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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 09/02/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE BRANDON L.)
) No. 1 CA-JV 10-0006
)
) DEPARTMENT C
)
) **MEMORANDUM DECISION**
) (Not for Publication -
) 103(G) Ariz. R.P. Juv. Ct.;
) Rule 28 ARCAP)
)
)
)
)
)

Appeal from the Superior Court in Mohave County

Cause No. No. JV2009-04057

The Honorable Derek C. Carlisle, Judge Pro Tempore

AFFIRMED IN PART; VACATED IN PART

Carlene Hamilton Lacy, Mohave County Public Defender Kingman
By Melissa A. Puett, Deputy Public Defender
Attorneys for Appellant

Matthew J. Smith, Mohave County Attorney Kingman
By Deborah L. Herbert, Deputy County Attorney
And Steven M. Wilson, Deputy County Attorney
Attorneys for Appellee

S W A N N, Judge

¶1 Brandon L. appeals his delinquency adjudication and resulting disposition. He contends that the juvenile court erred by denying his motion to withdraw from a disposition agreement, and erred by requiring his parents to pay a victims' rights fee pursuant to A.R.S. § 8-418. For the reasons set forth below, we affirm the court's order denying Brandon's motion to withdraw from the disposition agreement, but we vacate the order requiring his parents to pay the victims' rights fee.

FACTS AND PROCEDURAL HISTORY

¶2 The State filed a delinquency petition alleging that sixteen-year-old Brandon had committed indecent exposure, a violation of A.R.S. § 13-1402 and a class 6 felony. The State alleged that Brandon had exposed his genitals to his sister, who was less than fifteen years old, recklessly disregarding whether she would be offended or alarmed. The petition was based on Brandon's confession to police and the victim's statements to her other siblings about the incident. When interviewed by police, the victim stated that she was in a room with Brandon but did not remember anything happening.

¶3 Brandon entered a disposition agreement with the State in which he agreed to admit to the offense, provided that it was reduced to a class 1 misdemeanor. When the parties submitted the disposition agreement to the court, the court engaged Brandon in an extensive colloquy. The court ascertained that

Brandon understood and agreed with the terms of the disposition agreement, understood the potential consequences of a delinquency adjudication, and understood and voluntarily waived his constitutional rights. Brandon then entered an admission, stating: "I showed [the victim] my private parts, sir." Finding that Brandon had waived his rights and entered the admission knowingly, intelligently, and voluntarily, and finding that there was a factual basis for the admission, the court accepted the admission. The court set a disposition hearing and ordered the probation department to prepare a dispositional report.

¶4 Before the disposition hearing, the court received the probation department's report; documents concerning Brandon's academic performance and individualized education program; and multiple mental health evaluation reports, two of which were based on examinations conducted after Brandon entered his admission. The reports show that Brandon has a history of mental health issues and has been diagnosed with multiple psychological disorders.

¶5 At the disposition hearing, Brandon's counsel requested that Brandon be allowed to withdraw from the disposition agreement. Counsel expressed concern that because of his psychological disorders, Brandon had not entered the agreement knowingly, voluntarily, and intelligently.

Specifically, counsel expressed concern that Brandon had admitted to something he did not do but believed his own false admission.

¶16 Counsel presented testimony from Brandon's (and the victim's) mother, B.L. B.L. testified that Brandon has been diagnosed with multiple psychological disorders, which contribute to a serious, ongoing problem with veracity that often involves Brandon admitting to misbehavior he did not engage in. B.L. testified that Brandon saw a counselor for two years about his lying behavior, but the counselor "gave up" because "[t]hey can't stop him from lying." B.L. stated that she believed Brandon had lied about exposing his genitals to the victim because the victim, the only other person with firsthand knowledge of the alleged incident, continued to deny that the incident occurred.

¶17 At the conclusion of B.L.'s testimony, the court asked whether counsel wanted to present further evidence. Counsel responded that she did not, and the court took a recess to review the recording of the pre-admission colloquy. When the hearing reconvened, the court asked Brandon's counsel whether she wanted to present further argument. Counsel responded that she did not, and the court proceeded to deny Brandon's request to withdraw from the disposition agreement. The court found that no sufficient reason for withdrawal had been proven, and

that the colloquy showed that Brandon's admission was knowing, intelligent, and voluntary.

