

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

FILED BY CLERK

MAY 10 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

IN RE ALBERTO N.

) 2 CA-JV 2012-0011  
) DEPARTMENT B  
)  
) MEMORANDUM DECISION  
) Not for Publication  
) Rule 28, Rules of Civil  
) Appellate Procedure  
)  
)  
)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 19293301

Honorable Catherine Woods, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney  
By Erica Cornejo

Tucson  
Attorneys for State

Lori J. Lefferts, Pima County Public Defender  
By Susan C. L. Kelly

Tucson  
Attorneys for Minor

K E L L Y, Judge.

¶1 The juvenile court adjudicated Alberto N. delinquent after concluding he had committed disorderly conduct and assault as alleged in a delinquency petition filed in October 2011. The court placed Alberto on a four-month term of probation, also requiring him to perform twenty hours of community service and to write a letter of apology to the victim.

¶2 On appeal, Alberto challenges only the juvenile court's disposition order, maintaining the court "failed to utilize its inherent discretion in setting [his] disposition consequences" because it rejected "an alternative resolution" defense counsel had offered to the court at the disposition hearing. "We will not disturb the juvenile court's disposition of a juvenile delinquent except for abuse of discretion." *In re Maricopa Cnty. Juv. Action No. JV-128676*, 177 Ariz. 352, 353, 868 P.2d 365, 366 (App. 1994); *see also In re Niky R.*, 203 Ariz. 387, ¶ 10, 55 P.3d 81, 84 (App. 2002) ("The juvenile court has broad discretion to determine an appropriate disposition for a delinquent juvenile.").

¶3 At the disposition hearing, the probation officer assigned to the case testified about his report to the juvenile court, in which he apparently had recommended a six-month term of probation, twenty hours of community service, and an apology letter. He testified he had "just learned that [Alberto had] been accepted into a professional soccer team and is probably going to be traveling around quite a bit." He suggested the court could "entertain an early termination" of probation if Alberto finished his community service and apology letter quickly, but indicated he had spoken to Alberto about the service and letter and Alberto was "agreeing to the current conditions." The court then noted the victim's absence from the hearing, but the prosecutor indicated the victim and his family were "in agreement" with the disposition that had been proposed.

¶4 Defense counsel then told the juvenile court, “we have an alternative recommendation.” He argued Alberto should receive a “consequence rather than probation” and should be required only to complete the community service and letter rather than being placed on probation. He indicated Alberto had been admitted to a residential program with a professional soccer league that would require a lot of travel and practice time, making compliance with the terms of probation difficult. In response to the court’s inquiry, he indicated Alberto would likely begin that program in May or June.

¶5 The court asked a few more questions about the program, spoke to Alberto and his mother, and then indicated its concern about changing the disposition plan:

I think what would be the best course here, particularly because when this was all approached and discussed with the victim and his family, it seemed that everybody was generally in agreement with a term of probation. Given that the victim consented to that or expressed an agreement with that game plan and now there’s a proposal to change it, I’m not comfortable changing something that had previously been agreed to and presented to the victim. I have a feeling if they knew there was going to be a proposed change in the plan, they may have wanted to be here today to be heard on that.

So under the circumstances, and I am factoring in the time frame that even with probation it appears that it will have been able to be completed by the time that Alberto would be accepted into the program, and I just wanted to ask [the probation officer and prosecutor], is there anything magical about six months versus can we make it perhaps four months?

The probation officer indicated there would be no problem, and the court ordered a four-month term as well as community service and an apology letter.

¶6 We cannot say the juvenile court abused its broad discretion. *See Niky R.*, 203 Ariz. 387, ¶ 10, 55 P.3d at 84. Alberto’s suggestion on appeal that the court “deferred to the victim’s prior approval of the proposed consequences, rather than adequately investigating and balancing the extreme hardships” probation would cause him is not borne out in the record. Although the court did consider the victim’s absence, it also clearly considered the hardships probation would cause Alberto and then shortened the anticipated term to four months so that Alberto could complete it before his soccer program started. Alberto’s arguments on appeal essentially ask us to replace the juvenile court’s judgment with our own, something we will not do. *See In re Martin M.*, 223 Ariz. 244, ¶ 15, 221 P.3d 1058, 1062 (App. 2009) (appellate court will not reverse disposition absent abuse of discretion). Therefore, the juvenile court’s disposition order is affirmed.

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge