IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

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FILED: 02/22/11
RUTH WILLINGHAM, ACTING CLERK
BY: DLL

IN RE LEE C.	)	1 CA-JV 10-0222
	)	DEPARTMENT A
	)	**MEMORANDUM DECISION**
	)	(Not for Publication – Ariz. R.P. Juv. Ct. 103(G); ARCAP 28)

Appeal from the Superior Court in Yavapai County

Cause No. P1300JV20080170

The Honorable Ethan A. Wolfinger, Judge

AFFIRMED

Sheila Sullivan Polk, Yavapai County Attorney — Prescott
By Carol D. Kennedy, Deputy County Attorney
Attorneys for Appellee

DeRienzo & Williams, P.L.L.C. — Prescott Valley
By Daniel DeRienzo
Attorneys for Appellant

W I N T H R O P, Judge

¶1 Lee C. ("Juvenile") appeals from the juvenile court's delinquency adjudication and disposition order committing him to the Arizona Department of Juvenile Corrections ("ADJC") and

requiring him to pay restitution. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY[1]

¶2 On June 23, 2010, Juvenile, who was already on intensive probation, and two other individuals took M.P.'s vehicle without her permission. After reportedly consuming a large quantity of alcohol, Juvenile drove the vehicle at a high rate of speed into a fence, severely damaging the fence and the vehicle's hood, driver's side fender, driver's side headlamp assembly, bumper, grill, undercarriage, and right rear tire - in effect, "totaling" the vehicle. An investigating officer's draft report estimated damage to the vehicle at "well over $2,000." The State filed a delinquency petition, charging Juvenile with Count I, unlawful use of means of transportation, a class five felony, in violation of Arizona Revised Statutes ("A.R.S.") section 13-1803 (2010)[2]; Count II, criminal damage (as to M.P.'s vehicle) in an amount of $2,000 or more but less than $10,000, a class five felony, in violation of A.R.S. § 13-1602 (2010); Count III, criminal damage (as to the fence) in an

[1] We review the facts in the light most favorable to sustaining the juvenile court's orders and resolve all reasonable inferences against Juvenile. *See In re John M.*, 201 Ariz. 424, 426, ¶ 7, 36 P.3d 772, 774 (App. 2001); *State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

[2] We cite the current versions of the relevant criminal statutes because no revisions material to this decision have since occurred.

amount of $1,000 or more but less than $2,000, a class six felony, in violation of A.R.S. § 13-1602; and Count IV, violation of his probation.

¶3 Pursuant to a plea agreement, Juvenile admitted Count II as amended to a class six designated felony, Count III as a designated felony, and Count IV. Juvenile's mother agreed with his admission. Before accepting his admission, the court addressed Juvenile personally and found his admission was knowingly, voluntarily, and intelligently made; he understood the nature of the charges, and the nature and range of possible disposition options, including commitment to ADJC and that he could be ordered to pay full restitution; and he understood his constitutional rights and had waived them. Additionally, counsel for the State advised the court that the parties had agreed on the specific amount of restitution with regard to Count III (damage to the fence), and "[t]he restitution associated with Count II [the damage to M.P.'s vehicle] is still at issue, but the agreement is that the restitution would not be limited by the statutory limit for a Class 6 designated felony." Juvenile's counsel confirmed that was the agreement of the parties, and Juvenile agreed to pay all restitution arising out of the delinquency petition. After finding that a factual basis existed for Juvenile's admission, the court adjudicated him

delinquent and in violation of his probation, and dismissed Count I with prejudice.

¶4 At Juvenile's disposition hearing, the court ordered him committed to ADJC until the age of eighteen or for a period of not less than six months in secure care for Counts II and III, to be followed by a consecutive term of intensive probation for Count IV. The court also ordered Juvenile to pay restitution in the amount of $5,228.87 - $1,728.87 to the fence owner and $3,500 to M.P. Additionally, the court ordered, *inter alia*, that the clerk send an abstract of the adjudication to the Arizona Department of Transportation's Motor Vehicle Division ("MVD").

¶5 Juvenile filed a timely notice of appeal from the court's disposition order. We have appellate jurisdiction pursuant to A.R.S. § 8-235(A) (2007) and Rule 103(A), Ariz. R.P. Juv. Ct.

ANALYSIS

¶6 The juvenile court has "broad power to make a proper disposition" after adjudicating a juvenile delinquent. *In re Appeal in Maricopa County Juv. Action No. JV-510312*, 183 Ariz. 116, 118, 901 P.2d 464, 466 (App. 1995). We will not disturb the court's disposition absent an abuse of discretion. *In re Kristen C.*, 193 Ariz. 562, 563, ¶ 7, 975 P.2d 152, 153 (App. 1999).

I. Restitution

¶7 Juvenile argues that he did not knowingly, voluntarily, and intelligently enter his plea agreement because, at the time of his change of plea, he was unaware of the specific amount of restitution he would have to pay for the damage to M.P.'s vehicle alleged in Count II.

