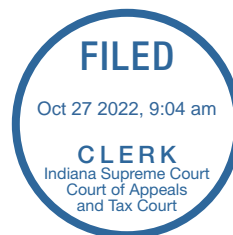


## MEMORANDUM DECISION

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

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B.C.,  
*Appellant-Respondent,*

v.

State of Indiana,  
*Appellee-Petitioner*

October 27, 2022

Court of Appeals Case No.  
22A-JV-1031

Appeal from the Elkhart Circuit  
Court, Juvenile Division

The Honorable Michael A.  
Christofeno, Judge  
The Honorable Elizabeth A.  
Bellin, Magistrate

Trial Court Cause No.  
20C01-2003-JD-103

**May, Judge.**

[1] B.C. appeals his placement in the Indiana Department of Correction (“DOC”) following his repeated violation of the probation he was serving due to his adjudication as a delinquent child for committing an act that would be Class A misdemeanor domestic battery if committed by an adult.<sup>1</sup> B.C. asserts the juvenile court erred when it placed him in the DOC instead of referring him to probate court for civil commitment at a state hospital. Under the facts and circumstances herein, we conclude no abuse of discretion occurred. We accordingly affirm.

## Facts and Procedural History

[2] On December 21, 2019, fourteen-year-old B.C. hit his mother (“Mother”) multiple times and pulled her to the ground. As a result, on March 17, 2020, the State filed a petition alleging B.C. was a delinquent child for committing an act that would be Class A misdemeanor domestic battery if committed by an adult. On June 10, 2020, B.C. admitted the allegation and told the juvenile court he was receiving treatment for anxiety at Oaklawn, which is an outpatient treatment facility. The court adjudicated B.C. as a delinquent child, placed him on probation with conditions, allowed him to remain in Mother’s house, and ordered him to attend school daily.

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<sup>1</sup> Ind. Code § 35-42-2-1.3(a)(1).

[3] On September 1, 2020, Probation filed a probation modification report that alleged B.C. was becoming more aggressive and threatening at home, which caused Mother to request B.C. be removed from her home for safety reasons. At a hearing on September 9, 2020, B.C.'s probation officer testified B.C. had threatened family members with a knife, police had to be called because B.C. punched Mother, and B.C. tested positive for marijuana and Adderall. B.C.'s therapist from Oaklawn recommended residential placement and a psychological assessment. The juvenile court revoked probation and placed B.C. in the Juvenile Detention Center ("Detention") until a bed became available in Emergency Shelter Care ("Shelter Care") at Bashor Children's Home ("Bashor"). The court ordered a psychological assessment and ordered B.C. be returned to Detention if he committed any violence after moving to Bashor's Shelter Care.

[4] On October 23, 2020, Probation filed a report to inform the court that it had received the results of B.C.'s psychological assessment, which recommended B.C. be placed in a residential treatment program where his medications can be monitored and adjusted, because his behaviors were too extreme to be treated on an outpatient basis. Probation had sent information to numerous residential facilities, and Bashor was willing to admit B.C. to its Geyer Unit ("Geyer Unit"), which is a residential treatment program for juveniles, when a bed became available. The juvenile court held a hearing on October 27, 2020, at which Bashor's Shelter Care reported B.C. was refusing to take part in schooling and had gotten into a fight with another resident. The juvenile court

continued B.C. in Bashor's Shelter Care, ordered B.C. placed in the Geyer Unit at Bashor as soon as a bed became available, and ordered B.C. to complete the treatment program.

- [5] On November 20, 2020, Probation filed a modification report indicating B.C. had to be moved back to Detention because his behavior in Bashor's Shelter Care became so aggressive and destructive that the program director, Amy Sturma, could "no longer insure [sic] the safety of the other residents or the staff at Emergency Shelter Care." (App. Vol. 2 at 80.) The court held a hearing on November 30, 2020, at which time Probation was "extremely concerned" about behavior displayed by B.C.:

[W]hile at Shelter Care [B.C.] continuously threatened and intimidated staff and peers. He threw a chair at female staff, destroyed Bashor property, and glorified his negative behaviors. For example, [B.C.] made shanks and would threaten staff and peers. He told a 10-year-old female that he was going to kill her and sew her mouth shut. He even went as far as taking out a spiral out of a spiral notebook to show that he would sew her mouth closed. [B.C.] was also instigating an autistic male in attempts to get his young man to fight. . . . [R]ecently [B.C.] glorified wanting to be a serial killer and continuously talked about wanting to kill people, giving graphic details stating that he would decapitate people, slice them up, and let them bleed and feed them to pigs.

