STATE OF MICHIGAN

COURT OF APPEALS

In re DEREK FRANCIS LORANGER.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

DEREK FRANCIS LORANGER,

Respondent-Appellant.

UNPUBLISHED
March 4, 2008

No. 275586
Wayne Circuit Court
LC No. 04-428631-DL

Before: Whitbeck, P.J., and Jansen and Davis, JJ.

PER CURIAM.

In this juvenile delinquency case, respondent appeals as of right the trial court's order removing him from his home and placing him in a juvenile detention facility. We affirm. This appeal is being decided without oral argument. MCR 7.214(E).

The issues raised by respondent on appeal were not preserved below. Thus, to the extent these issues were not waived, review is for plain error affecting substantial rights. *People v Young*, 472 Mich 130, 143; 693 NW2d 801 (2005).

Respondent first argues that the trial court erred by revoking his probation and incarcerating him in a juvenile facility for being disrespectful or impolite to the probation officer. Respondent asserts that being respectful or polite was not a condition of his probation. We conclude that this issue has been waived because respondent's counsel below effectively admitted that respondent's conduct toward the probation officer was inappropriate and could subject him to increased punishment by the trial court. Specifically, respondent's counsel acknowledged at the probation review hearing that respondent's conduct was "unacceptable" and "certainly inappropriate." More critically, respondent's counsel stated to the trial court at that hearing, "I know that you have to impose punishment . . . ." This issue has been waived because respondent's counsel effectively acknowledged that respondent was subject to punishment for his conduct toward the probation officer; respondent has intentionally abandoned any claim that he could not be punished for his conduct. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). Respondent's waiver has extinguished any error with regard to this issue. *Id*. at 215-216.

Even if this issue had not been waived, no plain error occurred. *Young*, *supra* at 143. The conditions of respondent's probation included a requirement that he "obey all reasonable parental, guardian, or probationary requirements and directions." It is reasonable to conclude that the reference to "probationary requirements and directions" encompassed requirements and directions of the probation officer assigned to respondent's case. It was effectively undisputed at the hearing that respondent yelled and screamed at the probation officer when she came to his school to discuss certain issues with him. It is reasonable to conclude that respondent violated the conditions of probation by disregarding the probation officer's requirements and directions and by disrespectfully yelling and screaming at her.

Respondent next argues that he was improperly denied the right to confront and cross-examine the probation officer concerning his alleged conduct toward her. However, our review of the record reveals that respondent's counsel never sought to call the probation officer as a witness or to cross-examine her. Thus, there is simply no basis to conclude that the trial court denied respondent the right to confront and cross-examine the probation officer. Respondent has not shown any error, let alone plain error, *Young*, *supra* at 143, with regard to this issue.

Finally, respondent argues that he was denied his right of allocution in this case. We conclude that respondent waived his right to allocute at the hearing. Near the end of her remarks, and before the trial court began explaining its sentence, respondent's counsel stated, "I don't know if the Court wants to hear from [respondent] at all." In other words, respondent's counsel did not request an opportunity for respondent to allocute, but rather affirmatively deferred to the trial court on the question whether respondent should make a statement at the time. This conduct constituted a waiver of respondent's right of allocution. *Carter*, *supra* at 215-216.

Respondent points to a verbal exchange near the end of the proceeding as evidence that he was denied the right of allocution. However, this exchange did not occur until *after* the trial court had begun announcing its decision to commit respondent to a juvenile detention facility. Respondent's belated remarks in this regard cannot reasonably be considered an attempt to allocute, i.e., to address the trial court before the sentencing decision. See *People v Westbrook*, 188 Mich App 615, 616-617; 470 NW2d 495 (1991). Rather, they amounted to an attempt to interrupt the court and to dispute the trial court's decision. The trial court did not deny respondent any right of allocution that he may have had by refusing to tolerate such a disruption.

Affirmed.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Alton T. Davis