**IN THE COURT OF APPEALS**
**STATE OF ARIZONA**
**DIVISION ONE**

DIVISION ONE
FILED: 2/26/2013
RUTH A. WILLINGHAM, CLERK
BY: mjt

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| IN RE ALAN B. | ) | 1 CA-JV 12-0149 |
| | ) | DEPARTMENT A |
| | ) | **MEMORANDUM DECISION** |
| | ) | (Not for Publication – Ariz. R.P. Juv. Ct. 103(G); ARCAP 28) |

Appeal from the Superior Court in Maricopa County

Cause No. JV184663

The Honorable Jo Lynn Gentry-Lewis, Judge

**AFFIRMED**

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William G. Montgomery, Maricopa County Attorney — Phoenix
By E. Catherine Leisch, Deputy County Attorney
Attorneys for Appellee

Christina Phillis, Maricopa County Public Advocate — Mesa
By Suzanne Sanchez, Deputy Public Advocate
Attorneys for Appellant

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**W I N T H R O P**, Chief Judge

**¶1** Alan B. ("Juvenile") appeals the juvenile court's adjudication finding him in violation of probation and the resulting disposition order detaining him in a juvenile detention facility for twenty-five days and ordering him to pay

$698 in detention costs. He argues the court erred in accepting his admission of a probation violation and in finding he was able to pay a portion of his detention costs. For the reasons that follow, we affirm.

## ANALYSIS

*I. Mootness*

**¶2** As a threshold matter, we address the State's contention that this appeal is moot. Because Juvenile has completed his detention and is now eighteen years old, the State argues he cannot obtain any actual relief even if he prevails on appeal. Juvenile asserts the disposition continues to affect his legal rights because the juvenile court ordered him to pay costs he cannot afford, and this will prevent him from applying, at least in the foreseeable future, for destruction of his juvenile delinquency record pursuant to Arizona Revised Statutes ("A.R.S.") section 8-349 (West 2012).[1]

**¶3** We will not consider a question presented in a moot case unless it is of great public importance or likely to recur. *Fraternal Order of Police Lodge 2 v. Phoenix Emp. Relations Bd.*, 133 Ariz. 126, 127, 650 P.2d 428, 429 (1982). Under the collateral consequences exception, however, we will review an

[1] We cite the current Westlaw version of all statutes cited in this decision because no revisions material to our analysis have occurred since Juvenile committed the act forming the basis for the resulting disposition.

otherwise moot order if the order's consequences will continue to affect a party. *Cardoso v. Soldo*, __ Ariz. __, __, ¶ 9, 277 P.3d 811, 814 (App. 2012). We have repeatedly recognized this exception in criminal cases. *See id.* at ___, ¶ 9, 277 P.3d at 814-15. Also, in *Ciulla v. Miller ex rel. Arizona Highway Department*, 169 Ariz. 540, 821 P.2d 201 (App. 1991), we considered an appeal of a driver's license suspension even after the suspension expired because it had collateral legal consequences that would continue to affect the appellant – specifically, it would appear on his driving record and raise his insurance rates. *See id*. at 541, 821 P.2d at 202 (finding the appeal "not moot").

**¶4** A person over the age of eighteen who has been referred to juvenile court may apply for the destruction of his or her juvenile delinquency record only if, among other requirements, "[a]ll restitution and monetary assessments have been paid in full." A.R.S. § 8-349(C)(1), (6). Juvenile contends the juvenile court erred in ordering him to pay assessments he cannot afford. Because if true, the court's alleged error has collateral legal consequences affecting Juvenile's ability to have his juvenile record destroyed, and his appeal is not moot. Accordingly, we consider Juvenile's timely appeal. *See* A.R.S. § 8-235(A); Ariz. R.P. Juv. Ct. 103(A).

*II. Juvenile's Awareness of the Potential Disposition*

**¶5** At his adjudication hearing, Juvenile admitted violating a term of his probation, and the juvenile court accepted his admission. Juvenile argues on appeal that his admission was not knowingly, intelligently, and voluntarily made because the record fails to show he was aware his admission could result in incarceration in a juvenile detention facility until his eighteenth birthday. He further argues that the failure to notify him of this consequence violated principles of due process. *See generally* U.S. Const. amend. VI; Ariz. Const. art. 2, §§ 4, 24.

