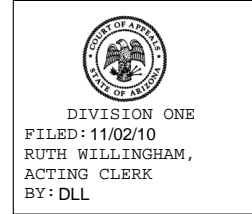


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



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

IN RE JUSTIN B.)
) 1 CA-JV 10-0154
)
) DEPARTMENT D
)
) **MEMORANDUM DECISION**
) (Not for Publication -
) Ariz.R.P.Juv.Ct.
) 103(G); ARCAP 28)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JV553418

The Honorable Shellie Smith, Commissioner

AFFIRMED

Richard M. Romley, Maricopa County Attorney Phoenix
By Jeffrey W. Trudgian, Appeals Bureau Chief
Attorneys for Appellee

Maricopa County Juvenile Public Defender Mesa
By Suzanne Sanchez, Deputy Juvenile Public Defender
Attorneys for Appellant

I R V I N E, Judge

¶1 Justin B. timely appeals from the juvenile court's
adjudication of delinquency for possession of marijuana. His

appellate counsel has filed a brief in accordance with *Smith v. Robbins*, 528 U.S. 259 (2000), *Anders v. California*, 386 U.S. 738 (1967), and *Maricopa County Juvenile Action No. JV-117258*, 163 Ariz. 484, 788 P.2d 1235 (App. 1989), asking this Court to search the record for fundamental error. For the reasons that follow, we affirm.

¶12 The State filed a delinquency petition alleging that Justin "knowingly possessed for sale an amount of marijuana having a weight of less than two pounds." The State separately charged Justin with one count of assault on his mother. A change of plea hearing was held at which Justin admitted to an amended charge of possession of marijuana, a Class 6 undesignated felony. The assault charge was dismissed with prejudice. After informing Justin of his constitutional rights and of the dispositional alternatives available, the juvenile court found that he knowingly, intelligently, and voluntarily entered an admission to the petition.

¶13 After a disposition hearing was held, the juvenile court designated the charge as a felony and committed Justin to the Arizona Department of Juvenile Corrections ("ADJC") for a minimum of six months.

¶14 The court has read and considered counsel's brief and has fully reviewed the record for reversible error. See *JV-117258*, 163 Ariz. at 488, 788 P.2d at 1239. We find none. The

record shows that all of the proceedings were conducted in compliance with the laws of this State and the applicable rules of the court. See Ariz.R.P.Juv.Ct. 6, 29, and 30. The record shows that Justin was represented by counsel at all stages of the proceedings. The disposition is within the authority of the juvenile court.

¶15 At the disposition hearing, Justin objected to the probation officer's reports and psychological evaluations, arguing that they were based largely in part on "what the mother has said," which was "rumor and innuendo" because "[she] is not a reliable historian." On appeal, Justin argues that the trial court erred by considering unreliable evidence. We disagree.

¶16 A juvenile court has broad discretion to determine an appropriate disposition for a delinquent juvenile, and we review it for an abuse of discretion. *In re Niky R.*, 203 Ariz. 387, 390 ¶ 10, 55 P.3d 81, 84 (App. 2002). At disposition, "the court may consider reliable evidence of behavior for which there has been no adjudication." *Maricopa County Juvenile Action No., JV-512016*, 186 Ariz. 414, 418, 923 P.2d 880, 884 (App. 1996) (citation omitted). "Whether hearsay information is 'reliable' is largely a matter of discretion with the trial court." *Id.* (citations omitted). The juvenile court considered the mother's testimony, the probation officer's reports and court-ordered psychological evaluations.

¶17 Mother's testimony regarding Justin's drug use, drug-related crimes and response to drug treatment was not hearsay. "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Ariz.R.Evid. 801(c). Justin's mother's statements were made in court and reliably based on her personal perceptions of Justin's behavior. Although nonverbal conduct can constitute hearsay, Justin's behavior did not because he did not intend his conduct to assert a statement of fact. *See id.*

¶18 Moreover, reliable sources independent of the mother's statements support the probation report's conclusion that Justin should be committed to the ADJC because he posed a risk to himself, his mother and the community. Justin was arrested for assaulting his mother and threatening his sister after he returned home from running away. Incident reports from when he awaited disposition show that Justin also repeatedly threatened to harm staff or other youths and caused a "safety and security risk" on one occasion. Justin's probation officer also reported that Justin admitted to selling cocaine in New York and that he had always been around gangs, though he denied a specific gang affiliation. Justin had also continued to test positive for marijuana use.

¶9 In the psychological evaluations, Justin himself admitted to Dr. S. that he was arrested for selling crack in New York, that he was physical with his mother, that he enjoys fighting, that he had been in detention twice since age twelve or thirteen, and that he has had many counselors in his past and has undergone numerous psychological evaluations without much success. Additionally, the Jewish Family & Children's Services psychiatric evaluation, which Justin has not challenged, states that he had been hospitalized in New York twice for "threat[en]ing to hurt self and others" and described: "Self-injurious behaviors: burned finger, fist in walls. Has been in fights in the past." Finally, Justin admitted in a letter to the juvenile court that he resented his family and has acted verbally and physically abusive to them.

¶10 The probation reports and psychological evaluations were thus supported by sources of information that corroborated mother's statements, and Justin has not otherwise challenged their reliability. Because he also has not challenged the underlying facts reflected in the probation reports and evaluations, we discern no abuse of discretion. See *JV-512016*, 186 Ariz. at 418, 923 P.2d at 884 (holding no abuse of discretion where juvenile objected to unreliable hearsay in probation report, but did not contend that the facts were false or misleading).

¶11 Upon the filing of this decision, defense counsel shall inform Justin of the status of his appeal and of his future options. Defense counsel has no further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Justin has thirty days from the date of this decision to proceed, if desired, with a petition for review.

¶12 For the foregoing reasons, we affirm.

/s/

PATRICK IRVINE, Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Presiding Judge

/s/

PATRICIA K. NORRIS, Judge