¶8 A plea agreement can be knowingly, voluntarily, and intelligently made without knowledge of the specific amount of restitution if the juvenile is adequately informed of the approximate range of restitution. *See In re Maricopa County Juv. Action No. JV-110720*, 156 Ariz. 430, 432, 752 P.2d 519, 521 (App. 1988). Further, although restitution for criminal damage is generally limited to the statutorily prescribed parameters, a plea is not involuntary and a court may order full restitution in an amount greater than the statutory cap if a defendant has been informed of the amount or range of restitution. *See State v. Fancher*, 169 Ariz. 266, 267, 818 P.2d 251, 252 (App. 1991).

¶9 In the delinquency petition, the State alleged that Juvenile committed a class five felony by damaging M.P.'s vehicle in an amount of $2,000 or more but less than $10,000. *See* A.R.S. § 13-1602(B)(3). Thus, when entering the plea agreement, Juvenile knew that the statutory "cap," or the upper limit of his restitution exposure for the damage to M.P.'s vehicle, was $10,000. As part of the plea agreement, Count II

was amended to allege a class six felony. Although a class six felony is generally associated with damage in an amount of $1,000 or more but less than $2,000, *see* A.R.S. § 13-1602(B)(4), Juvenile was informed before entering the plea agreement that the restitution ordered with regard to the damage to M.P.'s vehicle would not be capped at the statutory limit for a class six felony, and he agreed to pay full restitution. He and his mother were further advised in advance of his admission that the restitution related to Count II would not exceed the value of the vehicle, which had been determined to be approximately $4,525.00. Thus, Appellant was aware of the range and his approximate restitution liability at the time he entered the plea agreement and agreed to pay restitution arising out of the delinquency petition.[3] Juvenile has not shown that his plea was not knowingly, voluntarily, and intelligently entered because the exact amount of restitution had not yet been determined.

[3] We also note that, after the accident, M.P. requested restitution in the amount of $14,168.69, the estimated cost to repair her vehicle. The record indicates that Juvenile's counsel was able to negotiate a substantial reduction in the restitution claim, and at the disposition hearing, counsel for the State noted that M.P. had "significantly, I think, made concessions and essentially compromised her claim and had agreed to a restitution amount of $3,500 to satisfy that obligation." Juvenile's counsel confirmed that Juvenile had agreed to "the $3,500 in restitution and also the previous agreed amount of [$]1,728 and some change for the damage to the fence."

II. Effect on Driving Privileges

¶10 Juvenile next argues that he did not knowingly, voluntarily, and intelligently enter his plea agreement because he was unaware that, as a consequence of the agreement, he could lose his privilege to drive.[4] *See* A.R.S. § 28-3304(A)(3), (C) (Supp. 2010).

¶11 Juvenile premises his argument on the contention that, "based on the record, it appears no one knew, until the juvenile was in Court, that he would have to admit to driving." The record does not support Juvenile's characterization of the facts. Instead, the record indicates that, in providing the factual basis for his change of plea, Juvenile initially lied by stating that his "friend" had been the driver who wrecked M.P.'s vehicle. After speaking briefly off the record with Juvenile's counsel, the prosecutor objected that this was not the factual basis underlying the State's agreement with Juvenile. The

[4] We note that a case Juvenile cites in making his argument, *In re Jonathan F.*, 1 CA-JV 10-0109, 2010 WL 3450677 (Ariz. App. Sept. 2, 2010), and cases he cites for his other arguments, *In re Brenard B.*, 2 CA-JV 2010-0065, 2010 WL 3946171 (Ariz. App. Oct. 8, 2010), *In re Joshua H.*, 1 CA-JV 09-0117, 2009 WL 4981526 (Ariz. App. Dec. 22, 2009), and *In re Irlanda C.*, 1 CA-JV 09-0241, 2010 WL 3238952 (Ariz. App. Aug. 17, 2010), are unpublished memorandum decisions from this court. Rule 28(c), ARCAP, prohibits the citation of unpublished memorandum decisions as legal authority. *See Walden Books Co. v. Ariz. Dep't of Revenue*, 198 Ariz. 584, 589, ¶¶ 20-23, 12 P.3d 809, 814 (App. 2000). We caution Juvenile's counsel not to cite such decisions in the future except as allowed under the limited exceptions recognized in the rule.

prosecutor explained that "we have done a number of interviews and I understood . . . that he was going to be laying a basis for causing the accident." Juvenile then admitted that he had actually been driving M.P.'s vehicle and "crashed the car into the fence."

¶12 Because Juvenile admitted and was adjudicated delinquent for "felon[ies] in the commission of which a motor vehicle [wa]s used," the court was obligated to forward a record of his adjudication to MVD, which in turn was required to revoke his license. *See* A.R.S. §§ 28-3304(A)(3), -3305(A) (2004). To the extent it was necessary that he be advised in advance of this consequence, he was put on notice by his counsel, who informed him before the change of plea hearing "that there would be MVD consequences for admitting to an offense that involved a motor vehicle, especially an offense that involved drinking alcohol and getting into an automobile accident." His counsel's affidavit indicates that Juvenile "acknowledged an understanding that this was a potential and likely consequence." We conclude that Juvenile knowingly, voluntarily, and intelligently entered the plea agreement even though the record does not indicate that the court specifically forewarned him that his license could be revoked.

