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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE ANGELICA C.) 1 CA-JV 09-0166
)
) DEPARTMENT B
)
) **MEMORANDUM DECISION**
) (Not for Publication -
) Ariz. R.P. Juv. Ct. 103(G);
) ARCAP 28)
)
)

Appeal from the Superior Court in Yuma County

Cause No. S1400JV20060461

The Honorable Maria Elena Cruz, Judge

AFFIRMED AS CORRECTED

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By Kent E. Cattani, Chief Counsel
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N O R R I S, Judge

¶1 Angelica C. timely appeals from the juvenile court's disposition committing her to the Arizona Department of Juvenile Corrections ("ADJC"). Angelica argues the juvenile court abused

its discretion by committing her to the ADJC because the court lacked sufficient evidence for commitment, less restrictive alternatives were available for her rehabilitation, and she posed no threat to the community. She argues the court committed her "for treatment reasons and primarily due to the undisputed lack of cooperation and noncompliance by her mother."

¶12 The juvenile court has broad discretion to determine the appropriate disposition for a delinquent juvenile. *In re Miguel R.*, 204 Ariz. 328, 331, ¶ 3, 63 P.3d 1065, 1068 (App. 2003). We review orders of the juvenile court for an abuse of discretion and view the evidence in the light most favorable to sustaining the adjudication. *Id.*; *In re John M.*, 201 Ariz. 424, 426, ¶ 7, 36 P.3d 772, 774 (App. 2001) (citing *In re Julio L.*, 197 Ariz. 1, 2-3, ¶ 6, 3 P.3d 383, 384-85 (2000)). For the following reasons, we affirm.

¶13 In October 2006, Angelica was first adjudicated delinquent and placed on standard probation for reckless burning and disorderly conduct. She violated the terms of her probation six times by failing to abide by school rules and probation conditions before she was released from probation in July 2008. In January 2009, she pushed her mother and pulled her mother's hair, was adjudicated delinquent for "Disorderly Conduct per Domestic Violence," and placed on juvenile intensive probation supervision ("JIPS") for nine months.

¶14 Over the next six months, Angelica violated the conditions of her probation nine additional times by failing to attend school, arriving to school late, violating her noon curfew, and violating her court ordered house arrest. By the end of July 2009, she had been detained seven times, totaling 107 days. She received counseling while in detention, but Angelica and her mother failed to attend multiple counseling appointments after her release. In July 2009, her probation officer alleged four additional probation violations and filed a petition to revoke her probation.

¶15 On July 22, 2009, Angelica admitted to violating the terms of her JIPS by (1) being out past her noon curfew without a parent until 11:49 p.m., and (2) running from her surveillance officer when told she was under arrest and failing to abide by several of his verbal directives to stop. Angelica admitted to the probation violations (counts two and three) after the juvenile court informed her she could be committed to the ADJC.

¶16 At the disposition hearing, the court heard from Angelica, her attorney, her probation officer, her mother, and her case manager. Angelica's attorney acknowledged Angelica "has been noncompliant in areas." In ordering Angelica committed to ADJC, the court stated:

The Court has considered the matters as stated and finds that this Court has made efforts and provided all the services that

it can to try to assist Angelica. Angelica's performance on probation has not been satisfactory. She continues to be defiant of her probationary rules and, frankly, seems to be outside the reach of this jurisdiction.

I am ordering that you be committed to the Department of Juvenile Corrections I'm committing you because of your performance during this probationary term because you have been on probation two times previously because you have been incarcerated a total -- more than a hundred days total, all put together, and nothing seems to be able to assist you. The job here for this Court is to try to rehabilitate juveniles and it just seems like we can't do that in this setting. And the Department of Juvenile Corrections may be better suited to helping you.

¶7 In exercising its broad discretion, the juvenile court is required to consider guidelines for commitment promulgated by the Arizona Supreme Court. See Ariz. Rev. Stat. ("A.R.S.") § 8-246(c) (2007); Ariz. Code of Jud. Admin. § 6-304(C)(1) ("ACJA").¹

¹The guidelines specify a juvenile court shall:

- a. Only commit those juveniles who are adjudicated for a delinquent act and whom the court believes require placement in a secure care facility for the protection of the community;
- b. Consider commitment to ADJC as a final opportunity for rehabilitation of the juvenile, as well as a way of holding the juvenile accountable for a serious delinquent act or acts;
- c. Give special consideration to the nature of the offense, the level of risk the

The guidelines are not mandatory and should not be applied in a mechanical fashion; rather, the juvenile court should "determine whether, under the unique circumstances of the particular juvenile, commitment to ADJC is appropriate." *In re Niky R.*, 203 Ariz. 387, 390, ¶ 13, 55 P.3d 81, 84 (App. 2002) (citing *Pinal County Juv. Action No. JV-9404492*, 186 Ariz. 236, 238, 921 P.2d 36, 38 (App. 1996)).

