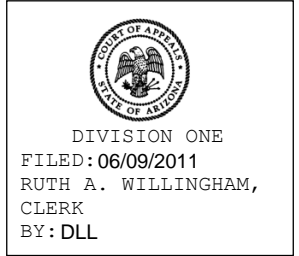


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



IN RE YASMEEN Y.)
) 1 CA-JV 11-0028
)
) DEPARTMENT B
)
) **MEMORANDUM DECISION**
)
) (Not for Publication -
) Ariz. R.P. Juv. Ct. 103(G);
) ARCAP 28)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JV553457

The Honorable Terri L. Clarke, Judge *Pro Tempore*

AFFIRMED

William G. Montgomery, Maricopa County Attorney
by Linda Van Brakel, Deputy County Attorney
Attorneys for Appellee

Phoenix

Christina Phillis, Maricopa County Juvenile Public Defender Mesa
by Suzanne W. Sanchez, Deputy Juvenile Public Defender
Attorneys for Appellant

B A R K E R, Judge

¶1 Appellant Yasmeen Y. ("Y.") appeals from the juvenile court's disposition order committing her to the Arizona

Department of Juvenile Corrections ("ADJC"). For the following reasons, we affirm.

Facts and Procedural History¹

¶2 The juvenile court adjudicated Y. delinquent in October 2010 after she admitted to possession of drug paraphernalia. At the resulting disposition hearing in November 2010, the court placed Y. on probation. In January 2011, Y. admitted to having violated the terms of her probation by using marijuana.

¶3 In a report prepared by Y.'s probation officer on January 14, 2011, the officer recommended that Y. receive constant counseling and treatment but that Y. not be committed to ADJC. Two weeks later, however, in a report dated January 27, 2011, the officer indicated to the court that the probation department now recommended commitment to ADJC because "[Y.'s] severe drug abuse has eclipsed any type of treatment that the [p]robation department can offer."

¶4 In a disposition hearing on January 31, 2011, Y.'s father told the court that he had secured an opening for Y. at Park Place, a secure residential drug treatment facility, for ninety days. The court was informed that the probation

¹ We view the facts in the light most favorable to upholding the order of the juvenile court. *In re John M.*, 201 Ariz. 424, 426, ¶ 7, 36 P.3d 772, 774 (App. 2001).

department had considered Park Place but had recommended against it because there was no guarantee treatment could continue after ninety days, which would not be long enough to address Y.'s needs.

¶15 On January 31, 2011, the court committed Y. to ADJC for at least thirteen months of incarceration. The purpose of the thirteen months was to ensure that Y. had ample time to successfully complete the twelve-month New Freedom Program, which the court explained focused on substance abuse and behavioral health. The court recognized that it could not order ADJC to enroll Y. in the New Freedom Program but stated that it would "strongly urge" ADJC to do so. Y. timely appealed the court's order, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 8-235(A) (2007) and Arizona Rule of Procedure for Juvenile Court 103(A).

Discussion

¶16 Y. argues that the juvenile court erred when it committed Y. to ADJC for thirteen months. The juvenile court has broad discretion to determine the disposition of a delinquent juvenile. *In re Kristen C.*, 193 Ariz. 562, 563, ¶ 7, 975 P.2d 152, 153 (App. 1999). We review orders of the juvenile court for an abuse of discretion and we will not re-weigh the evidence. *In re Miguel R.*, 204 Ariz. 328, 331, ¶ 3, 63 P.3d

1065, 1068 (App. 2003); *John M.*, 201 Ariz. at 426, ¶ 7, 36 P.3d at 774.

¶7 Pursuant to A.R.S. § 8-341(A)(1) (Supp. 2009), committing a delinquent juvenile to the department of juvenile corrections is one of seven options available to the juvenile court during disposition proceedings. Our supreme court issued guidelines to assist the juvenile court in determining when to send a delinquent juvenile to ADJC. Ariz. Code Judicial Admin.

§ 6-304. The guidelines specify a juvenile court shall:

a. Only commit those juveniles who are adjudicated for a delinquent act and whom the court believes require placement in a secure care facility for the protection of the community;

b. Consider commitment to ADJC as a final opportunity for rehabilitation of the juvenile, as well as a way of holding the juvenile accountable for a serious delinquent act or acts;

c. Give special consideration to the nature of the offense, the level of risk the juvenile poses to the community, and whether appropriate less restrictive alternatives to commitment exist within the community; and

d. Clearly identify, in the commitment order, the offense or offenses for which the juvenile is being committed and any other relevant factors that the court determines as reasons to consider the juvenile a risk to the community.

