

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

J.O.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner

April 4, 2023

Court of Appeals Case No.
22A-JV-2788

Appeal from the Allen Superior
Court

The Honorable Carolyn S. Foley,
Judge Pro Tempore

Trial Court Cause No.
02D07-2111-JD-785

Memorandum Decision by Judge Weissmann
Judges Bailey and Brown concur.

Weissmann, Judge.

- [1] J.O. alleges the trial court abused its discretion in placing him in the custody of the Indiana Department of Corrections (DOC) after the juvenile court adjudicated him a delinquent. Finding that the trial court did not abuse its discretion, we affirm.

Facts

- [2] J.O. has a long history with child protection agencies. While living in Texas in 2012, the Texas Department of Family and Protective Services removed J.O. from his mother's care over substantiated allegations of neglect. J.O. was placed with a family member for three years, after which he was returned to his mother's care. But only a year later, J.O. was removed from his mother's care again. J.O. was eventually adjudicated a child in need of services (CHINS) and placed in a treatment facility, where he exhibited self-harming behavior and a general inability to control himself.
- [3] J.O. was eventually reunified with his mother. Soon after, however, and now living in Indiana, J.O. alleged physical abuse by his mother and her boyfriend. Although J.O. desired to be removed from Mother's home, the Indiana Department of Child Services (DCS) did not substantiate his allegations and closed the matter. After J.O. ran away and his mother failed to report him missing, J.O. was again adjudicated a CHINS as a victim of neglect. When J.O. was located, his mother refused to take custody of him. J.O. was then placed in foster care, from which J.O. ran away.

- [4] On November 9, 2021, when J.O. was 16 years old, police discovered him and three other juveniles in an underground tunnel at a Fort Wayne construction site. Police observed a large stainless steel ground access tunnel door propped open and observed the juveniles in a deep pit filled with running water. The juveniles exited the pit when instructed, and the officers identified J.O. as a runaway.
- [5] J.O. fled the officers and was not located for more than a month. This time police discovered him inside a condemned home. J.O. initially told the officers that his name was “Kevin” but refused to say where he had been. Upon his arrest and detention at the Allen County Juvenile Center, J.O. tested positive for marijuana and fentanyl. Once again, J.O. was adjudicated a CHINS.
- [6] The State filed a delinquency petition against J.O., alleging he committed false informing and criminal trespass, both Class B misdemeanors if committed by an adult, and critical infrastructure facility trespass, a Level 6 felony if committed by an adult. Finding probable cause existed for the allegations, the juvenile court sent J.O. to the Allen County Juvenile Center. J.O. eventually admitted to the criminal trespass and critical infrastructure allegations and was adjudicated a delinquent.
- [7] At J.O.’s dispositional hearing, both the State and the probation department recommended placement in the DOC based on his delinquency history. This included multiple other arrests on allegations of conversion, unauthorized entry of a motor vehicle, and resisting law enforcement. And although it was

recognized that J.O. had successfully completed a period of probation, he then fled from two successive residential facilities. The Indiana Youth Assessment System showed J.O. was at high risk of reoffending. After considering this evidence, the juvenile court agreed that placement with the DOC was in J.O.'s best interests.

Discussion and Decision

[8] “The disposition of a juvenile adjudicated a delinquent is a matter committed to the sound discretion of the juvenile court.” *R.H. v. State*, 937 N.E.2d 386, 388 (Ind. Ct. App. 2010). This discretion is constrained by statutory considerations requiring the trial court to consider “the welfare of the child, the safety of the community, and the policy favoring the least harsh disposition.” *Id.*; Ind. Code § 31-37-18-6. “We may overturn the juvenile court’s dispositional order only by finding that the trial court abused its discretion.” *R.H.*, 937 N.E.2d at 388. An abuse of discretion occurs when the trial court’s actions are clearly against the logic and effect of the facts and circumstances before it or the reasonable inferences that may be drawn from them. *Id.*

[9] The trial court did not abuse its discretion in placing J.O. with the DOC. J.O. has a history of fleeing from unsecured placements. In his latest instance, J.O. was missing for over a month. When he was found and brought to the juvenile center, he tested positive for marijuana and fentanyl. Beyond just the risk that J.O. will disappear from a less restrictive placement, he also has a significant juvenile record revealing the need to separate himself from the community for both his own protection and the welfare of the community. With these facts

before it, we see no abuse of discretion in the trial court's determination that placement with the DOC represented the least harsh disposition in relation to J.O.'s best interests and the safety of the community.

[10] J.O.'s attempt to liken his case to *E.H. v. State*, 764 N.E.2d 681 (Ind. Ct. App. 2002), is unconvincing. In *E.H.*, another panel of this Court vacated a dispositional decree placing a juvenile with the DOC after determining a less restrictive placement option existed. *Id.* at 686. The Court reasoned that the juvenile had been making "considerable progress" in foster care and the juvenile court "provided no explanation" for not continuing that placement. *Id.* Those are not the facts in J.O.'s case. In making its decision, the juvenile court relied on facts establishing a real risk that J.O. may flee from or abuse a less restrictive placement than DOC.

[11] Therefore, we find the trial court did not abuse its discretion and affirm its decision to commit J.O. to the DOC.

Bailey, J., and Brown, J., concur.