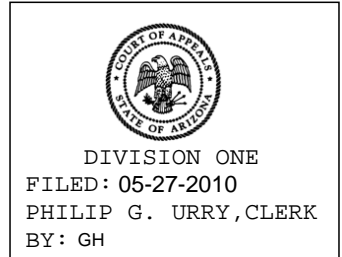


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



IN RE MIGUEL M.) 1 CA-JV 10-0080
)
) DEPARTMENT A
)
) **MEMORANDUM DECISION**
)
) (Not for Publication -
) Ariz. R.P. Juv. Ct. 103(G);
) ARCAP 28)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JV552148

The Honorable James H. Keppel, Judge

AFFIRMED

Richard M. Romley, Acting Maricopa County Attorney Phoenix
By Jeffrey W. Trudgian, Deputy County Attorney
Appeals Bureau Chief
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Mesa
By Suzanne Sanchez, Deputy Public Defender
Attorneys for Appellant

B A R K E R, Judge

¶1 Miguel M. appeals from the adjudication order finding him to be delinquent and the disposition order committing him to the Arizona Department of Juvenile Corrections ("ADJC") and ordering him to serve a minimum of six months in a locked facility. Miguel's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *Maricopa County Juvenile Action No. JV-117258*, 163 Ariz. 484, 486, 788 P.2d 1235, 1237 (App. 1989), finding no arguable grounds for appeal after searching the record. This court's obligation under *Anders* is to search the record for fundamental error. 386 U.S. at 744. Having done so, we affirm.

Facts and Procedural History

¶2 In December of 2009, Miguel got into an argument with his stepfather at a gas station and punched his stepfather in the face causing a bruise. On December 11, 2009, Miguel entered into a plea agreement that was accepted by the juvenile court in which he admitted to the charge of domestic violence assault with the intent to cause injury. On April 9, 2010, after considering less restrictive alternatives, the juvenile court committed Miguel to ADJC and ordered him to serve a minimum of six months. The court considered Miguel's pattern of criminal delinquency and the lack of success in monitoring him in the community on intensive probation.

¶3 This timely appeal followed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, Arizona Revised Statutes sections 12-120.21(A)(1) (2003) and 8-235(A) (2007), and Arizona Rule of Procedure for the Juvenile Court 103(A).

Discussion

¶4 We have read and considered the entire record and have found no fundamental error. Miguel was present and represented by counsel at all proceedings. The record indicates Miguel knowingly, voluntarily, and intelligently waived his rights pursuant to Arizona Rule of Procedure for the Juvenile Court 28(C)(5) when he entered an admission pursuant to the plea agreement. Miguel was advised in open court of the nature of the charges and the nature of the possible disposition. Miguel was under eighteen years of age at the time of the final order and was within the jurisdiction of the juvenile court. The juvenile court found a factual basis for the plea and accepted the plea.

¶5 The juvenile court informed Miguel of his constitutional rights in open court, but declined to inform Miguel of his right to plead not guilty¹. Failure to specifically inform a defendant of all rights being waived at

¹ Ariz. R. Crim. P. 17.2(d).

the time of the plea will not make the plea involuntary or unknowing where the defendant demonstrates awareness of his rights in the expanded record. See *State v. McVay*, 131 Ariz. 369, 372, 641 P.2d 857, 860 (1982). Awareness of the right to plead not guilty is evidenced by an earlier plea of not guilty. *State v. Wilson*, 131 Ariz. 96, 98, 638 P.2d 1342, 1344 (1981); see also *State v. Lopez*, 27 Ariz. App. 626, 629, 557 P.2d 558, 561 (1976) (holding that when the appellant initially entered a plea of not guilty and subsequently changed the plea at the plea bargaining proceeding, the record has conclusively demonstrated that a defendant had knowledge of the right to plead not guilty). Counsel for Miguel entered a denial of guilt, before the court and in Miguel's presence, to the charges of domestic violence assault with intent to cause injury and disorderly conduct. Miguel subsequently altered his plea at a plea bargaining proceeding admitting to the charge of domestic violence assault with the intent to cause injury. Although Miguel was not explicitly advised of his right to plead not guilty in open court, the record demonstrates that he had knowledge of the right to plead not guilty based on his initial denial of guilt and his change of plea admitting to one of the charges.

¶6 Furthermore, Miguel is not a first time offender and has pled delinquent to prior charges of aggravated assault and

the felony of endangerment, while having a third charge for threatening and intimidation dismissed. The record shows that Miguel has previously pled not guilty to two charges of aggravated assault and one charge of threatening or intimidation, followed by a change of plea to guilt for two of the charges. Therefore, Miguel's history before the court demonstrates sufficient sophistication with court pleadings to determine comprehension of the right to plead guilty or not guilty.

¶7 "It is within the juvenile court's discretion to determine the disposition of a juvenile following an adjudication of delinquency and, absent clear abuse of discretion, we will not disturb that disposition." *In re Sean M.*, 189 Ariz. 323, 324, 942 P.2d 482, 483 (App. 1997). Counsel advises that Miguel requests we determine whether the juvenile court abused its discretion by committing him to ADJC. Because of Miguel's criminal delinquency history and the lack of success in monitoring him in the community on intensive probation, the court did not abuse its discretion. See *In re Niky R.*, 203 Ariz. 387, 391, ¶¶ 16-19, 55 P.3d 81, 85 (App. 2002) (holding that commitment to ADJC is not an abuse of court's discretion when required for the protection of the community, to hold juvenile accountable for unlawful conduct, and upon

consideration of less restrictive means in light of individual circumstances).

Conclusion

¶8 The disposition by the juvenile court is affirmed. Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), the obligations of Miguel's counsel in this appeal have ended subject to the following. Counsel need do no more than inform Miguel of the status of the appeal and of his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. See Ariz. R.P. Juv. Ct. 107(A), (J).

/s/

DANIEL A. BARKER, Judge

CONCURRING:

/s/

PATRICIA A. OROZCO, Presiding Judge

/s/

LAWRENCE F. WINTHROP, Judge