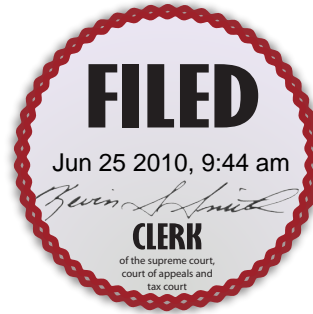


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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M.B.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 89A01-1001-JV-59
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE WAYNE SUPERIOR COURT  
The Honorable Darrin M. Dolehanty, Judge  
Cause No. 89D03-0912-JD-066

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**June 25, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

M.B. appeals his commitment to the Indiana Department of Correction (“DOC”). He contends that the juvenile court abused its discretion in awarding wardship over him to the DOC and should have placed him in a less restrictive secure detention facility. Given M.B.’s extensive history of delinquent behavior, which includes periods of informal adjustment, formal probation, secure detention, placement at a residential treatment facility under a suspended commitment to the DOC, placement at the DOC, and other services provided to him including counseling, we conclude that the juvenile court did not abuse its discretion in committing M.B. to the DOC. We therefore affirm.

## **Facts and Procedural History**

On December 17, 2009, the State filed a petition alleging that M.B., who was then seventeen years old, was a delinquent child for committing what would be three counts of Class A misdemeanor battery against his grandmother, mother, and cousin and one count of Class C misdemeanor minor consuming alcoholic beverages if committed by an adult.

On January 14, 2010, M.B. admitted two of the allegations of battery, specifically, the ones against his mother and cousin, and the State dismissed the other two allegations. The parties presented the following factual basis at the fact-finding hearing. Specifically, on December 12, 2009, M.B. and several friends had been drinking vodka and Everclear alcohol. M.B. went home after drinking. At home, M.B. struck his mother and his cousin, who was confined to a wheelchair. The police were called, and M.B. was arrested and detained in the Henry County Youth Center until his dispositional hearing.

The juvenile court found M.B. to be a delinquent. The court conducted the dispositional hearing that same day and awarded wardship over him to the DOC. The juvenile court's dispositional order provides in relevant part:

4. That reasonable efforts have been made to prevent the need for removal of the juvenile from the juvenile's home, or to return the juvenile to the home once removed. Those reasonable efforts are set out in the records and pleadings, and include the following: the child was on informal probation starting in December 2004, and continuing through December 2005. While on informal probation, the child received various services including counseling. The child has also been on formal probation, under a suspended period of detention, and received various services while on probation, including ongoing counseling. The child has been placed into secured detention, and has been placed at a residential treatment facility under a suspended commitment to the DOC. While at the residential facility, the child escaped, was later apprehended, and was then placed at the DOC.
5. The Juvenile Court has tried several forms of disposition for this child, ranging from informal methods of direction, to placement at the Department of Correction. The child continues to commit delinquent acts, whether in placement or out of placement.
6. The child has signed up for GED classes, but is not attending. He has not attended school since being released from the DOC.
7. The child has used heroin, marijuana and alcohol.
8. The child has been in counseling at Whitewater Valley Care Pavilion, Dunn Center, and the Youth Opportunity Center.

\* \* \* \* \*

10. The Court has considered continuing the child's current placement at the Henry County Youth Center, as a less restrictive placement for this child. The Court finds that the child has not done well in that placement, advanced only to "Level 2" of the center's general rehabilitation program, only to be returned to "Level 1" following disciplinary problems. The Court also finds that the child is in a token deficit, in the youth center's token-based economy, used to give incentive for good behavior, and to discourage rule violations. The Court therefore cannot give further consideration to using Henry County Youth Center as a proper disposition placement for this child.

\* \* \* \* \*

Pursuant to IC 31-37-19-6, the Court now awards wardship of the child to the Indiana Department of Correction for housing in any correctional facility for children.

\* \* \* \* \*

The Court recommends that the Department of Correction retain wardship of the child until he is able to successfully complete a program of rehabilitation, without regard to the age of the child.

Appellant's App. p. 57-58. M.B. now appeals his commitment to the DOC.