(Tr. Vol. 2 at 46) (errors in original). Probation was waiting to see if the Geyer Unit at Bashor was still willing to accept B.C. into its residential treatment program, but Probation also noted it may be time to consider placing B.C. into a secured facility. The court ordered B.C. was to remain in Detention until the

Geyer Unit made its new decision about whether to admit B.C., and it ordered Probation to begin investigating alternative residential placements, including the State Hospital. On December 4, 2020, B.C. was moved to the Geyer Unit at Bashor to begin residential treatment.

[6] The court scheduled a review hearing for March 3, 2021, and Probation filed a report in which it requested the court find B.C. in violation of probation. B.C.'s probation officer testified B.C. was getting up for school approximately two of five days a week, and he was refusing to attend therapy groups and other appointments, including appointments with his probation officer. Moreover, on January 18, 2021, B.C. assaulted another resident of the Geyer Unit. A representative of Bashor testified that B.C. had, just the week of the hearing, been more successful at attending school and that the initial testing had begun on B.C.'s neuropsychological assessment, which would provide recommendations about what treatments would be most helpful for B.C. moving forward. The court found B.C. in violation of probation because he was failing to attend school and had fought with a peer, but the court continued B.C.'s placement in the Geyer Unit.

[7] On May 3, 2021, Probation filed a Modification Report to inform the court that B.C. had "eloped from staff eyesight and did not return" when Bashor staff took Geyer Unit residents to a park for an outing. (App. Vol. 2 at 119.) Bashor staff notified the police, the Department of Child Services, and Probation. Probation requested a body attachment order, and the court ordered the same the next day. Police apprehended B.C. on May 31, 2021, and delivered him to

Detention. The court held a hearing on June 2, 2021, during which B.C. admitting using illegal substances while on the run. Probation reported B.C. also had assaulted another peer in the Geyer Unit on April 26, 2021. The court continued B.C. in Detention so that Probation could investigate additional residential placements. When the hearing ended, B.C. punched a wall multiple times, punched a computer monitor, and threw the monitor to the ground, which caused it to no longer work. In the process, B.C. injured his hand. The incident was reported to police and the State alleged B.C. committed an act that would be Class B misdemeanor criminal mischief if committed by an adult.

[8] The court held a follow-up hearing two weeks later. Probation reported B.C.'s behavior following the prior hearing and reported that B.C. had been accepted for admission at Southwest Indiana Regional Youth Village ("Southwest"), a residential treatment program that had seen his neuropsychological report and could treat his diagnosis. The court ordered B.C. remain in Detention until an appointment with an orthopedic doctor about his hand on June 23, 2021. B.C. was transferred from Detention to Southwest on June 24, 2021.

[9] On August 18, 2021, the parties convened for another hearing. During this hearing, B.C. admitted the State's new allegation of delinquency from B.C.'s act that would be criminal mischief on June 2 when B.C. broke the computer monitor at Detention. The court ordered Mother to pay for the monitor and closed the new cause number. The court then proceeded with a review hearing on B.C.'s placement at Southwest. Probation reported B.C. was not following rules, was not participating in treatment, had been in a physical altercation with

a peer, and had left the Southwest facility at 10:30 p.m. on August 2, 2021. Police patrolling the area found B.C. in a Walmart parking lot at 2:30 a.m. and returned him to Southwest. Probation was “concerned with the lack of remorse” about his negative behaviors, (Tr. Vol. 2 at 87), and reported that Southwest’s “staff secured facility . . . does not have the ability to keep him safe if he chooses to leave without permission.” (*Id.*) Probation recommended the court consider a more secure placement if B.C.’s behavior did not improve, but Probation was hopeful that B.C. would start the treatment to address his “defiant, aggressive, and impulsive behaviors.” (*Id.* at 88.) The court found B.C. had violated the terms of his probation but ordered him to stay at Southwest, follow the rules, and participate in the treatment program.

