STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of RAPHAEL HASTIE, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

RAPHAEL HASTIE,

Respondent-Appellant.

UNPUBLISHED
March 28, 2000

No. 213880
Wayne Circuit Court
Family Division
LC No. 96-346194

Before: Neff, P.J., and Sawyer and Saad, JJ.

PER CURIAM.

Respondent appeals by delayed leave granted from an order accepting his guilty plea to first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), and committing him to the custody of the Family Independence Agency. We affirm.

In June 1997, respondent, then twelve years old, sexually penetrated a six-year-old girl, at church, while the victim's mother was on the premises. In September 1997, respondent pleaded guilty to first-degree criminal sexual conduct pursuant to a plea agreement whereby the trial court would take the plea under advisement pending respondent's progress in treatment, with the understanding that if respondent successfully completed an appropriate treatment program the court would, on petitioner's motion, dismiss the case. The court took the plea under advisement, and respondent continued to participate in an outpatient treatment program that he had in fact begun two months earlier. However, in April 1998, upon receiving disturbing indications from the counselors that respondent was not responding well to outpatient treatment and required more intensive treatment, and posed a risk to children if left at large, the trial court accepted respondent's plea and committed him to the custody of the Family Independence Agency.

On appeal, respondent first argues that petitioner's failure to effect personal service on respondent or his grandmother, who was respondent's legal guardian, rendered the trial court without jurisdiction, citing MCL 712A.12 and 712A.13; MSA 27.3178(598.12) and 27.3178(598.13). We

disagree. "The interpretation and application of . . . statutes presents a question of law that is reviewed de novo." *McAuley v General Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998), overruled in part on other grounds *Rafferty v Markovitz*, 461 Mich 265, 272 n 6; 602 NW2d 367 (1999). "Whether a court has personal jurisdiction over a party is a question of law, which this Court reviews de novo." *Poindexter v Poindexter*, 234 Mich App 316, 319; 594 NW2d 76 (1999). Failure to follow statutory notice requirements in a juvenile proceeding results in a jurisdictional defect. *In re Mayfield*, 198 Mich App 226, 231; 497 NW2d 578 (1993). "[S]tatutes requiring notice to parents must be strictly construed." *In the Matter of Brown*, 149 Mich App 529, 536; 386 NW2d 577 (1986).

MCL 712A.12; MSA 27.3178(598.12) provides, in pertinent part:

> If the person . . . summoned shall be other than the parent or guardian of the child, then the parents or guardian, or both, shall also be notified of the petition and of the time and place appointed for the hearing thereon, by personal service before the hearing, except as hereinafter provided.

MCL 712A.13; MSA 27.3178(598.13) in turn prescribes the manner in which "[s]ervice of summons may be made anywhere in the state personally . . . ," and sets forth alternatives to personal service where "the judge is satisfied that it is impracticable to serve personally such summons or the notice provided for in the preceding section."

The plain wording of MCL 712A.12; MSA 27.3178(598.12) indicates that it is a noncustodial parent or legal guardian who is entitled to personal service of notice. Although a custodial parent or guardian must also be served, they need not receive personal service. The requirement of personal service for noncustodial parents or guardians reflects the possibility that a noncustodial parent or guardian, by reason of lacking physical custody, is especially vulnerable to having his or her rights curtailed in a proceeding about which the person is not fully informed. In this case, respondent and his grandmother/guardian were served by regular mail, and there is no indication in the record that they did not in fact duly receive actual notice of the proceedings concerning them. Because respondent and his custodial grandmother were served and appeared without objection at all proceedings, there was no defect in service in this case.

Respondent next argues that the trial court's acceptance of respondent's plea before he had completed his treatment program, and the court's refusal to allow respondent to withdraw the plea, constituted an abuse of discretion, or a violation of respondent's rights under MCR 5.941(D) or constitutional principles of due process. We disagree. This Court reviews a trial court's denial of a defendant's motion to withdraw a guilty plea for an abuse of discretion. *People v Kennebrew*, 220 Mich App 601, 605; 560 NW2d 354 (1996).

MCR 5.941(D) provides that a trial court "may take a plea of admission or of no contest under advisement. Before the court accepts the plea, the juvenile may withdraw the plea offer by right. After the court accepts the plea, the court has discretion to allow the juvenile to withdraw a plea." Respondent attempts to characterize his request to withdraw his plea as having come before the court actually accepted it, which the court would then, under the court rule, have been obliged to allow as a

matter of right. However, our review of the record persuades us to reject respondent's characterization.

