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IN THE
COURT OF APPEALS OF INDIANA

A.D.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0810-JV-635
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Scott Stowers, Magistrate
Cause No. 49D09-0807-JD-2131

June 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

A.D. appeals his adjudication as a delinquent child for committing the offense of Class A misdemeanor dangerous possession of a firearm. Specifically, he contends that the juvenile court erred in authorizing the filing of the delinquency petition because the offense is neither a status offense nor an act that would be an offense if committed by an adult. Relying on this Court's recent opinion in *C.C. v. State*, No. 49A02-0812-JV-1067, --- N.E.2d --- (Ind. Ct. App. June 5, 2009), we conclude that the legislature intended for jurisdiction of misdemeanor dangerous possession of a firearm to fall in the juvenile court. We therefore affirm the juvenile court.

Facts and Procedural History

On July 16, 2008, A.D., who was fifteen years old, and his friend, A.L., found several shotguns in a backyard and took the guns to A.L.'s house. Two people saw the boys running through an alley carrying the shotguns. When police responded to the scene, they found A.D. and A.L. inside the house and four shotguns in open view in the attic.

On July 17, 2008, the Stated filed a petition alleging that A.D. was a delinquent child for committing Class A misdemeanor dangerous possession of a firearm. Ind. Code § 35-47-10-5. A.D. challenged the juvenile court's jurisdiction on the ground that dangerous possession of a firearm was neither a status offense nor an act that would be an offense if committed by an adult. After a hearing, the juvenile court entered an order finding that the legislature intended for juvenile courts, not adult criminal courts, to have jurisdiction over this charge. The trial court entered a true finding and imposed a

suspended commitment to the Department of Correction with a number of special conditions. A.D. now appeals.

Discussion and Decision

A.D. raises one issue on appeal. That is, he contends that the juvenile court erred in authorizing the filing of the delinquency petition because dangerous possession of a firearm is neither a status offense nor an act that would be an offense if committed by an adult because there is no blanket prohibition against firearm possession by adults.[1] This Court recently addressed this issue in *C.C.*

The dangerous possession of a firearm statute, Indiana Code § 35-47-10-5, provides:

> A child who knowingly, intentionally, or recklessly:
>
> > (1) possesses a firearm for any purpose other than a purpose described in section 1 of this chapter; or
> >
> > (2) provides a firearm to another child with or without remuneration for any purpose other than a purpose described in section 1 of this chapter;
>
> commits dangerous possession of a firearm, a Class A misdemeanor. However, the offense is a Class C felony if the child has a prior conviction under this section.

For purposes of this statute, "child" means "a person who is less than eighteen (18) years of age." Ind. Code § 35-47-10-3.

Indiana Code § 31-30-1-1 provides that a juvenile court has exclusive, original jurisdiction in proceedings in which a child is alleged to be a delinquent child as well as "[o]ther proceedings specified by law." Ind. Code § 31-30-1-1(1), (12). As for

[1] *See* Ind. Code § 35-47-2-1 (prohibiting carrying a *handgun* without a license).

proceedings in which a child is alleged to be a delinquent child, Indiana Code chapter 31-37-2 contains a variety of delinquent acts, such as running away from home and truancy, that are not offenses if committed by an adult. These are considered status offenses. Indiana Code § 31-37-1-2 then provides:

> A child commits a delinquent act if, before becoming eighteen (18) years of age, *the child commits an act that would be an offense if committed by an adult*, except an act committed by a person over which the juvenile court lacks jurisdiction under IC 31-30-1.

(Emphasis added). Indiana Code § 31-30-1-4(11) specifies that the juvenile court does not have jurisdiction over individuals at least sixteen years old who are charged with certain offenses, including dangerous possession of a firearm by a child, "if charged as a felony."

Here, the State concedes that dangerous possession of a firearm is not a status offense and that Indiana Code § 35-47-10-5 only applies to children and thus only makes that conduct a crime if it is committed by a child (and therefore is not an act that would be an offense if committed by an adult). Nevertheless, the State argues that the legislative intent was to include a misdemeanor firearm charge within the jurisdiction of the juvenile court. This is precisely what this Court held in *C.C.* --- N.E.2d at ---, slip op. at 5.

In *C.C.*, we first noted that Indiana Code § 31-30-1-1, which lists the types of proceedings over which the juvenile court has exclusive, original jurisdiction, includes the category of "[o]ther proceedings specified by law." We reasoned: "Clearly, the legislature recognized that the list was not exhaustive and intended that juvenile

jurisdiction extend to other laws applicable to children. In our view, Indiana Code Section 35-47-10-5 fits within this definition." Slip op. at 5.

Moreover, we held:

> [P]rior to 2008, Indiana Code Section 35-47-10-5 said that the juvenile court does not have jurisdiction over a child's alleged violation of "IC 35-47-10 (children and firearms)[.]" The legislature did not make a distinction between the possible felony and misdemeanor charges under that statute, although the title of Indiana Code Section 31-30-1-4 was (and remains) "Juvenile court lacks jurisdiction over individuals at least 16 years old committing certain *felonies*; retention of jurisdiction by court having adult criminal jurisdiction[.]" (Emphasis added.) The other crimes listed in the statute, including murder, kidnapping, rape, and carjacking, are chargeable only as felonies if committed by an adult.
>
> In 2008, the General Assembly amended this statute. It now says that the juvenile court does not have jurisdiction over a child's alleged violation of dangerous possession of a firearm "if charged as a felony[.]" *By specifically excluding the felony portion of Indiana Code Section 35-47-10-5 from juvenile jurisdiction, it follows that the misdemeanor portion is not excluded and thus is subject to juvenile jurisdiction.* As discussed above, it is one of the "[o]ther proceedings specified by law" over which the juvenile court has exclusive jurisdiction. Ind. Code § 31-30-1-1.

C.C., --- N.E.2d at ---, slip op. at 5-6 (emphasis added). That is, if juvenile courts did not have jurisdiction over the offense of dangerous possession of a firearm to begin with, then there would have been no reason for the legislature to have explicitly removed felony dangerous possession of a firearm for offenders who are sixteen years or older from the juvenile courts' jurisdiction. Indiana Code § 31-30-1-4(11) only makes sense if the legislature believed that violations of Indiana Code § 35-47-10 normally fell within the juvenile court's jurisdiction.

We then concluded:

> From a common sense standpoint, if we were to follow C.C.'s reasoning to its illogical conclusion, his misdemeanor violation of the firearm statute would not fall within the jurisdiction of either the juvenile

> court or the adult criminal court and thus would go unpunished. We do not think this was the legislature's intent. As the State points out, "[i]t is a rule of statutory interpretation that courts will not presume the legislature intended to do a useless thing or to enact a statute that is a nullity."

Id., slip op at 6 (citation omitted). We reiterate this Court's conclusion in *C.C.* that it was not the legislature's intent for misdemeanor dangerous possession of a firearm to go unpunished and that it is the legislature's intent for jurisdiction to fall in juvenile court. We therefore affirm the juvenile court.

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.