

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAMON BEAUCHAMP, a Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMON BEAUCHAMP, a/k/a DAMON JAMO
BEAUCHAMP,

Defendant-Appellant.

UNPUBLISHED
November 2, 1999

No. 199911
Wayne Juvenile Court
LC No. 93-308382

Before: Whitbeck, P.J., and Gribbs and White, JJ.

PER CURIAM.

Defendant Damon Beauchamp appeals as of right from a dispositional order of the Wayne Juvenile Court in this juvenile delinquency case, placing him under the supervision of the Family Independence Agency. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts and Procedural History

The prosecutor originally charged Beauchamp with possession with intent to deliver marijuana. In early September, 1996, he entered a plea of admission to the lesser offense of possession of marijuana, apparently in exchange for dismissal of the original delivery charge. At that time, the court left Beauchamp in his mother's custody with monitoring by electronic tether, pending a dispositional hearing.

On the day before Beauchamp's dispositional hearing, he was placed in the youth home for violating the terms for wearing the tether and being suspended from school. However, Beauchamp's dispositional hearing was rescheduled for mid-November 1996, and he was again released on tether. On October 22, 1996, the police arrested Beauchamp while he was riding with some friends in a stolen

car; he was placed in the youth home again. Subsequently, the tether department filed a new petition charging Beauchamp with repeated truancy from school.

At the November 1996 dispositional hearing, the prosecution asked the probate court to dismiss the new truancy petition in light of the fact that Beauchamp had turned seventeen. On the issue of disposition on the possession of marijuana charge, Beauchamp's counsel advised the probate court that, according to Beauchamp, the incident on October 22, 1996 was the result of a tether malfunction. Beauchamp told counsel that he stayed home from school that morning while waiting for permission to leave from the tether officer and that, when he finally received permission to leave, he caught a ride to school with some friends around 10:00 a.m. Beauchamp claimed that he never realized that he rode to school in a stolen car.

In response, the probate court heard remarks from a tether officer.¹ The tether officer acknowledged that there had been problems with Beauchamp's tether unit, but she explained that the malfunction did not give Beauchamp license to stay home from school. She added that tether officers were available to take Beauchamp to school in the event that it was necessary for Beauchamp to stay home so that his tether unit could be fixed or adjusted. Regarding the incident on October 22, the tether officer stated that Beauchamp told her he was riding with some friends to get some lunch over the school lunch hour, but the school counselor later told her that the school does not allow students to go off campus for lunch.

The probate court also heard from Beauchamp's mother, who stated that Beauchamp's tether unit was broken and smoked, and that the tether officer called every thirty minutes. Regarding Beauchamp's school suspension, Beauchamp's mother maintained that Beauchamp did not do anything wrong but had been "excluded . . . for security reasons" after he and his friends got into a confrontation concerning a coat and were threatened.

The probate court then ordered that Beauchamp be placed with the Family Independence Agency, stating its reasons on the record as follows:

THE COURT: All right. Court is going to place this young man under the supervision of the Family Independence Agency. He has just too much trouble following the direction of the tether, that the Court is not convinced that he can follow the requirements of probation.

So the Court will place him under the supervision of the Family Independence Agency for placement and supervision at an appropriate placement including a school program. And they are to assure that he attends school, because this young man's going to take full time staff to assure that he will be attending school.

At issue in this appeal is whether the trial court erred by exercising jurisdiction over Beauchamp and ultimately placing him under the Family Independence Agency's supervision.

II. Analysis

A. Beauchamp's Argument

Beauchamp contends that the probate court erred by abusing its discretion in the adjudication and disposition of this case. With regard to the adjudicative phase, Beauchamp's counsel asserts that the probate court's jurisdiction is in question because "[t]here has been produced no record of a plea." Defense counsel argues that "the voluntariness or substantive sufficiency of the underlying plea cannot be ascertained as no transcript has ever been provided containing the details of any such procedure" and therefore counsel "pro forma challenges the sufficiency of same in the absence of demonstration to the contrary." With regard to disposition, Beauchamp's counsel argues that the probate court should have ordered an in-home placement given under probation as Beauchamp's mother requested. Counsel notes that Beauchamp's tether unit was malfunctioning, and asserts that this prevented the court from determining whether the tether program would have been successful for Beauchamp if he had a working, non-defective unit. Counsel also notes that the truancy petition was dismissed, and the prosecution never charged Beauchamp for the stolen vehicle incident.

B. Standard of Review

We review the disposition in a juvenile case for an abuse of discretion. See *In re Ricks*, 167 Mich App 285, 295; 421 NW2d 667 (1988); *In re Scruggs*, 134 Mich App 617, 621-622; 350 NW2d 916 (1984).

C. The Transcript

We believe it is clear that Beauchamp, as the appellant, has the responsibility of providing this Court with any transcript necessary to review the sufficiency of his plea at the adjudicative phase. See, e.g., *People v Anderson*, 209 Mich App 527, 535; 531 NW2d 780 (1995). There is nothing in the record to indicate that Beauchamp's counsel has ever ordered the transcript of the plea hearing. To the contrary, the only transcript request in the lower court record is for the dispositional hearing. Moreover, the presumption of regularity precludes this Court from assuming error from the absence of a transcript that defendant has not shown to be unavailable on timely request. See *People v Carpentier*, 446 Mich 19, 37; 521 NW2d 195 (1994).

D. The Dispositional Ruling

We affirm the probate court's dispositional ruling. Probation, as a matter of grace rather than of right, was discretionary with the lower court. *In Re Scruggs*, *supra* at 621. We find no abuse of discretion here. Although Beauchamp makes much of the fact that his tether unit was malfunctioning, the tether officer explained that the tether problems did not excuse Beauchamp's failure to attend school and other rule violations, e.g., the school suspension and the October 22, 1996 incident when Beauchamp improperly left the school campus during the lunch hour.

Affirmed.

/s/ William C. Whitbeck

/s/ Roman S. Gibbs

/s/ Helene N. White

¹ Identified in the transcript only as “Tether Lady.”