

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 08/17/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE IRLANDA C.)
) No. 1 CA-JV 09-0241
)
) DEPARTMENT C
)
) **MEMORANDUM DECISION**
) (Not for Publication -
) 103(G) Ariz. R.P. Juv.
)
) Ct.; Rule 28 ARCAP)

Appeal from the Superior Court in Yuma County

Cause No. S1400JV20090457

The Honorable Maria Elena Cruz, Judge

AFFIRMED

Jon R. Smith, Yuma County Attorney
By Mark Edward Hessinger, Deputy County Attorney
Attorneys for Appellee Yuma

Kelly A. Smith
Attorney for Appellant Yuma

D O W N I E, Judge

¶1 Irlanda C. ("Juvenile") appeals her adjudication and disposition for attempted aggravated assault. Juvenile's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *Maricopa County Juv. Action No. JV-*

117258, 163 Ariz. 484, 788 P.2d 1235 (App. 1989), advising that a search of the record revealed no arguable grounds for reversal. Counsel requests that we search the record for fundamental error. See *Anders*, 386 U.S. at 744; *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, Arizona Revised Statutes ("A.R.S.") section 8-235(A) (2007) and Arizona Rule of Procedure for the Juvenile Court 103.

FACTS AND PROCEDURAL HISTORY¹

¶12 On October 23, 2009, the juvenile told I.C. that she "wanted to fight." Later that day, she punched I.C. in the head and face. When I.C. fell to the ground, the juvenile kicked her in the nose. I.C.'s injuries included a broken nose that required surgery, a concussion, scratches, and bruises.

¶13 On October 28, 2009, officer E.Q. went to the juvenile's home and asked her what she knew about a fight on October 23. When the juvenile confirmed "she knew what [the officer] was talking about," he issued *Miranda* warnings that the juvenile said she understood. The juvenile confirmed hitting

¹ We view the facts and all reasonable inferences in the light most favorable to sustaining the juvenile court's adjudication. *Maricopa County Juv. Action No. JV-123196*, 172 Ariz. 74, 78, 834 P.2d 160, 164 (App. 1992) (citation omitted).

I.C. with her fists. She was placed under arrest. At the police station, Officer E.Q. "reminded" juvenile of her *Miranda* rights, and she agreed to talk to him. The juvenile's mother waited in the station lobby.

¶14 The juvenile was charged with aggravated assault, a class four felony, and assault, a class three misdemeanor. She admitted one count of attempted aggravated assault, a class five felony, and the court dismissed the original counts. The juvenile was adjudicated delinquent, placed on intensive probation, and ordered to pay \$4559.13 in restitution.

DISCUSSION

¶15 We have read counsel's brief and reviewed the entire record. See *JV-117258*, 163 Ariz. at 488, 788 P.2d at 1239. We find no fundamental error. All of the proceedings were conducted in compliance with the Arizona Rules of Procedure for the Juvenile Court, and the disposition was within the juvenile court's authority. The juvenile was present at all critical phases of the proceedings and was represented by counsel.

1. Ineffective Assistance of Counsel

¶16 Although counsel identified no issues for our review, the juvenile's notice of appeal states that she "didn't have enough legal advice." Although a claim of ineffective assistance of counsel may not be raised in a direct appeal in an adult criminal case, it may be raised in a juvenile appeal.

Compare State v. Spreitz, 202 Ariz. 1, 3, 39 P.3d 525, 527 (2002) with, e.g., *Maricopa County Juv. Action No. JV-511576*, 186 Ariz. 604, 606-07, 925 P.2d 745, 747-48 (App. 1996).

¶7 To prevail, the juvenile must show that counsel's performance was deficient and that the deficient performance prejudiced her. *Id.* An attorney's performance is deficient if it is not "reasonably effective under the circumstances." *Sturgis v. Goldsmith*, 796 F.2d 1103, 1110 (9th Cir. 1986). Prejudice occurs when "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *JV-511576*, 186 Ariz. at 606, 925 P.2d at 747 (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984)).

¶8 The juvenile has neither developed nor explained her argument about ineffective assistance of counsel. Moreover, nothing in the record reflects that her attorney's performance was not "reasonably effective under the circumstances."

2. Plea Agreement

¶9 Juveniles must be afforded due process in the adjudication of charges against them. See *In re Gault*, 387 U.S. 1, 30-31 (1967); *In re Maricopa County, Juv. Action No. JV-508488*, 185 Ariz. 295, 299, 915 P.2d 1250, 1254 (App. 1996). "[T]o be valid, the record of an admission in the juvenile system must reflect that the juvenile was aware of the right

against self-incrimination, the right to confront accusers, and the right to a trial in the form of an adjudication proceeding" *In re Timothy M.*, 197 Ariz. 394, 398, ¶ 18, 4 P.3d 449, 453 (App. 2000). The court must also find that a factual basis for the plea exists and that the admission is voluntary and not the result of threats and promises. *Id.* A hearing is required, and the court "must personally address the juvenile to ensure that the plea agreement and consequent waiver of constitutional rights comport with all due process requirements." *Id.*

¶10 In the case at bar, the juvenile was present at the adjudication hearing and represented by counsel. Before accepting the plea, the court explained the juvenile's right to "maintain [her] innocence and proceed to trial on the original charges," where she would have the right to be presumed innocent, to remain silent, to cross-examine the State's witnesses, and to bring in her own witnesses. The juvenile agreed to give up these rights and admit the amended charge of attempted aggravated assault. After the State presented a factual basis for the charge, the court found that the juvenile had "knowingly, intelligently, and voluntarily" entered the plea and accepted it.

¶11 The juvenile court did not, however, specifically question whether promises or force induced the juvenile's admission. Such an omission does not invalidate a plea as long

as the juvenile "is advised of the constitutional privilege against self-incrimination, the right to a jury trial, and the right to confront [her] accusers," and the record shows that the plea "was voluntarily made with an understanding of the nature of the charges and the consequences of the plea."² *In re Harry B.*, 193 Ariz. 156, 158, ¶ 6, 971 P.2d 203, 205 (App. 1998). As we stated *supra*, the court here advised the juvenile of the requisite rights. It also explained the charges and the State's offer, including its recommendation for intensive probation. Under these facts, the court appropriately accepted the juvenile's plea.

CONCLUSION

¶12 We affirm the juvenile's adjudication and resulting disposition. Counsel's obligations pertaining to the juvenile's representation in this appeal have ended. Counsel need do nothing more than inform the juvenile of the status of the appeal and her future options, unless counsel's review reveals

² A defendant cannot voluntarily and intelligently enter into a plea agreement without knowing the amount of restitution. *State v. King*, 157 Ariz. 508, 510, 759 P.2d 1312, 1314 (1988); *Maricopa County Juv. Action No. JV-110720*, 156 Ariz. 430, 432, 752 P.2d 519, 521 (App. 1988). Because the record on appeal was not sufficiently clear on this issue, we ordered supplemental briefing. In response, the parties asked us to stay the proceedings and re-vest jurisdiction in the juvenile court for a factual determination of this issue, which we did. At a subsequent hearing, the juvenile testified that she was "fully aware of the restitution amount owed prior to entering her plea."

