedural History

- [2] On August 9, 2022, the State filed a Petition Alleging Delinquency alleging that G.W. committed theft as a class A misdemeanor if committed by an adult under Count I, criminal trespass as a class A misdemeanor if committed by an adult under Count II because “on or about June 30, 2022,” he “did knowingly or intentionally enter the real property of another person, to-wit: South Veterans Park, after having been denied entry by South Veterans Park,” and leaving home without a reasonable cause and without permission of his parent or guardian under Count III. Appellant’s Appendix Volume II at 54.
- [3] On August 31, 2022, G.W. entered a Village Pantry with another individual and took two containers of Mike’s Hard Blue Freeze without paying. On September 8, 2022, the State amended its petition and added Count IV, criminal trespass as a class A misdemeanor if committed by an adult, and Count V, theft as a class A misdemeanor if committed by an adult.
- [4] On October 10, 2022, G.W. admitted to Counts II and V of the amended petition, that on or about June 30, 2022, he entered South Veterans Park after having been denied entry and that “on or about August 31, 2022,” he “did knowingly or intentionally exert unauthorized control over the property of Village Pantry, to-wit: 2 cans of Mike’s Hard Blue Freeze with the intent to

deprive Village Pantry of any part of the use or value of the property,” and the court adjudicated him delinquent. *Id.*

- [5] On October 21, 2022, G.W.’s guardian reported him missing, and he was located in Mississippi on October 30th. On November 21, 2022, a predispositional report was filed detailing G.W.’s juvenile history and prior services provided to him and recommending commitment to the DOC. That day, a dispositional hearing was held at which G.W. testified, “in all honesty . . . I am lost and I need guidance,” he had traveled to Mississippi with his sister to work for the fair “to prove that [he] could do things on [his] own,” and he agreed that he wanted “to provide” with a job in which he “could make good money and travel.” Transcript Volume II at 34-35. The court ultimately stated, “[f]or most of your teenage life, G.W., you have been involved in criminal activity,” and it committed him to the DOC. *Id.* at 44.

Discussion

- [6] G.W. argues the trial court abused its discretion in committing him to the DOC and erred in not including specific findings and conclusions in its order. The juvenile court is given wide latitude and great flexibility in determining the disposition of a delinquent child. *D.A. v. State*, 967 N.E.2d 59, 65 (Ind. Ct. App. 2012). However, its discretion is circumscribed by Ind. Code § 31-37-18-6, which provides that, “[i]f consistent with the safety of the community and the best interest of the child,” the juvenile court shall enter a dispositional decree that is “in the least restrictive (most family like) and most appropriate setting available” and “close to the parents’ home, consistent with the best interest and

special needs of the child”; least interferes with family autonomy; is least disruptive of family life; imposes the least restraint on the freedom of the child and the child’s parent, guardian, or custodian; and provides a reasonable opportunity for participation by the child’s parent, guardian, or custodian. Under the statute, placement in the least restrictive and most appropriate setting available applies only “[i]f consistent with the safety of the community and the best interest of the child.” *J.D. v. State*, 859 N.E.2d 341, 346 (Ind. 2007) (citing Ind. Code § 31-37-18-6). We review the juvenile court’s disposition for an abuse of discretion. *R.H. v. State*, 937 N.E.2d 386, 388 (Ind. Ct. App. 2010).

[7] Ind. Code § 31-37-18-9 provides in part:

(a) The juvenile court *shall* accompany the court’s dispositional decree with written findings and conclusions upon the record concerning approval, modification, or rejection of the dispositional recommendations submitted in the predispositional report, including the following specific findings:

(1) The needs of the child for care, treatment, rehabilitation, or placement.

(2) The need for participation by the parent, guardian, or custodian in the plan of care for the child.

(3) Efforts made, if the child is removed from the child’s parent, guardian, or custodian, to:

(A) prevent the child’s removal from; or

(B) reunite the child with;

the child’s parent, guardian, or custodian.

- (4) Family services that were offered and provided to:
- (A) the child; or
 - (B) the child's parent, guardian, or custodian.
- (5) The court's reasons for the disposition.
- (6) Whether the child is a dual status child under IC 31-41.

* * * * *

(c) The juvenile court may incorporate a finding or conclusion from a predispositional report as a written finding or conclusion upon the record in the court's dispositional decree.

(Emphasis added).

[8] The juvenile court's order provided in part:

The Court has reviewed and considered:

- The statements, evidence and recommendations offered by the parties
- Any child support obligation worksheet
- Any information provided regarding the child's eligibility for assistance under Title IV-E
- Any statement from the Department of Child Service (DCS)
- The best interests of the child and the child's community
- The various alternatives available for the care, treatment and rehabilitation of this child

- The income and other assets of the child’s family
- Services and financial participation, if any, that should be ordered for the parents, including those set out in any Petition for Parental Participation
- The ability of the parents to participate in services and/or financially, the plan of care for this child

Appellant’s Appendix Volume II at 80.

[9] The record reveals that the predispositional report included G.W.’s juvenile history, which included delinquency adjudications for child molesting as a level 3 felony if committed by an adult in 2016; battery resulting in bodily injury as a class A misdemeanor if committed by an adult in 2020; criminal mischief as a class A misdemeanor if committed by an adult and strangulation as a level 6 felony if committed by an adult in 2020; and theft as a class A misdemeanor if committed by an adult in 2022, for which he “was placed on an Informal Adjustment for four (4) months and as a term of probation was to complete thirty (30) hours of community service.” *Id.* at 70. According to the report, in 2016, G.W. violated informal probation “by being referred to the probation department for Theft,” and in 2019, he was placed on informal probation but “received several discipline referrals involving physical altercations and [was] unsuccessfully discharged from case-management through Meridian.” *Id.* at 69. It states that he was expelled from school after the 2021-2022 school year. The report places G.W. in the high risk to reoffend category according to the Indiana Youth Assessment System and recommends commitment to the DOC.

It details G.W.'s mental health needs and states that he "has been provided a significant amount of services." *Id.* at 77. Those services include "individual services therapy and case management through Community Mental Health in Brookeville," which were "discontinued due to [his] refusal to attend appointments and grandmother was physically unable to make him attend," "a Comprehensive Trauma Informed Psychological and Diagnostic Evaluation at Wernle Youth and Family in 2017," and during the evaluation he "received individual and family therapy . . . returned home and received comprehensive services to assist with [his] transition back home through Choices Cross Systems of Care [and] [s]ervices included Case-management, Individual Therapy, Behavioral Case management, and Mentoring." *Id.* The report states that G.W. "has been referred to the probation department several times" and details the events leading up to his current commitment to the DOC, and the report concludes that G.W. "continues to not have any regard for other people's property," "continues to show no remorse for his actions and behaviors and continues to make choices that place himself and others at risk," and due to his "history and continuing to engage in criminal activities and refusal to participate in any identified service[s] there is nothing additional that the Juvenile Justice System can offer or provide youth at this time." *Id.*

- [10] Based upon the record, and in light of G.W.'s delinquent behavior and failure to adequately respond to prior attempts at rehabilitation, we find no abuse of discretion in the juvenile court's commitment of G.W. to the DOC. *See D.E. v. State*, 962 N.E.2d 94, 97 (Ind. Ct. App. 2011) (holding the juvenile court did not

abuse its discretion in placing D.E. in a DOC facility where earlier attempts to rehabilitate his behavior were unsuccessful).

[11] To the extent G.W. argues that the juvenile court's dispositional order fails to comply with Ind. Code § 31-37-18-9, we note the order does not include findings and conclusions concerning approval of the dispositional recommendations submitted in the predispositional report or the specific findings required by Ind. Code § 31-37-18-9 including the needs of G.W. for placement, prior family services offered and provided to him or his guardians, and the court's reasons for the disposition. While the dispositional order followed the predispositional report's recommendation to commit G.W. to the DOC, the order did not incorporate any finding or conclusion from the report. We remand for an amended dispositional order which includes the written findings and conclusions required by the statute.

[12] For the foregoing reasons, we affirm G.W.'s commitment and remand for an amended dispositional order.

[13] Affirmed and remanded.

Bailey, J., and Weissmann, J., concur.