

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2008

A.T., a Child,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

Nos. 4D07-2129 and 4D07-3238

[June 4, 2008]

ON MOTION FOR CLARIFICATION

PER CURIAM.

We grant appellant's motion for clarification and substitute this opinion to correct scrivener's errors in our opinion issued April 23, 2008.

Appellant A.T., a sixteen-year-old child, appeals the disposition order committing her to the care of the Department of Juvenile Justice for placement in a level eight high risk residential program.

A.T. argues that the "characteristics vis-à-vis the needs" test is the most workable test for trial courts to use in deciding whether to depart from the Department's Predisposition Report recommendation. In *E.A.R. v. State*, No. 4D07-1061, 4D07-3228, 2008 WL 583791 at *1 (Fla. 4th DCA March 5, 2008), this court rejected this argument and certified conflict with *M.S. v. State*, 927 So. 2d 1044, 1046 (Fla. 2d DCA 2006). We again note conflict as we did in *E.A.R. v. State*.

A.T. also argues that upwardly departing after a juvenile disposition has already been imposed violates double jeopardy. We concur with the reasoning of the third district in *J.E. v. State*, 676 So. 2d 39, 40 (Fla. 3d DCA 1996). There is no double jeopardy violation as the departure only increased the restrictiveness level. It was not a resentencing.

Affirmed.

POLEN, GROSS and MAY, JJ., concur.

* * *

Consolidated appeals from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Elizabeth A. Metzger, Judge; L.T. Case Nos. 562007CJ000594A and 2006CJ001689.

Carey Haughwout, Public Defender, and Elisabeth Porter, Assistant Public Defender, West Palm Beach, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Sue-Ellen Kenny, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing