

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

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

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GERALD R., *Appellant*,

*v.*

DEPARTMENT OF CHILD SAFETY, W.R., *Appellees*.

No. 1 CA-JV 16-0017  
FILED 7-12-2016

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Appeal from the Superior Court in Maricopa County  
No. JD29954  
The Honorable Cari A. Harrison, Judge

**REVERSED AND REMANDED**

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COUNSEL

Vierling Law Offices, Phoenix  
By Thomas A. Vierling  
*Counsel for Appellant*

Arizona Attorney General's Office, Phoenix  
By JoAnn Falgout  
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Chief Judge Michael J. Brown delivered the decision of the Court, in which Judge Donn Kessler and Judge Patricia K. Norris joined.

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**B R O W N**, Chief Judge:

¶1 Gerald R. (“Father”) appeals the juvenile court’s order granting the Department of Child Safety’s motion to terminate Father’s parental rights to his child, W.R. Father argues the juvenile court erred in (1) terminating his parental rights based on the length-of-sentence ground under Arizona Revised Statutes (“A.R.S.”) section 8-533(B)(4), and (2) finding that termination was in the child’s best interests. The Department filed a Notice of Concession of Error, acknowledging that insufficient evidence supports the juvenile court’s order terminating Father’s parental rights to his child.

¶2 Parental rights may be terminated under A.R.S. § 8-533(B)(4) if a parent has been convicted of a felony and will be incarcerated for a length of time that would deprive the child of a normal home with that parent for a “period of years.” There is no “bright line” definition of when a sentence is sufficiently long to deprive a child of a normal home. *Michael J. v. ADES*, 196 Ariz. 246, 251, ¶ 29 (2000). Instead, the court should consider the particular facts of each case and consider all relevant factors including the age of the child, the relationship between the child’s age and the likelihood that incarceration will deprive the child of a normal home, the length of the sentence, and the effect of the deprivation of a parental presence on the child at issue. *Id.* at 251-52, ¶ 29.

¶3 Father was convicted of a narcotic drug violation and sentenced to two and a half years in prison, commencing on July 11, 2014. The child was born on January 23, 2015, while Father was incarcerated. As noted by the Department, Father was granted early release from prison on May 3, 2016. Accordingly, Father was incarcerated for less than sixteen months of the child’s life. Even if Father had been required to serve his maximum sentence, his release would have occurred when the child was less than two years old. Father therefore argues that given the length of his sentence (less than two years) and the child’s age, the circumstances of his incarceration did not deprive the child of a normal home for a period of years in satisfaction of A.R.S. § 8-533(B)(4).

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¶4 Because we agree with Father that the evidence is insufficient to support the juvenile court's order terminating Father's parental rights, we accept the Department's concession of error. We therefore reverse the court's termination order and remand for further proceedings.<sup>1</sup>



Ruth A. Willingham · Clerk of the Court  
FILED : AA

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<sup>1</sup> Given the insufficiency of evidence under A.R.S. § 8-533(B)(4), we do not address whether sufficient evidence supports the juvenile court's determination that terminating Father's parental rights was in the child's best interests.