III. Juvenile's Commitment to ADJC

¶13 Juvenile also argues that the court abused its discretion by failing to consider and follow our supreme court's guidelines for commitment to ADJC ("the Commitment Guidelines"). *See* Ariz. Code of Jud. Admin. § 6-304; *see also* A.R.S. § 8-246(C) (2007) (requiring the promulgation of commitment guidelines). The Commitment Guidelines require the juvenile court to consider "the nature of the offense, the level of risk the juvenile poses to the community, and whether appropriate less restrictive alternatives exist within the community." Ariz. Code of Jud. Admin. § 6-304(C)(1)(c). They, however, "do not mandate that the less restrictive alternative be ordered." *In re Niky R.*, 203 Ariz. 387, 391, ¶ 19, 55 P.3d 81, 85 (App. 2002). Instead, as we have noted, the juvenile court retains broad powers to determine an appropriate disposition for a delinquent juvenile, and we will not disturb the court's order absent an abuse of that discretion. *See Kristen C.*, 193 Ariz. at 563, ¶ 7, 975 P.2d at 153.

¶14 Before accepting Juvenile's admission at his change of plea hearing, the juvenile court fully advised him of the various disposition alternatives, including possible commitment to ADJC, and his counsel confirmed that she had discussed in detail with Juvenile and his mother "all the things that could happen as a result of his admissions." At the disposition

hearing, the court indicated that it had read and reviewed Juvenile's file, letters from M.P., Juvenile, and his mother, and the probation officer's disposition summary report, which detailed Juvenile's extensive history of substance abuse, referrals, delinquency adjudications (including numerous felony adjudications), and violations of probation; his movement from standard to intensive probation and failure to complete programs related to his probation; his choice "to go on the run for nearly one year to avoid his probation related requirements"; and his anti-social behavior while in detention. The report recommended Juvenile's commitment to ADJC both for rehabilitative purposes and for the protection of the community. After hearing from the probation officer, both counsel for the State and Juvenile, Juvenile's relatives, and Juvenile, the court committed Juvenile to ADJC.

¶15 Although the juvenile court did not specifically reference the Commitment Guidelines in making its decision, we find no abuse of the court's discretion. Based on Juvenile's repeated offenses, his demonstrated inability to abstain from substance abuse, the escalating seriousness of his delinquent acts, the level of risk he posed to the community, and the recommendations given at the disposition hearing, the court had reasonable grounds to conclude that commitment to ADJC was a final opportunity to rehabilitate him, consistent with the

interests of his family and the community, and an appropriate way to hold him accountable for his actions. *See* Ariz. Code of Jud. Admin. § 6-304(C)(1)(a)-(c). The parties, including Juvenile's counsel, presented extensive argument to the court as to the various disposition alternatives available, and we find no abuse of discretion in the court's decision to commit Juvenile to ADJC. *See generally In re Appeal in Pinal County Juv. Delinquency Action No. JV-9404492*, 186 Ariz. 236, 238-39, 921 P.2d 36, 38-39 (App. 1996).

IV. Alleged Ineffective Assistance of Counsel

¶16 Juvenile next contends that he received ineffective assistance of counsel because his counsel failed to inform him of the consequences of his plea and the restitution amount, and advised him to admit to acts he did not commit.

¶17 Juveniles may raise a claim of ineffective assistance of counsel in a juvenile appeal. *See generally In re Appeal in Maricopa County Juv. Action No. JV-511576*, 186 Ariz. 604, 606-07, 925 P.2d 745, 747-48 (App. 1996). To state a colorable claim of ineffective assistance of counsel, Juvenile must show that his counsel's performance fell below objectively reasonable standards *and* that the deficient performance prejudiced him. *See State v. Febles*, 210 Ariz. 589, 595, ¶ 18, 115 P.3d 629, 635 (App. 2005) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). Juvenile bears the burden of overcoming with more than

mere speculation the strong presumption that counsel has provided effective assistance. *See id*. at 596, ¶ 20, 115 P.3d at 636 (citations omitted).

¶18 In this case, the record and Juvenile's counsel's sworn affidavit make clear that his counsel conferred with him extensively and informed him of the potential consequences of his change of plea, and nothing in the record supports his bald assertion that she advised him to admit acts that he did not commit. In fact, counsel's affidavit directly contradicts that assertion. Juvenile has not demonstrated that his attorney was ineffective.

CONCLUSION

¶19 We affirm the juvenile court's adjudication, disposition, and order of restitution.

_____/S/_____
LAWRENCE F. WINTHROP, Judge

CONCURRING:

_____/S/_____
PHILIP HALL, Presiding Judge

_____/S/_____
JON W. THOMPSON, Judge