¶18 The court placed Brandon on probation for one year. The court also ordered Brandon's parents to pay a \$25 victims' rights fee pursuant to A.R.S. § 8-418.

¶19 Brandon timely appeals. We have jurisdiction pursuant to A.R.S. § 8-235(A) (2007) and Ariz. R. P. Juv. Ct. 103(A).

DISCUSSION

I. MOTION TO WITHDRAW FROM THE DISPOSITION AGREEMENT

¶10 Brandon first contends that the denial of his motion to withdraw from the disposition agreement resulted in a "manifest injustice" pursuant to Ariz. R. Crim. P. 17.5. The Arizona Rules of Criminal Procedure, however, do not apply in juvenile proceedings. *In re Maricopa County Juvenile Action No. J-86715*, 122 Ariz. 300, 303, 594 P.2d 554, 557 (App. 1979). Juvenile proceedings must comply with due process, but they are not criminal in nature. *Id.*

¶11 In a juvenile proceeding, the juvenile court may accept an admission or plea if it is supported by a factual basis and a finding that the juvenile knowingly, intelligently, and voluntarily waived his constitutional rights. Ariz. R. P. Juv. Ct. 28(C)(7)(a). The record must disclose that the juvenile was aware of his right to proceed to an adjudication hearing, his right against self-incrimination, his right to

confront his accusers, and the potential consequences of his admission. *In re Maricopa County Juvenile Action No. J-90110*, 127 Ariz. 389, 393, 621 P.2d 298, 301 (App. 1980) (holding that the juvenile court must follow the procedures prescribed in *Boykin v. Alabama*, 395 U.S. 238 (1969)).

¶12 Here, based on Brandon's responses to the court's comprehensive colloquy, the court properly found that Brandon knowingly, intelligently, and voluntarily waived his constitutional rights.¹ Moreover, the court did not abuse its discretion by later finding that the evidence of Brandon's mental health status was insufficient to invalidate his admission. To be sure, credible evidence was presented to show that Brandon suffers from multiple psychological disorders. But the evidence did not indicate that Brandon was not competent.² And the court did not abuse its discretion by finding that

¹ Brandon's counsel asserts that though Brandon told the court during the colloquy that he wished to ask questions, he "was not given an opportunity" to do so. On this record, we discern no reversible error. When asked by the court whether he had questions, Brandon answered affirmatively. But he did not thereafter attempt to ask any questions, and counsel did not object when the court proceeded without further inquiry. We also note that at the time Brandon indicated that he had questions, the inquiry into the knowing, intelligent, and voluntary nature of his actions had been completed.

² Brandon's competency had not been an issue in the case. The record reveals that though defense counsel considered whether to request a competency evaluation of Brandon, counsel ultimately concluded that Brandon was competent, and therefore did not raise the issue in court.

insufficient evidence had been presented to show that as a result of his psychological disorders, Brandon had lied about committing the specific act at issue. B.L. opined that Brandon had lied, but other evidence suggested that Brandon had not lied. His admission to the court did not vary from his confession to the police. And though the victim told police that nothing had happened, she told her siblings that Brandon had exposed his genitals to her.

¶13 We conclude that the court did not abuse its discretion by refusing to allow Brandon to withdraw from the disposition agreement.

II. VICTIMS' RIGHTS FEE

¶14 Brandon next contends that the court erred by assessing a \$25 victims' rights fee against his parents pursuant to A.R.S. § 8-418. The State confesses error, and we agree. Section 8-418 provides that "the court . . . shall assess the parent of a delinquent a fee of twenty-five dollars *unless the parent or a sibling of the juvenile is the victim.*" (Emphasis added.) It is undisputed that here, the victim is Brandon's sibling. Accordingly, the court erred by imposing the victims' rights fee. We vacate that order.

CONCLUSION

¶15 For the reasons set forth above, we vacate the court's order requiring Brandon's parents to pay a victims' rights fee pursuant to A.R.S. § 8-418. We otherwise affirm.

/s/

PETER B. SWANN, Judge

CONCURRING:

/s/

MARGARET H. DOWNIE, Presiding Judge

/s/

DONN KESSLER, Judge