**¶6** We review for an abuse of discretion the court's finding that Juvenile waived his rights and entered a plea agreement. *See generally State v. Superior Court (Wing)*, 183 Ariz. 327, 330, 903 P.2d 635, 638 (App. 1995); *see also State v. Brewer*, 170 Ariz. 486, 495, 826 P.2d 783, 792 (1992) (reviewing to determine whether reasonable evidence supported the trial court's finding that a criminal defendant was competent to waive his rights and enter a plea agreement). In our review, we consider the facts in the light most favorable to upholding the court's finding. *In re John M.*, 201 Ariz. 424, 426, ¶ 7, 36 P.3d 772, 774 (App. 2001).

**¶7** Before accepting an admission of a probation violation, a juvenile court must advise a juvenile of his or her

applicable constitutional rights. *See* Ariz. R.P. Juv. Ct. 32(D)(2). The court must also find "that the juvenile knowingly, intelligently and voluntarily waives" his or her rights. Ariz. R.P. Juv. Ct. 32(D)(2)(g)(i). The record must affirmatively establish that the juvenile was aware of these rights and the potential consequences when entering an admission. *In re Melissa K.*, 197 Ariz. 491, 493, ¶ 7, 4 P.3d 1034, 1036 (App. 2000). In advising the juvenile, the court must ensure the juvenile is aware of the range of potential dispositions available to the court, including the maximum punishment of commitment to the Arizona Department of Juvenile Corrections ("ADJC") until age eighteen. *Id.* at ¶ 8; *In re Amber S.*, 225 Ariz. 364, 367, ¶ 10, 238 P.3d 632, 635 (App. 2010). The court need not, however, disclose potential dispositions less severe than the maximum punishment. *See Amber S.*, 225 Ariz. at 367-68, ¶¶ 7-12, 238 P.3d at 635-36 (concluding that the juvenile need not have been specifically advised that placement in foster care was a potential disposition).

**¶8** In this case, the record shows the juvenile court not only advised Juvenile of the potential maximum punishment, but also explicitly advised him of the potential for his incarceration in a detention facility:

> THE COURT: Okay. If I accept your admission, I'm going to set this matter for a disposition hearing where the judge will set the consequences of your

> conduct. Some of the possible consequences that you face include, placing you on standard or intensive probation at home, or *some place outside of the home, sentencing you to the Juvenile Department of Corrections until you turn 18, placing you in a detention facility* on home detention, or in an electronic or telephonic monitoring system, which is a JEM unit.
>
> You could be ordered to do community service without pay; you could also be required to do drug screening treatment, counseling, or anything else that your probation officer wanted you to do, and you could be required to pay a fine or restitution, and this could affect your ability to get your driver's license.
>
> Do you have any questions about those consequences that you face?
>
> THE JUVENILE: No, ma'am. Do I get to choose one of those consequences?
>
> THE COURT: No, the judge gets to.

(Emphasis added.) Because the court advised Juvenile that he could be sentenced to ADJC until his eighteenth birthday, and/or to a less restrictive detention facility, and Juvenile acknowledged understanding the potential consequences of his admission, the juvenile court properly found that Juvenile's admission "was made with the full knowledge of the possible consequences." As it relates to the potential for incarceration, Juvenile's admission was knowing, intelligent, and voluntary.[2]

[2] We also note that, after Juvenile admitted a previous probation violation, the court placed him on intensive probation in August 2011. At the time, Juvenile signed an acknowledgement

*III. Imposition of Detention Costs*

**¶9** Juvenile also contends that the juvenile court abused its discretion in ordering that he pay a portion of his detention costs because the detention was not rehabilitative and the record does not support the court's finding that he was financially able to pay a portion of the cost.

