[Cite as *In re T.B.*, 2010-Ohio-523.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 93422 and 93423

IN RE: T.B.
A Minor Child

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. DL 08126693 and DL 08126607

BEFORE: Cooney, J., Kilbane, P.J., and Jones, J.

RELEASED: February 18, 2010

JOURNALIZED:

ATTORNEYS FOR APPELLANT

Tim Young
Ohio Public Defender

BY: Amanda J. Powell
Assistant State Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Catana Deskins
Assistant County Prosecutor
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

COLLEEN CONWAY COONEY, J.:

{¶ 1} Defendant-appellant, T.B.,[1] appeals the judgment of the juvenile court finding him delinquent for violating his probation. Finding merit to the appeal, we reverse and remand for further proceedings consistent with this opinion.

{¶ 2} In August 2008, complaints were filed charging fourteen-year-old T.B. with possessing criminal tools, attempted theft, and aggravated robbery. The trial court found T.B. delinquent on the charge of aggravated robbery with a firearm specification in Case No. DL 08126607. It found him delinquent on the charge of attempted theft in Case No. DL 08126693.

{¶ 3} At the dispositional hearings for both cases, held on November 21, 2008, the trial court ordered that T.B. be committed to the custody of the Ohio Department of Youth Services ("ODYS") for a minimum of six months for attempted theft, a minimum of one year for aggravated robbery, and a minimum of one year for the firearm specification. Each term was to be completed consecutively, with the maximum possible commitment until T.B.'s twenty-first birthday. But the trial court suspended these commitments and placed T.B. on community control, to be supervised by a probation officer.

[1]The parties are referred to herein by their initials or title in accordance with this court's established policy not to disclose identities in juvenile cases.

Thereafter, in a March 2009 hearing, T.B. admitted that he had violated the terms of his probation in Case No. DL 08126607. The trial court accepted his admission and imposed both of the previously suspended terms of commitment to ODYS.

{¶ 4} T.B. now appeals, raising three assignments of error for our review. He first claims that his admission was not knowing, intelligent, and voluntary because the trial court failed to ensure that he understood the consequences of admitting that he had violated the terms of his probation.

{¶ 5} Recently, the Ohio Supreme Court held that Juv.R. 29 applies to juvenile probation revocation hearings. *In re L.A.B.*, 121 Ohio St.3d 112, 2009-Ohio-354, 902 N.E.2d 471, syllabus. Juv.R. 29(D) establishes the requirements for the trial court to accept an admission, providing in pertinent part:

> "The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:
>
> "(1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;
>
> "(2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing."

{¶ 6} In this vein, the Ohio Supreme Court held in *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, paragraph six of the syllabus, that:

> "In a juvenile delinquency case, the preferred practice is strict compliance with Juv.R. 29(D). If the trial court substantially complies with Juv.R. 29(D) in accepting an admission by a juvenile, the plea will be deemed voluntary absent a showing of prejudice by the juvenile or a showing that the totality of the circumstances does not support a finding of a valid waiver."

{¶ 7} The supreme court further held that "[f]or purposes of juvenile delinquency proceedings, substantial compliance means that in the totality of the circumstances, the juvenile subjectively understood the implications of his plea." Id. Furthermore, an admission pursuant to Juv.R. 29 "'is analogous to'" an adult's guilty plea under Crim.R. 11. Id. at ¶112, quoting *In re Smith*, Union App. No. 14-05-33, 2006-Ohio-2788.

{¶ 8} In the instant case, T.B. argues that the trial court failed to comply with Juv.R. 29(D) because the court did not notify him of the potential commitment to ODYS he faced if the court accepted his admission. The State argues that the trial court had previously apprised T.B. of the length of the stayed commitment during the dispositional hearing in November 2008. At the hearing in which the trial court accepted T.B.'s admission in Case No. DL 081216607, the trial court advised him as follows:

"From your admission I could find you to be in violation of court order.

> "I could impose the sentence that has been previously stayed against you.
>
> "I could in the alternative place you at a residential facility, continue on community control.
>
> "Likewise, I would [sic] impose the consecutive sentencing in Case No. 08126693. Place you in a residential facility, continue on community control, order that you do something more than what you were previously ordered to do.
>
> "I could simply just release you to the supervision of a parent, and I could continue to monitor your progress in the community until you are age 21.

{¶ 9} We find that in conducting this colloquy, the trial court did not substantially comply with Juv.R. 29 because it failed to advise T.B. of the specific term he faced if committed to ODYS. Juv.R. 29 requires the trial court to determine that the juvenile knows about the potential consequences of entering an admission, and the loss of liberty involved in a commitment to ODYS is a significant potential consequence that the trial court should have explained. It is not enough that the trial court informed T.B. of the potential term of commitment at the dispositional hearing four months earlier.

