MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

W.E.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

April 26, 2023

Court of Appeals Case No.
22A-JV-2273

Appeal from the
Miami Superior Court

The Honorable
Daniel C. Banina, Judge

Trial Court Cause Nos.
52D02-2101-JD-7
52D02-2104-JD-13

Memorandum Decision by Judge Foley
Judges Vaidik and Tavitas concur.

Foley, Judge.

[1] W.E. was placed on sex offender probation and ordered to attend treatment after admitting to three counts of child molesting, which would be Level 4 felonies if committed by an adult, and one count of child molesting, which would be a Level 3 felony if committed by an adult. A petition for modification was filed alleging that W.E. violated the terms of his probation, which W.E. admitted. The juvenile court modified its dispositional order and awarded wardship of W.E. to the Indiana Department of Correction ("DOC"). W.E. appeals and argues that the juvenile court abused its discretion when it committed him to the DOC. Finding no abuse of discretion, we affirm.

Facts and Procedural History

[2] On January 26, 2021, the State filed a petition alleging delinquency under Cause Number 52D02-2101-JD-7 ("JD-7"), in which it alleged that W.E. committed one count of attempted child molesting, a Level 3 felony if committed by an adult, and one count of child molesting, a Level 4 felony if committed by an adult because W.E. had sexual contact with an eight-year-old child. Less than three months later, on April 13, 2021, the State filed another petition alleging delinquency under Cause Number 52D02-2104-JD-13 ("JD-13"), in which it alleged that W.E. committed six counts of child molesting, Level 3 felonies if committed by an adult, and six counts of child molesting, Level 4 felonies if committed by an adult, after W.E. had sexual contact with a ten-year-old child and a six-year-old child. On June 2, 2021, W.E. admitted to one count of child molesting, a Level 4 felony if committed by an adult under JD-7, and three counts under JD-13, one count of child molesting, a Level 3

felony if committed by an adult, and two counts of child molesting, a Level 4 felony if committed by an adult. The remaining allegations were dismissed.

[3] W.E. was placed on probation and ordered to attend Pierceton Woods Academy's Sexual Health and Relapse Prevention Program, a program designed to provide treatment for young men with sexual harmful behaviors. On January 14, 2022, W.E. was successfully discharged from Pierceton Woods Academy, and he was placed on probation and released to his father's care. As part of his probation, W.E. was subject to special probation conditions for juvenile sex offenders. Under one condition, W.E. was required to "have no unsupervised contact with children under the age of 16 or children who are physically or mentally handicapped." Appellant's App. Vol. II p. 136. "Supervised contact requires that supervision be provided by a responsible adult who is aware of [W.E.'s] offense." *Id*.

[4] On May 13, 2022, the State filed a "Verified Petition for Modification of Dispositional Decree," alleging that W.E. had violated the conditions of his probation by having unsupervised contact with a child under the age of sixteen. *Id*. at 147. In the modification petition, the State requested that the juvenile court modify its dispositional order and commit W.E. to the DOC for placement in its Juvenile Sex Offender Program. Several months after W.E. was released from Pierceton Woods Academy, he was observed embracing and kissing a twelve-year-old child. On another occasion, W.E. was observed with a ten-year old girl, who was sitting on his lap with her face close to his. At a hearing on the State's modification petition, W.E. admitted to violating his

probation by having contact with the twelve-year-old girl, although he denied kissing her. W.E. denied contact with the ten-year old girl but admitted to riding bikes with a ten-year-old boy. W.E. stated that he spent time with people much younger than himself because he "didn't really have anyone else to hang out with." Tr. Vol. II p. 83.

[5] On August 31, 2022, the juvenile court held a dispositional hearing. The juvenile court found that W.E. violated his probation and modified W.E.'s dispositional order by ordering wardship of W.E. to the DOC. In doing so, the juvenile court made the following statement:

> [T]he juvenile does have a history of . . . inappropriate contact with . . . younger children. He's been afforded opportunities in the past. [H]e was involved at the Youth Opportunity Center. He was placed in a therapeutic foster home for a year and [nine] months. He was placed at the Pierceton Woods Academy and completed their sexual health and relapse prevention program. [H]e's clearly in violation of his rules of [p]robation. You can say what you want about the witnesses that testified but [sic] their vision or lack of thereof, but I, when you have three people saying similar things . . . I tend to believe they saw what they saw. [T]he one witnesses [sic] testified you were making out with this girl. I tend to believe that. [E]ven this contact with this [ten] year old boy. [Y]ou were on [p]robation. You've gone down this road twice already, (indiscernible) placements. To not recognize the fact that you shouldn't be doing what you're doing, is either intentional or you just don't understand the rules. But I think you understand the rules. [A]nd to continue to have contact with young children after what you've been through, I think shows that you need more treatment. I'm not aware of any other treatment facilities that would be appropriate in this case. I'm not saying this one in the [DOC] is the best but it seems to be

> the . . . last resort. So[,] I'm going to find that you should be committed to [DOC], the Juvenile Division to participate in their Indiana Sex Offender Management Monitoring Program, as soon as possible.

