

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

NOV 23 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE JAMES S.)
) 2 CA-JV 2012-0073
) DEPARTMENT B
)
) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure
)
_____)

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100JV200500506

Honorable Kevin D. White, Judge
Honorable Craig A. Raymond, Judge Pro Tempore

AFFIRMED

James P. Walsh, Pinal County Attorney
By Kate Milewski

Florence
Attorneys for State

Richard Scherb

Florence
Attorney for Minor

K E L L Y, Judge.

¶1 Minor James S. appeals from the juvenile court’s June 2012 order revoking his placement on Juvenile Intensive Probation Services (JIPS) and committing him to the Arizona Department of Juvenile Corrections (ADJC) until his eighteenth birthday.¹ For the following reasons, we affirm.

¶2 Citing scant authority, James argues the juvenile court “denied [him] due process of law and abused [its] discretion by failing to adequately consider and give due weight” to the recommendation—offered by juvenile probation, agreed to by his own attorney and his guardian *ad litem*, and apparently not opposed by the state—that he be reinstated to JIPS instead of committed to ADJC. At the disposition hearing, the juvenile court stated,

The juvenile admitted testing positive [for drug use] on March 24th, 2012. His most recent probationary grant was less than a month earlier. He was reinstated to JIPS on February 21st, 2012.

¹James admitted violating his probation and does not challenge the probation violation finding on appeal. It appears James is now eighteen, and so should have been discharged from his ADJC commitment. *See* A.R.S. § 41-2820(A). In the context of adult sentencing, “where a defendant is challenging only the propriety or manner in which his sentence was imposed and not the conviction itself, the validity of the imposition of the sentence becomes a moot question once it has been fully served.” *State v. Hartford*, 145 Ariz. 403, 405, 701 P.2d 1211, 1213 (App. 1985). Because James turned eighteen after the state filed its answering brief, the state understandably has not argued James’s appeal is moot, and we decline to dismiss on mootness grounds *sua sponte*, as revocation of a juvenile’s probation may have consequences beyond the commitment served. *See* A.R.S. §§ 8-348, 8-349; *In re Themika M.*, 206 Ariz. 553, ¶ 14, 81 P.3d 344, 346-47 (App. 2003) (failure to complete probation “successfully” precludes later set-aside of delinquency adjudication or destruction of juvenile records); *see also Big D Constr. Corp. v. Court of Appeals*, 163 Ariz. 560, 562-63, 789 P.2d 1061, 1063-64 (1990) (reluctance to consider moot questions not constitutional limitation but discretionary “matter of prudential or judicial restraint”).

The juvenile is before the court today approximately four months before his 18th birthday for referral number 15.

The juvenile's history dates all the way back to March 2005. Several referrals were either adjusted or the decision not to file was imposed. He was originally placed on probation in August 2009. That was for referral [number] 8. He generated numerous referrals subsequent to that, again being placed . . . on probation May 3rd, 2011 He was placed on JIPS February 21st, 2012 and then generated this new petition.

I have reviewed the presentence report, reviewed the file on this young man, reviewed his [Juvenile Online Tracking System] history.

...

Probation in this case is asking that I reinstate this juvenile on JIPS until his 18th birthday. The juvenile's compliance on JIPS has been exceedingly poor. He has continued to engage in drug abuse. There are some very troubling comments about the support that probation received from his family in an effort to assist this young man.

The court then asked the juvenile probation officer about his recommendation and also heard from the state; James's attorney, his guardian *ad litem*, and his mother; and James himself, and none of them opposed the recommendation for reinstatement of his probation. Among the topics addressed were James's recent receipt of his General Equivalency Diploma, his history of mental health and drug abuse issues, and whether inpatient placement for treatment might be feasible. After hearing these statements, the court said, "All right. It is hereby ordered committing [James] to the [ADJC] until his 18th birthday." In its minute entry disposition order, the court expressly found "standard

or intensive probation is not a viable alternative and the least restrictive setting for [James] is a commitment to [ADJC].”

¶3 “A juvenile court has broad discretion in determining the proper disposition of a delinquent juvenile, and we will not disturb a disposition order absent an abuse of the court’s discretion.” *In re Themika M.*, 206 Ariz. 553, ¶ 5, 81 P.3d 344, 345 (App. 2003) (citation omitted). In the analogous context of adult sentencing, a court abuses its discretion if it acts arbitrarily or capriciously or fails to conduct an adequate investigation of relevant facts. *State v. Stotts*, 144 Ariz. 72, 87, 695 P.2d 1110, 1125 (1985). To determine whether ADJC commitment is the proper disposition for a delinquent juvenile, a court also must consider guidelines for commitment promulgated by the Arizona Supreme Court. *See In re Melissa K.*, 197 Ariz. 491, ¶ 14, 4 P.3d 1034, 1038 (App. 2000); see also A.R.S. § 8–246(C) (requiring promulgation of commitment guidelines); Ariz. Code of Jud. Admin. § 6-304(C) (Commitment Guidelines). Courts are not expected to apply these guidelines “in a mechanical fashion,” but rather to consider them in determining “whether, under the unique circumstances of the particular juvenile, commitment to ADJC is appropriate.” *In re Niky R.*, 203 Ariz. 387, ¶ 13, 55 P.3d 81, 84 (App. 2002). Moreover, the court is deemed to have to have made every finding necessary to support its disposition, because we assume the court knows and follows the law. *Id.* ¶ 21.

¶4 James does not argue that the juvenile court’s disposition was arbitrary or capricious or based on an inadequate investigation; nor does he contend the court failed

to consider the guidelines established for commitment of juveniles to ADJC. Rather, he maintains the court abused its discretion because it failed to give “due weight” to opinions offered by his probation officer, attorney, and guardian *ad litem*.² But we do not reweigh the evidence. *In re Andrew A.*, 203 Ariz. 585, ¶ 9, 58 P.3d 527, 529 (App. 2002). We review the record “only to determine if there is sufficient evidence to sustain the juvenile court’s ruling.” *Id.*

¶5 Here, the juvenile court clearly expressed its concern that James had been referred to juvenile court fifteen times in a seven-year period, that his “compliance on JIPS ha[d] been exceedingly poor,” and that he had “continued to engage in drug abuse.” James previously had been adjudicated delinquent for threatening and intimidating, a class one misdemeanor, and his most recent probation violations occurred little more than a month after his placement on JIPS for having violated a one-year term of standard probation imposed for possession of marijuana. In light of James’s history, ample evidence supported the court’s findings, either implicit or expressed, that ADJC was the least restrictive placement for James because he posed a risk to the community; because other rehabilitation efforts, including standard and intensive probation, had failed; and because the commitment provided a means of holding James accountable for his

²We find no basis in the record for James’s suggestion that he was denied due process. As James acknowledges, “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). James was provided a full opportunity to be heard at his disposition hearing before the juvenile court entered its disposition order.

delinquent conduct. *See* Ariz. Code of Jud. Admin. § 6-304(C)(1). We find no abuse of discretion. *See Niky R.*, 203 Ariz. 387, ¶ 23, 55 P.3d at 86.

¶6 Accordingly, the juvenile court's order revoking James's probation and committing him to ADJC is affirmed.

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed August 15, 2012.