**¶10** We review the juvenile court's disposition order for an abuse of discretion. *See In re Miguel R.*, 204 Ariz. 328, 331, ¶ 3, 63 P.3d 1065, 1068 (App. 2003). Once the juvenile court has determined placement in a detention facility is appropriate, A.R.S. § 8-243(C) obligates the court to inquire into the ability of the juvenile or those charged with his or her custody to bear the expense of juvenile detention, and order full or partial payment to the State if the court "is satisfied

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stating he had read and understood the conditions of his probation, had them explained to him, and agreed to them. He further acknowledged that if he violated probation again, the court could order that he be detained, include a monetary assessment and/or other conditions, or commit him to ADJC. The acknowledgement further provided that a civil judgment could be entered against Juvenile for the amount of any payments he had been ordered to make that were still unpaid as of his eighteenth birthday. Juvenile's mother also signed the acknowledgement. At the August 25, 2011 disposition hearing, the court placed Juvenile under the supervision of a probation officer and in the physical custody of his mother, and also ordered that all written conditions of Juvenile's intensive probation applied, including that Juvenile could be detained in a juvenile detention facility at the discretion and further order of the court. Consequently, the record makes clear that Juvenile was aware his admission could result in his detention in a juvenile detention facility and that he could be assessed costs associated with his detention.

that the child, the child's estate, parent or guardian or the person who has custody of the child can bear the charges."

**¶11** We find no abuse of the juvenile court's discretion. Juvenile fails to provide any support for his argument that his detention would have no rehabilitative function.[3] Additionally, the record supports the conclusion that Juvenile's home life lacked the necessary structure for Juvenile to be successful on probation. Juvenile admitted he was rarely at the family home, often stayed "here and there," and was generally unsupervised. Juvenile's mother agreed that she had seldom seen Juvenile in the previous eight months, explaining that Juvenile "never stay[s] home long enough for me to really talk to him," and "jumps from place to place faster than a rabbit." Consequently, Juvenile's placement in a detention facility would provide Juvenile with a consistent place to live until he turned eighteen and was likely to provide Juvenile with at least some necessary structure.

**¶12** Furthermore, to the extent Juvenile argues the ordered payment itself lacked a rehabilitative component, we disagree. Even if such a component was lacking, however, the "assessment"

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[3] Moreover, detention may be imposed as a condition of probation in a juvenile case not only for rehabilitation, but also to limit the risks to the community. *See Navajo County Juv. Action No. 92-J-040*, 180 Ariz. 562, 563, 885 P.2d 1127, 1128 (App. 1994). Juvenile's placement in a detention facility reduced the risk to the community by limiting his opportunity to commit further crimes.

helped fulfill the proper function of reimbursing the government for the costs of services rendered. *See* A.R.S. § 8-243(C); *see also State v. Connolly*, 216 Ariz. 132, 132-33, ¶ 3, 163 P.3d 1082, 1082-83 (App. 2007) (concluding that "court-ordered attorney and indigent assessment fees are not a 'penalty, fine, or sanction'" because "they are imposed to reimburse the county for costs of legal services" and "are not punitive in nature or related to other court-imposed penalties").

**¶13** Also, pursuant to § 8-243(C), the court did inquire into Juvenile's ability to bear the expense of his detention. The court was informed that the daily cost of detention is $109. Juvenile informed the court that he had been earning wages "doing landscaping work," and was also receiving monthly social security benefits in the amount of $698, which he regularly provided to his parents. After determining that Juvenile had the financial ability to bear the expense, the court ordered Juvenile (through his parents) to pay up to the amount of one monthly social security check as partial reimbursement for the cost of his detention. In this case, the amount ordered was reasonably related to the cost of Juvenile's detention, consisted of only a small percentage of the actual cost, and is supported by the evidence. We find no abuse of the court's discretion in charging Juvenile and/or his parents with a portion of the costs of his detention.

## CONCLUSION

**¶14** For the foregoing reasons, we affirm the juvenile court's adjudication and disposition order placing Juvenile in a detention facility, as well as the court's order requiring Juvenile to pay a portion of the costs of his detention.

_____/S/_____
LAWRENCE F. WINTHROP, Chief Judge

CONCURRING:

_____/S/_____
JOHN C. GEMMILL, Presiding Judge

_____/S/_____
MARGARET H. DOWNIE, Judge