Tr. Vol. II p. 90–91. W.E. now appeals.

Discussion and Decision

[6] W.E. argues the juvenile court abused its discretion when it modified his dispositional order and committed him to the custody of the DOC because less restrictive alternatives would have allowed for him to get the help and treatment he needs. 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*. "[T]he 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.*

[7] 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). Under Indiana Code section 31-37-18-6:

> 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.

[8] "[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] W.E.'s placement in the DOC was in his best interest and in the interest of the safety of the community. The evidence showed that W.E. has had several opportunities for prior less restrictive rehabilitative efforts, and they have failed to affect his behaviors. In 2014, W.E., at age nine and in a prior case, was placed at the Youth Opportunity Center for approximately two months for diagnostic evaluation because he was sexually abusive to his sisters and had inappropriate sexual contact with animals. After being released from the Youth Opportunity Center, W.E. was placed in a therapeutic foster home while he continued to receive services to address his behaviors, including participation in the Sexually Abusive Youth Program. In 2021, after admitting to the underlying delinquent acts of child molesting, W.E. received treatment at the Pierceton Woods Academy for his sexually maladaptive behavior. After W.E. was released from the Pierceton Woods Academy Program, he met with a case manager weekly, and after the modification petition was filed, he received weekly individual therapy with Lifeline.

[10] However, even with these multiple attempts at treatment over many years, W.E. continued to have prohibited and inappropriate physical contact with two different girls under the age of twelve while on juvenile sex offender probation. Additionally, W.E. was not honest with his therapist or case manager about his most recent contact with children under the age of twelve although he partially admitted to the contact at the hearing on the modification petition. This refusal to follow the conditions of his probation and refrain from interacting with young children was a compelling reason for a more supervised, restrictive

environment than W.E.'s prior placement that allowed him to violate the juvenile court's orders and to continue to prey on the children in his neighborhood.

[11] W.E. claims that the juvenile court did not know if sending him to the DOC was in his best interest. However, the record reflects that, regarding sending W.E. to the DOC, the juvenile court actually stated that:

> . . . to continue to have contact with young children after what you've been through, I think shows that you need more treatment. I'm not aware of any other treatment facilities that would be appropriate in this case. I'm not saying this one in the [DOC] is the best but it seems to be the . . . last resort."

Tr. Vol. II pp. 90–91. In *M.R. v. State*, 605 N.E.2d 204, 208 (Ind. Ct. App. 1992), this court noted that "[w]hile [a DOC] commitment should be resorted to only if less severe dispositions are inadequate, there are times when such commitment is in the best interests of the juvenile and society in general." Here, the juvenile court found that less restrictive placements were inadequate or unavailable and that a commitment to the DOC for more treatment was the only available option for W.E. to receive the treatment he needs. Therefore, the juvenile court actually believed that a placement in the DOC was the best possible option for W.E.

[12] W.E. also contends that the juvenile court's reliance on the recommendation of his probation officer was improper because the probation officer only wanted W.E. to be punished. However, W.E.'s probation officer stated her primary

reason for recommending placement in the DOC was so that W.E. could get "further treatment." Tr. Vol. II p. 68. She also stated that she believed that placement in the DOC was "the most appropriate option [for W.E.] because it will allow him to receive additional treatment for his sexually maladaptive behaviors in their highly structured environment." *Id*. at 67. She also believed that W.E. was a danger to himself and others as was shown by his recent behavior in having unsupervised contact with young children and lying to his service providers about it. Therefore, the juvenile court's reliance on, and consideration of, the probation officer's recommendations were not improper. The evidence supported her statements and recommendations.

[13] The evidence presented established that W.E. violated his probation by having unsupervised contact with children under the age of twelve and lied about it to his therapist and case manager. The past attempts at rehabilitation through less-restrictive placements did not curb his behaviors to prey on young children. Here, placement in the DOC was the best alternative under the circumstances so that W.E. could obtain the specialized treatment that he needs. We, therefore, conclude that the juvenile court did not abuse its discretion when it ordered that W.E. be placed in the DOC.

[14] Affirmed.

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