

STATE OF MICHIGAN
COURT OF APPEALS

In re WILLIAM JONES, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

V

WILLIAM JAMES JONES,

Respondent-Appellant.

UNPUBLISHED

January 27, 2004

No. 242605

Wayne Circuit Court

LC No. 98-371976

Before: Donofrio, P.J., and Griffin and Jansen, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's supplemental order revoking his probation and escalating his placement into a secure facility. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The juvenile respondent pleaded guilty of use of an imitation controlled substance, MCL 333.7414. The trial court placed respondent in the custody of the court, subject to the Wayne County Department of Community Justice (WCDCJ). The trial court effectively placed respondent on probation by allowing him to remain in his home provided he was attending a treatment program and complying with the terms of the program. The terms of the program required respondent to refrain from using illegal substances, to undergo a substance abuse assessment and substance abuse treatment, to submit to random drug screens, to submit to a psychiatric evaluation, and to attend tutoring sessions. The order provided that if respondent did not comply with the terms of the treatment program while he remained in the home, the WCDCJ would arrange for an appropriate placement in a secure facility.

Petitioner filed a supplemental petition alleging that respondent violated the previous order by failing to attend tutoring sessions, failing to submit to a psychiatric evaluation, and failing to submit to all required drug screens. The petition sought escalation of respondent's placement to a secure facility. The trial court held a hearing at which it established that respondent failed to attend tutoring sessions, failed to attend all required drug screens, and did not submit to a psychiatric evaluation. Respondent also admitted that he smoked marijuana approximately one week prior to the hearing. The trial court entered a written order finding that respondent had not been rehabilitated, that reasonable efforts were made to avoid removing

respondent from the home, and that continued placement in the home was contrary to respondent's welfare.

Due process requires that a probationer be given prior notice of the terms and conditions of probation before a court can revoke probation for failure to adhere to those terms and conditions. This notice is especially important where the probationer is a juvenile who cannot be expected to understand the terms of probation without an explanation by the court. *People v Stanley*, 207 Mich App 300, 307; 523 NW2d 892 (1994).

A juvenile who is charged with probation violation is entitled to have the petitioner prove the allegations by a preponderance of the evidence. MCR 3.944(C)(1)(c). A juvenile who wishes to admit the probation violation is entitled to have the court advise him of the nature of the alleged violations, the possible dispositions, and that by admitting the violations he is waiving his right to a contested hearing. MCR 3.944(D)(1)-(3). The trial court must confirm the plea on the record and ask the juvenile if any promises have been made beyond those in the agreement, and confirm the agreement on the record. MCR 3.944(D)(4)-(5). If the plea is a plea of admission, the trial court may establish support for a finding that the juvenile violated probation by questioning the juvenile or by other means. MCR 3.944(D)(6). If the trial court finds that a violation of probation occurred, it may modify the existing order of probation or order any disposition available under MCL 712A.18 or MCL 712A.18a. MCL 712A.18(1)(d) and (e) authorizes the court to place the juvenile in a private or public institution.

Respondent argues that the trial court's order revoking his probation and escalating his placement must be reversed on the grounds that he was denied due process when the trial court failed to fully explain the terms and conditions of his probation at the original hearing, and that the trial court erred in concluding that sufficient evidence existed to find that he violated his probation or that escalation of his placement was warranted. We disagree and affirm. Respondent has not furnished the transcript of the hearing at which the trial court placed him on probation, and has not established that he has been excused from doing so. MCR 7.210(B). Moreover, respondent has not filed either his own affidavit or an affidavit from trial counsel asserting that he did not receive notice of the terms and conditions of his probation. The order of probation sets out respondent's obligations. Given that respondent has failed to substantiate his assertion that the trial court did not give him adequate notice of the terms and conditions of his probation, we decline to give further consideration to this argument. See *People v Coons*, 158 Mich App 735, 740; 405 NW2d 153 (1987).

The trial court's findings that respondent violated his probation and that escalated placement into a secure facility were supported by a preponderance of the evidence. The trial court established support for a finding that respondent violated his probation by questioning respondent directly, as authorized by MCR 3.944(6)(a). Respondent's own admissions established the violation of probation. Furthermore, respondent stipulated to the escalation of placement into a secure facility.

Affirmed.

/s/ Pat M. Donofrio
/s/ Richard A. Griffin
/s/ Kathleen Jansen