

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.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE MATHEU I.)
) 2 CA-JV 2009-0092
) DEPARTMENT A
)
) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 16417302

Honorable Leslie Miller, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney
By Kara Crosby

Tucson
Attorneys for State

The Hopkins Law Office, P.C.
By Cedric Martin Hopkins

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H O W A R D, Chief Judge.

¶1 Fifteen-year-old Matheu I. appeals the juvenile court’s order committing him to the Arizona Department of Juvenile Corrections (ADJC) for a minimum term of six

months.¹ Specifically, he argues the court abused its discretion because, he maintains, it had “disregarded” a less restrictive alternative disposition he proposed. He also contends the court improperly considered unreliable hearsay evidence in determining his placement at disposition. For the following reasons, we affirm.

¶2 The juvenile court adjudicated Matheu delinquent after he admitted having committed the offenses of possession of a deadly weapon by a prohibited possessor and theft by control of lost, mislaid, or misdelivered property. At his disposition hearing, Matheu asked the court to place him on Juvenile Intensive Probation Supervision (JIPS) and in the custody of his grandparents. In addressing Matheu, the court noted he had run away from placements nearly a dozen times and had already been placed on intensive probation for previous offenses but had failed to report to his probation officer as required. The court stated Matheu’s record was one of the most significant it had seen for a minor of his age and that, although “the probation department has provided every single resource it has,” his criminal behavior had escalated.²

¹Matheu does not challenge his adjudication of delinquency.

²In 2004, when Matheu was ten, he was adjudicated delinquent after admitting three separate incidents of criminal conduct, respectively involving aggravated assault with a deadly weapon, misdemeanor assault, and criminal damage. Four years later, he admitted separate incidents of shoplifting and assault. He was placed on JIPS but immediately absconded from supervision, and a bench warrant was issued for his arrest. He was apprehended in June 2009, when he was charged with, among other offenses, theft by control of a handgun and possession of a handgun by a prohibited possessor.

¶3 Matheu’s probation officer told the juvenile court that representatives from Child Protective Services (CPS) had informed him telephonically they would not be involved in Matheu’s placement decision because he “won’t stay where [CPS] put[s] him.” The probation officer’s predisposition report apparently included other information conveyed by CPS workers, including their decision to discontinue placement efforts for Matheu because of his history of running away and because he was “too dangerous” for CPS placement.³ The predisposition report apparently also included the CPS workers’ report of a domestic violence incident in the home of Matheu’s grandparents, where Matheu was requesting alternative placement. On appeal, Matheu maintains the court improperly considered hearsay involving statements made by CPS representatives and did not adequately consider a less restrictive alternative placement with JIPS and his grandparents.

¶4 Matheu acknowledges that “reliable hearsay is properly considered by the juvenile court at disposition,” see *In re Maricopa County Juv. Action No. JV-512016*, 186 Ariz. 414, 418, 923 P.2d 880, 884 (App. 1996), but maintains the probation officer’s reports of conversations with Matheu’s CPS case manager and her supervisor were not reliable. In support of this assertion, he argues only that “[t]he probation officer had a vested interest” in having the court follow his recommendation that Matheu be committed to ADJC. Nothing in the record supports this statement. “Official acts of public officers are presumed to be

³Matheu refers to this report on appeal, and the juvenile court appears to have discussed the report during the disposition hearing, but the report itself is not included in the record on appeal, and neither party sought to include it in the record.

correct and legal, in the absence of clear and convincing evidence to the contrary,” *Swartz v. Superior Court*, 105 Ariz. 404, 406, 466 P.2d 9, 11 (1970), and Matheu cites no evidence that his probation officer falsified information or that his CPS case manager and her supervisor had misrepresented Matheu’s history with CPS. *See Maricopa County No. JV-512016*, 186 Ariz. at 418, 923 P.2d at 884 (no abuse of discretion in admitting hearsay where juvenile challenged reliability but “[did] not contend that the facts reported . . . were false or misleading”). “Whether hearsay information is “reliable” is largely a matter of discretion with the trial court” *Id.*, quoting *State v. Marquez*, 127 Ariz. 3, 6, 617 P.2d 787, 790 (App. 1980). The court did not abuse its discretion in considering the probation officer’s report and testimony.

¶5 Nor did the juvenile court abuse its discretion in committing Matheu to AJDC. A juvenile court has “broad power to make a proper disposition” after a delinquency adjudication. *In re Maricopa County Juv. Action No. JV-510312*, 183 Ariz. 116, 118, 901 P.2d 464, 466 (App. 1995), quoting *In re Maricopa County Juv. Action No. J-72918-S*, 111 Ariz. 135, 137, 524 P.2d 1310, 1312 (1974). Pursuant to A.R.S. § 8-246(C), our supreme court has promulgated the following guidelines for commitment of minors to ADJC:

When considering the commitment of a juvenile to the care and custody of ADJC, the 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 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.

Ariz. Code. of Jud. Admin. § 6-304(C)(1). Although a court is required to consider these guidelines before committing a juvenile to ADJC, *id.*, “the guidelines do not mandate that the less restrictive alternative be ordered” but that it be identified and reviewed in the context of the “the nature of the offense at issue and the specific risk the juvenile poses.” *In re Niky R.*, 203 Ariz. 387, ¶ 19, 55 P.3d 81, 86 (App. 2002); *see also In re Melissa K.*, 197 Ariz. 491, ¶ 14, 4 P.3d 1034, 1038 (App. 2000) (juvenile court may deviate from guidelines, “but it must consider them in making disposition”).

¶6 At Matheu’s disposition hearing, the juvenile court expressly considered each of the commitment guidelines, including whether the less restrictive alternative identified would be appropriate. Matheu had previously been adjudicated delinquent on charges of assault and once for aggravated assault with a weapon. This court’s latest adjudication of delinquency had involved his possession, as a prohibited possessor, of a stolen handgun. He had absconded from numerous non-secure placements and had already had the opportunity

of being placed on JIPS but had absconded from that as well. Matheu's commitment to ADJC was thus consistent with the protection of the community, held him accountable for a serious delinquent act, and provided him with a final opportunity for rehabilitation where other less restrictive services, including assignment to JIPS, had failed.

¶7 The juvenile court's decision to commit Matheu to ADJC was thus consistent with ADJC commitment guidelines and was not an abuse of its discretion. We therefore affirm the juvenile court's adjudication of delinquency and disposition order.

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

PHILIP G. ESPINOSA, Presiding Judge

PETER J. ECKERSTROM, Judge