{¶ 10} Although the facts of *In re Holcomb,* 147 Ohio App.3d 31, 2002-Ohio-2042, 768 N.E.2d 722, are not analogous, its holding applies to the instant case in that the trial court bears the burden of explaining to a juvenile the consequences of an admission by explaining the minimum and maximum

terms of commitment to ODYS that might result from the court's accepting the juvenile's admission. In that case, this court held that the trial court did not comply with Juv.R. 29(D) when it merely informed the juvenile offender that his sentence could include commitment to ODYS and that "the possible consequences of his admissions 'should have been explained * * * at the arraignments.'" In the instant case, we find that even though the trial court advised that it could impose the previously stayed commitment, the court failed to set forth the minimum or maximum terms or even mention ODYS when it accepted T.B.'s admissions.

{¶ 11} Other courts of appeals have reached similar conclusions. The Fourth District held that, under Juv.R. 29, a juvenile is entitled to a basic explanation of the charge against him when the juvenile court accepts his admission even though the court had advised him of the nature of the charges at a previous bindover hearing. *In re Jones* (April 13, 2000), Gallia App. No. 99 CA 4. That court reasoned, in part, that "the obvious intent of Juv.R. 29(D)(1) is that the juvenile understands the charge *at the time he enters his admission of guilt*, not several weeks earlier at a bindover hearing." (Emphasis sic.)

{¶ 12} The Third District has also emphasized the importance of timing, holding that the trial court did not comply with Juv.R. 29(D)(2) when it

advised a juvenile at the arraignment hearing, but not at the adjudicatory hearing, that by entering an admission, he was waiving his rights to challenge and subpoena witnesses and to remain silent. *In re Messmer*, Wyandot App. No. 16-08-03, 2008-Ohio-4955, ¶12-14. See, also, *In re Scott W.*, Licking App. No. 08-CA-32, 2008-Ohio-6668 (holding that the trial court did not substantially comply with Juv.R. 29(D) when it discussed the consequences of the juvenile's admission at the preliminary hearing but not at the adjudicatory hearing).

{¶ 13} Because we find that the trial court failed to substantially comply with Juv.R. 29(D), we sustain the first assignment of error.

{¶ 14} In the second assignment of error, T.B. argues that the trial court violated his due process rights when it failed to properly notify him that he had violated his probation in Case No. DL 08126693 and to inquire whether T.B. had received a written statement of his probation conditions. The Ohio Supreme Court has held that juveniles are entitled to certain due process rights. *In re C.S.*, citing *In re Gault* (1967), 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527. "Juv.R. 35(B) recognizes a juvenile's due process rights through its requirements." *In re Royal* (1999), 132 Ohio App.3d 496, 725 N.E.2d 685, citing *In re Davis* (Sept. 8, 1998), Warren App. No. CA97-12-016. Juv.R. 35 provides, in pertinent part:

"(A) Continuing jurisdiction; invoked by motion

"The continuing jurisdiction of the court shall be invoked by motion filed in the original proceeding, notice of which shall be served in the manner provided for the service of process.

"(B) Revocation of probation

"The court shall not revoke probation except after a hearing at which the child shall be present and apprised of the grounds on which revocation is proposed. The parties shall have the right to counsel and the right to appointed counsel where entitled pursuant to Juv.R. 4(A). Probation shall not be revoked except upon a finding that the child has violated a condition of probation of which the child had, pursuant to Juv.R. 34(C), been notified."

{¶ 15} In the instant case, the record shows that the State failed to file a motion or give T.B. notice that he had violated his probation in Case No. DL 08126693, even though it had done so regarding Case No. DL 08126607. The State should have notified T.B. that he had violated his probation in Case No. DL 08126693, as required by Juv.R. 35. And the court must comply with Juv.R. 35 and inquire whether the juvenile has been notified of the rules of probation pursuant to Juv.R. 34(C). We find the second assignment of error is well taken.

{¶ 16} In the third assignment of error, T.B. argues that the trial court abused its discretion by failing to appoint a guardian ad litem pursuant to Juv.R. 4(B) where there existed a conflict between T.B. and his father. In light of our disposition of the first two assignments of error necessitating a

remand, this assignment of error is moot because a new hearing is required at which the court should inquire whether a guardian ad litem is necessary.

{¶ 17} Judgment is reversed, and case is remanded for further proceedings consistent with this opinion.

It is ordered that appellant recover of said appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, juvenile division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

____
COLLEEN CONWAY COONEY, JUDGE

MARY EILEEN KILBANE, P.J., and
LARRY A. JONES, J., CONCUR