### **Discussion and Decision**

M.B. argues that the juvenile court erred by committing him to the DOC because it is not the least restrictive and most appropriate placement. He argues that he should have remained at the Henry County Youth Center until his eighteenth birthday.

In determining whether the juvenile court properly placed M.B. in the DOC, we note that the choice of the specific disposition of a juvenile adjudicated to be a delinquent is a matter within the sound discretion of the juvenile court and will only be reversed if there has been an abuse of that discretion. *J.S. v. State*, 881 N.E.2d 26, 28 (Ind. Ct. App. 2008). The juvenile court's discretion is subject to the statutory considerations of the welfare of the child, the safety of the community, and the policy of favoring the least harsh disposition. *Id.* An abuse of discretion occurs when the juvenile court's action is clearly erroneous and against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual inferences that can be drawn therefrom. *Id.* Hence, the juvenile court is accorded wide latitude and great flexibility in dealing with juveniles. *Id.*

Indiana Code section 31-37-18-6 presents the following factors that a juvenile court must consider when entering a dispositional decree:

If consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that:

(1) is:

- (A) in the least restrictive (most family like) and most appropriate setting available; and
  - (B) close to the parents' home, consistent with the best interest and special needs of the child;
- (2) least interferes with family autonomy;
  - (3) is least disruptive of family life;
  - (4) imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian; and
  - (5) provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

“Without question, the statute requires the juvenile court to select the least restrictive placement in most situations; however, the statute contains language that reveals that a more restrictive placement might be appropriate under certain circumstances.” *J.S.*, 881 N.E.2d at 28-29. This means that the statute requires placement in the least restrictive setting only “[i]f consistent with the safety of the community and the best interest of the child.” I.C. § 31-37-18-6. Therefore, the statute recognizes that, in certain situations, the best interest of the child is better served by a more restrictive placement. *J.S.*, 881 N.E.2d at 29.

M.B.'s situation is one where the best interest of the child is better served by a more restrictive placement. As the juvenile court summarized at the dispositional hearing, M.B. has an extensive history of delinquent behavior. Tr. p. 15-16. In August 2004 M.B. was referred for felony auto theft. His disposition was an informal adjustment of six months, which was extended for another six months. Both in August 2005 and September 2005 M.B. was referred for misdemeanor battery and was ordered to serve

ninety days in a secure detention facility. However, his detention was suspended, and M.B. was placed on formal probation for a year. In April 2006 M.B. was referred for receiving stolen property, which led to forty days of secure detention with no probation, since previous probation efforts had proven useless. In October 2007 M.B. was referred for felony theft, which led to a suspended commitment to the DOC, and M.B. was placed on probation for a year at the Youth Opportunity Center. In January 2008 M.B. escaped from the Youth Opportunity Center and was referred for a probation violation, which led him to be committed to the DOC.

Additionally, the record shows that M.B. had signed up for GED classes but was not attending them at the time of the dispositional hearing. And he had not attended school since being released from the DOC. M.B. has a history of substance abuse with heroin, marijuana, and alcohol and had to be taken to the hospital for withdrawal symptoms in 2009. Efforts at counseling M.B. were at Whitewater Valley Care Pavilion, Dunn Center, and the Youth Opportunity Center.

The facts show that several forms of disposition have been tried on M.B., ranging from informal methods of direction to placement at the DOC. Nonetheless, M.B. has not responded to any of these interventions to help him and continues to commit delinquent acts, whether in placement or out of placement. Reasonable efforts have also been made to avoid removing M.B. from his home, or to return M.B. home when removed, ranging from informal probation to placement in a residential treatment facility under a suspended commitment to the DOC, from which M.B. escaped. According to M.B.'s probation officer, "There are no community resources that have not been previously tried with

[M.B.'s] family.” Appellant’s App. p. 48. Given that M.B. has failed at informal dispositions, counseling, secure detention, residential placement, and the many other services offered to him and given the juvenile court’s belief that M.B.’s needs go beyond placement at a secure detention facility, we conclude that the court did not abuse its discretion in committing M.B. to the DOC for housing in a correctional facility for children.

Affirmed.

NAJAM, J., and BROWN, J., concur.