[10] On September 15, 2021, Probation filed another modification report, and the court held a hearing on September 20, 2021. Probation reported B.C. had fled Southwest on August 27, 2021, and stolen a pack of beer from a convenience store and a bicycle from a residence. When police found B.C., his blood alcohol content was .04. Pursuant to a body attachment order, B.C. was returned to Detention. The Probation officer testified:

During the intake process at Detention, [B.C.] made several concerning statements. [Detention] staff indicated that he stated, “I think I was born to kill people,” that he – “I don’t like guns, though, I like to stab them because they die slower,” “I only have five members that I wouldn’t kill. I would kill [t]he rest and anybody else that makes me mad.” Staff, at that point, indicated that they had asked [B.C.] what his reasoning was for making those types of statements and he replied, “because I’m always thinking about it.” He stated that he would have these

conversations with his therapist about killing people. [B.C.] then went on to make threats of starting fights and riots if any of his friends would come into detention while he was there, and he also stated that the police would have to be called and tasers, and pepper spray would need to be used. It was noted that while the intake process was happening, [B.C.] sat with his fists balled and a smile on his face. [B.C.] has also been redirected for making inappropriate sexual comments towards female staff and gang references toward other residents.

At this time, based on the fact that [B.C.] has failed treatment in both Bashor and Southwest Regional Youth Villages, and both by absconding, and while in placement he continued to show aggressive behaviors, lack of engagement in programming, Probation is concerned that [B.C.] would not remain at another court ordered placement. We would also be concerned about his inability, if he were placed, for further treatment.

Therefore, Probation is recommending that he be found in violation of probation and be made a ward of the Indiana Department of Correction.

(Tr. Vol. 2 at 95-6.) Thereafter, B.C. testified on direct examination that he thinks he should “be in an insane asylum” because of “the thoughts I have.” (*Id.* at 101.) Defense counsel argued B.C. is a young man with “some pretty significant mental health needs.” (*Id.* at 102.) Defense counsel and the court then had the following exchange:

[Defense counsel]: Obviously, the Court isn’t going to send him to an insane asylum, but, uh, you know, this is an individual that – that may be, you know, that the State Hospital should be on – on the possibility list of where, perhaps, he should go. I don’t know what, at this point, is going to be the best way to get him



there. I know the Department of Corrections [sic] can refer there. I – I don't know if he needs a – a new psychological. I – I guess my recommendation might be that we have the Department of Corrections to do that as a – the Department of Corrections could do that as well, to include and allow them by Court permission to be able to recommend themselves with the State Hospital. Because, obviously, when, you know, we're dealing with what originally was just an A Misdemeanor, domestic battery, talked to Dr. Garcia, I think a lot of ground has been covered since then that might warrant a little bit more serious look at some of these other options.

[The court]: And, just to explain. [Mother], and to you [B.C.], there are sadly in this state, as in many states, very few beds available at the State Hospital, which – and – and, [B.C.], just to explain to you, that's was where – what's where people would get mental health treatment. And, so, if I am not mistaken, and it may have changed, the last time I sat with the Director of the Department of Mental Health in the State of Indiana, he indicated that there were, I think, 50 – 55 beds available for juveniles. I think people in your age range, I think it is really 20 or 30 beds are available for all of Indiana, and it's sad, and I don't agree that that's the way the State should spend their money, however, that is the reality of it. I just want to explain to you.

The other thing I would tell you is that he did not give myself and the other judges in the room a good explanation of the wait period. He did indicate that they were trying to get the stays down to a year. And, so, that said to me, if people are there a year and there's only 20 beds, it's pretty hard to get – to get beds available and to get people in there. And, in fact, I know, uh, uh, the prior magistrate here, had a hearing and got somebody in with some significant mental health issues, with significantly higher charges than this case, and, it was difficult at best. And, I don't know if the child got the treatment they

needed, but as [Defense counsel] points out, this Court has the ability to send somebody to the Department of Corrections, either down for an evaluation or down on a commitment with the order that they receive, some form of evaluation.

The large point I'm trying to make is it can be hard for judges to essentially kick the door open to the – to the Department of Mental Health in a hearing of this nature. I think, perhaps, what [Defense counsel] is getting at – [Defense counsel], if I am misrepresenting what you're saying at all, --

[Defense counsel]: I don't think you are, Your Honor.

[The court]: -- that it may be easier for the Department of Corrections to get that door open than a – than a trial court judge. You know, as sad as that is, and as pathetic as I think that is from the State, that is, I think, perhaps, the reality of it. Is that fair enough of your assessment, [Defense counsel]?

[Defense counsel]: That's exactly my assessment, Your Honor.

(*Id.* at 102-04) (errors in original). Based on that discussion, the court and parties agreed B.C. would be sent to the DOC for a mental health evaluation and recommendations from the DOC about where B.C. should be placed – DOC, State Hospital, or some other residential facility. The court also ordered Probation to simultaneously investigate secured residential facilities for an appropriate placement.

[11] B.C. was at the DOC from October 6, 2021, to October 27, 2021, for a diagnostic evaluation. Before and after those dates, B.C. was housed in Detention. Probation received recommendations from the DOC based on that

evaluation on November 5, 2021, and the report itself arrived on November 8, 2021. The evaluation recommended: “[D]ue to a long and extensive history of criminal activity and an inconsistent home life, a long-term highly structured residential program is needed. The program would need to address his past trauma, substance abuse, self-esteem, intellectual disability, and emotional needs through therapeutic services.” (App. Vol. 2 at 228.) That recommendation was based in part on a psychiatrist’s assessment that B.C. did not “truly have schizophrenia” and that his symptomology was “more indicative of PTSD/anxiety than true psychosis.” (*Id.* at 243.)

[12] At a permanency and placement hearing on November 30, 2021, Probation recommended B.C. be placed in the Rite of Passage program at DePaul Academy so that B.C. could get “treatment for his past trauma without having [to] become a ward of IDOC.” (Tr. Vol. 2 at 117.) Rite of Passage indicated they would base his treatment plan on the DOC’s diagnostic evaluation, and B.C. indicated to Rite of Passage that he was willing to work with them toward treatment goals. However, Probation also made clear that its recommendation would be commitment to the DOC if B.C. was unable to complete the program at Rite of Passage. The State agreed to provide B.C. with an opportunity to receive treatment at Rite of Passage. The court noted B.C.’s placement at Rite of Passage was being made “by agreement” of the parties and it ordered B.C. to “participate and successfully complete in [sic] all components of residential treatment[.]” (*Id.* at 129.) (*See also* App. Vol. 3 at 41.)

[13] B.C. was released from Detention to Rite of Passage staff on December 20, 2021. (App. Vol. 3 at 43.) On January 26, 2022, Probation filed a report requesting modification because: “[B.C.] is continuing to engage in negative behaviors, including assaulting other residents/peers at ROP-DePaul Academy. At this time, DePaul Academy is requesting [B.C.]’s removal from the program.” (*Id.* at 53.) According to the letter sent from DePaul Academy, not only was B.C. engaging in negative behaviors, B.C. was refusing “to open up in therapy to discuss his thought and feelings and be willing to work on coping skills to help lesson his level of anxiety.” (*Id.* at 58.) Probation recommended B.C. be committed to the DOC because of “his continued delinquent behaviors, and his refusal to engage in therapeutic services[.]” (*Id.* at 55.) The court held a hearing on February 16, 2022, during which it heard additional evidence of B.C.’s negative behaviors while at Rite of Passage. In light of DePaul Academy’s notice that B.C. had to be removed, the court remanded B.C. to the custody of Detention and set the matter for further hearing as to his violation of probation.

[14] The court held that follow-up hearing on March 7, 2022. B.C. admitted the probation violation but claimed Rite of Passage had “discharged [him] rather than trying to help [him].” (Tr. Vol. 2 at 152.) Probation recommended the court find B.C. in violation of his probation and impose the suspended commitment to DOC because the rehabilitative plan had been modified several times without decreasing B.C.’s propensity for aggressive and violent behavior toward others. A representative of DePaul Academy testified B.C.

demonstrated a lack of willingness to do the work to better himself. B.C. and Mother testified B.C. should be sent home, because Mother had a stable home and B.C. had learned to control himself. The court determined B.C. should be made a ward of the DOC because “there are no less restrictive means available. [B.C.] remains both a danger to himself and the community, given the even most recent behaviors after being placed on a suspended commitment.” (*Id.* at 165.)

## Discussion and Decision

- [15] B.C. challenges his placement in the custody of the DOC. “The specific disposition of a delinquent child is within the juvenile court’s discretion,” *K.S. v. State*, 114 N.E.3d 849, 854 (Ind. Ct. App. 2018), *trans. denied*, and we thus review a trial court’s dispositional order for an abuse of discretion. *Id.* A decision is an abuse of discretion if it is clearly against the logic and effect of the facts and circumstances before the court or against “the reasonable, probable, and actual deductions to be drawn” from those facts and circumstances. *Id.*
- [16] While juvenile courts have “wide latitude and great flexibility” in fashioning dispositions for delinquents, *id.* (quoting *C.T.S. v. State*, 781 N.E.2d 1193, 1203 (Ind. Ct. App. 2003), *trans. denied*), our legislature delineated factors the trial court should consider as it makes its decision:

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.

Ind. Code § 31-37-18-6.