At the proceeding in question, the trial court recognized the troubling evidence that respondent was not responding to treatment and remained a danger to the community. It then stated that it was accepting the plea that it had long held under advisement. Only at this point did respondent move to withdraw the plea. While it is true that the court entertained arguments on the motion to withdraw and reiterated its decision to accept the plea, that did not operate to suspend the court's initial decision to accept the plea. Thus, respondent moved to withdraw the plea after it was accepted, not before, leaving the decision on the motion to the court's discretion.

An abuse of discretion occurs only where a court's action is so violative of fact and logic as to constitute perversity of will or defiance of judgment. *People v Laws*, 218 Mich App 447, 456; 554 NW2d 586 (1996). There was no abuse of discretion here.

"[I]n order to withdraw a guilty plea before sentencing, the defendant must first establish that withdrawal of the plea is supported by reasons based on the interests of justice. If sufficient reasons are provided, the burden then shifts to the prosecution to demonstrate substantial prejudice." See *People v Spencer*, 192 Mich App 146, 151; 480 NW2d 308 (1991). In this case, respondent offered no reason for withdrawing his plea, but for that the court should allow him more time to benefit from treatment, or that the court acted before petitioner had fulfilled its end of the bargain. However, the court did not abruptly accept the plea before respondent had a chance to demonstrate the reform that the agreement envisioned; instead, the court acted when, after several months of treatment, the indications were dire that respondent was not responding well to existing treatment and required institutionalization.

Respondent argues that he did not have sufficient time to complete the extensive sexual-offender treatment he required, pointing to the trial court's declaration one week before accepting the plea that it would adjourn the matter for two months. In fact, when asked at the earlier proceeding for a two-month adjournment, the court replied, "Alright, . . . two months should be sufficient for that I would hope." The court's use of the subjunctive tense indicates that it was not making a firm promise, or announcing that it was foreclosing itself from taking any adverse action within a two-month window. Respondent and counsel would have to have been very slow of perception to have presumed that the court agreed absolutely, after respondent was in treatment for nine months, and seven months had elapsed since the court took the guilty plea under advisement, not to act in response to new information for two more months. Further, at the subsequent hearing, respondent's counsel did not renew the request for the two full months of additional time of which the parties spoke one week earlier, but had herself recognized that recent indications demanded faster action, asking then for only two additional weeks. In light of these developments, the trial court properly held respondent to the negotiated consequences of his having failed to live up to his end of the bargain.

Respondent further argues that the trial court's decision was in violation of respondent's due process rights under the state and federal constitutions. However, respondent provides no argument concerning how the court's decision ran afoul of constitutional due process protections, even if it did not

offend the other authorities cited. Respondent's perfunctory, one-sentence argument warrants no consideration from this Court. "This Court generally holds that a party's failure to argue a position or failure to identify relevant authority waives the issue." *Oneida Twp v Eaton Co Drain Comm'r*, 198 Mich App 523, 526 n 2; 499 NW2d 390 (1993). See also MCR 7.212(C)(7).

Finally, respondent argues that he committed no cognizable offense because he was of the same age group specially protected by the CSC statute as was his victim. This argument is without merit.

MCL 750.520b(1)(a); MSA 28.788(2)(1)(a) provides that "[a] person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if . . . [t]hat other person is under 13 years of age." The statute on its face does not exclude any class of offenders on the basis of age. Statutory rape is a strict-liability offense. *In re Hildebrant*, 216 Mich App 384, 386; 548 NW2d 715 (1996). "The public policy has its basis in the presumption that the children's immaturity and innocence prevents them from appreciating the full magnitude and consequences of their conduct." *Id.* "[T]he Legislature did not intend to withdraw the law's protection of the victim in order to protect the offender." *Id.* at 386-387.

Respondent was twelve years old at the time of the incident at issue. Persons of that age are commonly understood to be sexually alert and capable, and there is no evidence that respondent was deficient in this regard. Indeed, respondent's own testimony, "I put my penis inside her vagina," indicates that he was the active party. The evidence further indicates that respondent admitted to the police that he told his victim to lie down between the pews at the church and then took the initiative to unzip his pants and position himself on top of her. Additionally, the evidence reveals that respondent admitted to looking at "too many women," especially those "wearing a short dress or short skirt." In short, it is plain that, as of the time of the incident and several months later, respondent well enough understood the nature of sexual activity to be legally responsible for initiating sexual activity with a person under the age of thirteen. Indications that respondent otherwise lacked maturity or common sense do not bear on the question. Respondent's sexual opportunism at the expense of the six-year-old girl was indeed a cognizable offense under this state's statutory scheme.

Affirmed.

/s/ Janet T. Neff
/s/ David H. Sawyer
/s/ Henry W. Saad