Id. § 6-304(C)(1). As this court has previously stated, however, “[i]t is important to note that these guidelines are

just that: guidelines; they are not mandatory and do not place constraints on the juvenile court's discretion' to determine whether a commitment to ADJC is in fact appropriate." *In re Niky R.*, 203 Ariz. 387, 390, ¶ 12, 55 P.3d 81, 84 (App. 2002) (citations omitted) (quoting *Pinal Cnty. Juvenile Delinquency Action No. JV-9404492*, 186 Ariz. 236, 238, 921 P.2d 36, 38 (App. 1996)). "Trial courts should not apply the guidelines in a mechanical fashion but determine whether, under the unique circumstances of the particular juvenile, commitment to ADJC is appropriate." *Id.* at ¶ 13. Moreover, we have previously held that the juvenile court may commit to ADJC a juvenile whose only offenses are drug offenses. *In re Fernando C.*, 195 Ariz. 233, 234, ¶ 5, 986 P.2d 901, 902 (App. 1999).

¶8 The record in this case supports the court's decision to commit Y. to ADJC. First, there was evidence that Y. was a threat to the community. Indeed, Y.'s addictions to intoxicating and behavior altering substances such as heroin, marijuana, and alcohol alone made her a threat to the community. Furthermore, these addictions were made more threatening by Y.'s unstable mental state. Y.'s psychological evaluations indicated that Y. had significant depression, and Y. admitted to being susceptible to mood swings and in having been suicidal. Y.'s probation officer reported to the court that Y. was "likely to commit an offense injurious to []herself or others," and that

"[t]he interest of the child or the public require[d] [Y.'s] custodial protection." In a separate report, the officer stated that Y. was a danger to herself. Y. also carried her drug addiction onto school grounds. Y. had been suspended from school for bringing pills onto campus and another time for bringing drug paraphernalia onto campus. In February 2010, Y. was caught smoking heroin in the school bathroom. Finally, Y. admitted that she funded her heroin addiction by stealing from other people.

¶19 Second, the record supports a conclusion that commitment to ADJC was Y.'s best opportunity for rehabilitation of serious delinquent behavior. Y's probation officer reported that Y. had already participated in two inpatient substance abuse programs and two intensive outpatient substance abuse programs and that in November 2010 she was attending Narcotics Anonymous meetings on a daily basis. The officer also reported, "[Y.] has been diagnosed with ADHD and is currently participating in The New Foundation intensive outpatient program unsatisfactorily, reportedly she is on the verge of being kicked out for not engaging." Thus, the record supports a determination that commitment to ADJC was the best opportunity for a juvenile who had been given multiple and diverse opportunities for rehabilitation and yet had failed to reform her behavior.

¶10 Third, contrary to Y.'s assertion on appeal, the record supports a finding that commitment to ADJC was the least restrictive alternative for Y.'s specific issue. Y.'s probation officer reported that staff involved in Y.'s case said it was the worst case of drug addiction they had ever seen. Y. started using drugs when she was thirteen. She started with marijuana, then moved to cigarettes, alcohol, pain killers, heroin, and methamphetamines, apparently in that order. She admitted that the drug she used the most was heroin, which she said she used twice a day. Y.'s probation officer predicted that Y. "will undoubtedly be an addict throughout her teenage years into adulthood if she does not start taking substance abuse afflictions seriously." As discussed above, previous inpatient and outpatient programs had not been successful. Y. also admitted that she did not think being hospitalized would help her. The probation department stated that it did not have a program that would suit Y.'s serious needs, and it recommended that Y. be committed to ADJC. It also specifically recommended that while committed Y. participate in ADJC's twelve-month New Freedom Program, which the court explained focused on substance abuse and behavioral health. The officer stated that the recommendation for treatment in the New Freedom Program was given to save Y.'s life. Y.'s severe substance abuse issues, unsuccessful results from less restrictive rehabilitation

programs, and the probation department's recommendation all support a finding that the thirteen months in ADJC was the least restrictive option available to meet Y.'s severe needs and protect the community.

¶11 Y. argues that it was error for the court to not allow Y. to participate in the less-restrictive Park Place program, for which Y.'s father had secured ninety days of treatment. However, the probation department explicitly considered Park Place but recommended against it because there was no guarantee treatment could continue after ninety days, which would not be long enough to address Y.'s needs. Evidence of the severity of Y.'s addiction supported this recommendation, and thus the court did not err in following it.

¶12 Y. also argues that the court erred in issuing the order because the court could not guarantee that Y. would be enrolled in the New Freedom Program once committed to ADJC. Although the court recognized this fact, Y. cites no authority for the proposition that a juvenile court errs by committing a juvenile to ADJC without a guarantee regarding the juvenile's treatment once committed. Furthermore, even without enrollment in the New Freedom Program, the record supported the court's decision. The probation department opined that a year in ADJC, away from certain temptations and enabling influences, might very well save Y.'s life.

¶13 Because the record establishes that the court's ruling conforms with the Arizona Supreme Court's guidelines on committing juveniles to ADJC, the court did not err in its ruling.

Conclusion

¶14 For the above stated reasons, we affirm the juvenile court's order committing Y. to ADJC.

/s/

DANIEL A. BARKER, Judge

CONCURRING:

/s/

PETER B. SWANN, Presiding Judge

/s/

PATRICIA K. NORRIS, Judge