

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

IN RE: :
T.B. : CASE NOS. CA2009-01-003
: CA2009-06-167
: OPINION
: 9/14/2009
:
:

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS,
JUVENILE DIVISION
Case Nos. JV2006-0251 and JV2008-3883

Robin N. Piper, III, Butler County Prosecuting Attorney, Lina N. Alkamdawi, Government Services Center, 315 High Street, 11th Floor, Hamilton, OH 45011-6057, for appellee

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POWELL, P.J.

{¶1} Appellant, T.B., appeals his delinquency adjudication by the Butler County Court of Common Pleas, Juvenile Division, for two probation violations and an assault. For the reasons set forth below, we reverse the juvenile court's decision.

{¶2} While on probation for a previous delinquent adjudication, in case number JV2006-0251, appellant, then 15 years old, was suspended from Fairfield Freshman School

on or about November 17, 2008. This suspension produced the first probation violation, and appellant was placed under house arrest. Three days later, the school found marijuana in appellant's locker. This discovery culminated in a second probation violation, and appellant was ordered to the Butler County Juvenile Detention Center. On November 29, 2008, while at the detention center, appellant assaulted another resident in violation of R.C. 2903.13, which resulted in another case, JV2008-3883, being filed against appellant. At a hearing, on December 2, 2008, appellant entered admissions on all three charges. The three violations were merged, and appellant was committed to the Ohio Department of Youth Services for a minimum term of six months. In each juvenile case, appellant filed an appeal. The appeals were consolidated by order of this court. In his appeals, appellant raises a single assignment of error.

{¶3} "THE [JUVENILE] COURT ERRED WHEN IT ACCEPTED T[B.]'S ADMISSIONS BECAUSE IT FAILED TO COMPLY WITH THE RULES OF JUVENILE PROCEDURE 29(D)."

{¶4} Appellant argues the juvenile court did not meet the requirements of Juv.R. 29(D)(1) and (2), because the court failed to address or discuss all of appellant's Juv.R. 29 rights. We agree.

{¶5} Pursuant to Juv.R. 29(D), "[t]he court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:

{¶6} "(1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;

{¶7} "(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."

{¶8} "The juvenile court judge must be guided by Juv.R. 29 in the process of * * * accepting an admission." *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, ¶111. "Juv.R. 29(D) * * * mandates that before an admission can be accepted, the juvenile court judge must be satisfied that the admission is voluntarily made with the understanding of the nature of the allegations and the consequences of the admission and that by entering the admission, the juvenile is waiving the rights to confront witnesses and challenge evidence, to remain silent, and to introduce his own evidence." *Id.* "As many Ohio courts of appeals recognize, '[a]n admission in a juvenile proceeding, pursuant to Juv.R. 29, is analogous to a guilty plea made by an adult pursuant to Crim.R. 11 in that both require that a trial court personally address the defendant on the record with respect to the issues set forth in the rules.'" *Id.* at ¶112, quoting *In re Smith*, Union App. No. 14-05-33, 2006-Ohio-2788.

{¶9} "[I]n a juvenile delinquency case, the preferred practice is strict compliance with Juv.R. 29(D)." *Id.* at ¶113. However, if the juvenile 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." *Id.* "For 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.*

{¶10} Appellant argues that in accepting appellant's admissions the juvenile court failed to inquire whether he was making the admissions voluntarily per Juv.R. 29(D)(1). In addition, appellant contends that the juvenile court failed to inform him that he was waiving the right to challenge witnesses, the right to remain silent, and the right to introduce evidence at trial. The state in turn argues that the juvenile court substantially complied with the

requirements of Juv.R. 29(D); appellant subjectively understood the implications of his admission, based on the fact he had 49 prior juvenile offenses; and appellant failed to demonstrate he was prejudiced.

{¶11} On December 2, 2008, at appellant's hearing before the juvenile court, the following discussion(s) took place:

{¶12} "MR. GUINIGUNDO [T.B.'s attorney]: Your Honor, at this time we would enter admissions on the two (2) probation . . . Violations of probations, as well as the new assault charge.

{¶13} "BY THE COURT: Alright, [T.B.], I want to make sure you understand that your admission on the new assault is a new charge and it could result in additional, or other time being served by you as a result of a conviction of that offense. You understand that?

{¶14} "[T.B.]: Yes, sir.

{¶15} "BY THE COURT: Alright. You understand that you do have a right to trial in this matter. By virtue of the fact that you're entering an admission there won't be a trial, so you won't see anybody take the stand against you, and you won't be able to take the stand. We're simply going to make a finding based on the complaint that you're guilty of this offense of assault. Do you understand that?

{¶16} "[T.B.]: Yes, sir.

{¶17} "BY THE COURT: Alright. Alright, and then with regard to the violations of probation, you're also entering true pleas on those?

{¶18} "MR. GUINIGUNDO: That's correct, Your Honor.

{¶19} "BY THE COURT: Alright. And again, [T.B.], I want to make sure you understand that your admission on those charges could result in a commitment, pursuant to the Felony commitment that was previously indicated in you . . . In the . . . On the underlying

offense. Do you understand that?

{¶20} "[T.B.]: Yes, sir.

{¶21} "BY THE COURT: Alright, is there anything additional from the State in terms of the facts of this case?

{¶22} "MR. SCHLESSMAN: No, Your Honor.

{¶23} "BY THE COURT: Mr. Guinigundo, in terms of . . .

{¶24} "MR. GUINIGUNDO: Nothing on the facts.

{¶25} "BY THE COURT: . . . Disposition?

{¶26} "MR. GUINIGUNDO: And we stipulate that the allegations contained in the complaint constitutes this . . .

{¶27} "BY THE COURT: Alright. We'll make a finding then that [T.B.] is a juvenile delinquent, having committed the offense of assault, Misdemeanor in the First Degree. And, that on the violations of probation that he has, in fact, violated the terms of his probation in the matters as set forth in the Affidavits by the probation Department. Anything with regard to disposition?"

{¶28} After carefully reviewing the record, we find that the juvenile court failed to substantially comply with the requirements of Juv.R. 29(D). In particular, the juvenile court failed to ask appellant whether he was making the admissions voluntarily as required by Juv.R. 29(D)(1). In addition, although the trial court stated, "you won't see anybody take the stand against you, and you won't be able to take the stand," we do not believe this meets the obligations of Juv.R. 29(D)(2) which requires the juvenile court to inform appellant that in making an admission he is waiving his rights to confront witnesses and challenge evidence, and waiving the right to remain silent. We also note that the juvenile court also failed to inform appellant that he had the right to introduce evidence on his behalf. The record doesn't

demonstrate that under the "totality of the circumstances, [appellant] subjectively understood the implications of his plea[s]." Therefore, we reverse the juvenile court's decision and remand this case to the juvenile court for further proceedings consistent with this opinion. See, also, *In re C.S.*, 2007-Ohio-4919, ¶1113 (preferring strict compliance with Juv.R. 29[D]). Appellant's sole assignment of error is sustained.

{¶29} Judgment reversed and remanded.

YOUNG and RINGLAND, JJ., concur.

[Cite as *In re T.B.*, 2009-Ohio-4822.]