¶18 Although the juvenile court did not explicitly refer to the guidelines in ordering commitment, it applied several factors listed in ACJA § 6-304 to Angelica's situation before committing her to the ADJC. Of significance, the court found Angelica had a long history of noncompliance and no alternative forms of treatment were available.

¶19 The juvenile court explored other placement options and determined Angelica's mother, grandfather, and a therapeutic

juvenile poses to the community, and whether appropriate less restrictive alternatives to commitment exist within the community; and

- d. Clearly identify, in the commitment order, the offense or offenses for which the juvenile is being committed and any other relevant factors that the court determines as reasons to consider the juvenile a risk to the community.

ACJA § 6-304(C)(1).

group home were not viable alternatives.² At the disposition hearing, Angelica's attorney sought either reinstatement on JIPS or more time in the detention facility, primarily so Angelica

²Angelica's mother was not a viable option because she was also noncompliant, and because of their relationship, she was unable to assist in Angelica's rehabilitation. According to Angelica's case manager, "[i]t seems to me that Angelica is the mom; she plays the mom role. And mom plays the teenage role." The court also explained:

I don't think the system at home [with mom] is supportive and conducive to [Angelica's] success. I think mom has her own issues of victimization that she needs to work through, and that's very apparent in the fact that, you know, we find ourselves going back into this very harmful relationship [with Angelica's father]. It's very apparent that the mother is not the best placement at this time.

Angelica wanted to live with her grandfather, but this was also not a viable option because her father lived part-time with the grandfather and Angelica "always appears to be very upset when her father becomes involved."

In her predisposition report, Angelica's probation officer stated she spoke with staff at Child and Family Services. Staff advised a therapeutic group home was not an option because of Angelica's mother's noncompliance "with the family component." Angelica's case manager stated:

The only thing about therapeutic is because it comes from Simpatico, I have to show a means. So if we could take the reports then I could show that she meets the criteria for therapeutic. There's [sic] level ones and level twos. She meets the criteria for a level two, which is not therapeutic

But the only concern . . . the therapist had is that we didn't have very much background on her because they never showed up for appointments.

"could work through these issues with the parents." Angelica's counsel acknowledged, however, the "extreme noncompliance by the parents"; thus, working with the mother in therapy was not a realistic goal. By the time of the final disposition hearing, Angelica had violated JIPS 11 times in less than seven months and spent 107 days in detention. Probation, detention, and attempts to involve her mother all proved to be ineffective rehabilitation for Angelica's chronic disobedience, and the record reveals no other viable options were presented to the court.

¶10 Relying on *In re Melissa K.*, 197 Ariz. 491, 4 P.3d 1034 (App. 2000), Angelica argues the juvenile court improperly committed her to the ADJC for reasons inconsistent with the commitment guidelines. *Melissa K.* concerned a juvenile who had run away multiple times, had a history of substance abuse, and had been adjudicated delinquent for shoplifting. *Id.* at 492-93, ¶¶ 3, 6, 4 P.3d at 1035-36. Deviating from the then governing guidelines, the juvenile court committed her to the ADJC. *Id.* This court agreed the juvenile needed "to be placed in a facility from which she could not abscond," but, under the guidelines, she was "classified as a nuisance offender" which made her "presumptively inappropriate for commitment." *Id.* at 494-95, ¶¶ 12, 15, 4 P.3d at 1037-38. Angelica's case is distinguishable from *Melissa K.* because the current guidelines

do not contain the "nuisance offender" presumption, and the juvenile court in *Melissa K.*, unlike the court here, failed to explore alternatives to commitment. See *supra* ¶ 6 and note 2. Under the circumstances of this case, the juvenile court did not abuse its discretion in committing Angelica to the ADJC.

¶11 Nevertheless, the court's commitment order requires modification because it incorrectly recites the court had adjudicated Angelica delinquent on counts one and four when, in fact, it had dismissed these counts at the adjudication hearing. Accordingly, we correct the order of commitment to delete counts one and four. Cf. *State v. Contreras*, 180 Ariz. 450, 453 n.2, 885 P.2d 138, 141 n.2 (App. 1994).

¶12 For the foregoing reasons, the juvenile court did not abuse its discretion in committing Angelica to the ADJC. Therefore, we affirm the court's commitment order as corrected.

/s/

PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

/s/

DANIEL A. BARKER, Judge

/s/

PETER B. SWANN, Judge