[17] B.C. asserts the court “failed to address his mental health needs in the process provided for by Indiana law.” (Br. of Appellant at 16.) In particular, B.C. points to the procedure provided in Indiana Code section 31-37-18-3:

If it appears to the juvenile court that a child has a mental illness, the court may:

(1) refer the matter to the court having probate jurisdiction for civil commitment proceedings under IC 12-26; or

(2) initiate a civil commitment proceeding under IC 12-26.

However, the plain language of that statute does not *require* trial courts to institute civil commitment proceedings. Rather, it says “the court may”

institute such proceedings, and “may” is not synonymous with “must.” *See Romine v. Gagle*, 782 N.E.2d 369, 379-80 (Ind. Ct. App. 2003) (“When the word ‘shall’ appears in a statute, it is construed at mandatory . . . . The term ‘must’ carries with it the same meaning . . . . The term ‘may’ in a statute ordinarily implies a permissive condition and a grant of discretion.”), *reh’g denied, trans. denied*. Accordingly, the trial court had discretion about whether to institute civil commitment proceedings, and we look at the record as a whole to determine whether the trial court abused its broad discretion by not doing so.

[18] The possibility of the State Hospital being an appropriate placement for B.C. was raised first by the trial court when, on November 30, 2020, the court spontaneously authorized Probation to investigate it as a possible appropriate placement. Then, the possibility of sending B.C. to the State Hospital was discussed at length at the hearing on September 20, 2021, and that discussion led to the court and parties agreeing to send B.C. for a mental health evaluation at the DOC before making a decision about B.C.’s next placement. The trial court stated throughout the proceedings that it was interested in placing B.C. in the facility that could get him the treatment that he needed to have a successful future. Between March 2020 when the delinquency petition was filed and March 2022 when the court granted wardship of B.C. to DOC, the trial court authorized three separate evaluations intended to help the court provide B.C.

with appropriate treatment – a psychological evaluation in October 2020,<sup>2</sup> a neuropsychological evaluation in April 2021,<sup>3</sup> and a mental health evaluation by the DOC in October 2021.<sup>4</sup> None of those evaluations indicated the State Hospital was the only appropriate placement for B.C. In fact, to the contrary, the psychiatrist who met with B.C. in October 2021 determined:

Patient does not appear to truly have schizophrenia. No indication of responding to external stimuli. He was clear and linear throughout the evaluation although he stated he was hearing voices. Reports started from very young age which is more indicative of PTSD/anxiety than true psychosis.

(App. Vol. 2 at 243) (quoting App. Vol. 3 at 14-15 (psychiatrist's report)). In light of the court's repeated attempts to provide treatment to B.C. without making him a ward of the DOC and the court's repeated ordering of evaluations to help discern appropriate treatment facilities for B.C., the court did not abuse its discretion by failing to implement the proceedings contemplated by Indiana Code section 31-37-18-3. Moreover, given B.C.'s

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<sup>2</sup> Based on the results of the psychological assessment, the court placed B.C. in a specialized unit at Bashor where B.C. could receive the recommended mental health treatment in a residential facility. However, B.C. refused to attend treatment sessions and absconded from the facility.

<sup>3</sup> Following the neuropsychological assessment, the court placed B.C. in Southwest where he could receive appropriate treatment based on the diagnosis he received in the evaluation. However, B.C. again squandered his opportunity to get treatment by engaging in disruptive and aggressive behavior and by leaving the facility twice without permission.

<sup>4</sup> The mental health evaluation by the DOC led the court to place B.C. in the Rites of Passage program at DePaul Academy, which had a program that could treat the mental health diagnosis and educational issues identified by B.C.'s testing. However, within four weeks, B.C. had been so aggressive and violent with peers that DePaul Academy demanded B.C. be removed from their facility.



history of delinquent behavior and his repeated unwillingness to remain in less-secure facilities or cooperate with those facilities' behavioral expectations or treatment regimens, we find no abuse of discretion in the trial court's decision to place B.C. in the DOC. *See M.M. v. State*, 189 N.E.3d 1163, 1167 (Ind. Ct. App. 2022) (holding juvenile court did not abuse its discretion by granting wardship to DOC when "numerous and intensive efforts and lesser restrictive placements" had failed).

## Conclusion

[19] B.C. has not demonstrated the trial court abused its discretion by not instituting proceedings under Indiana Code section 31-37-18-3 or by committing him in the DOC. We accordingly affirm.

[20] Affirmed.

Crone, J., and Weissmann, J., concur.