IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE R.F.

No. 2 CA-JV 2016-0016
Filed August 10, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Gila County
No. S0400JV201400063
The Honorable Gary V. Scales, Judge Pro Tempore

AFFIRMED

COUNSEL

Bradley D. Beauchamp, Gila County Attorney
By Patricia R. Pfeiffer, Deputy County Attorney, Globe
Counsel for State

Harriette P. Levitt, Tucson
Counsel for Minor

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 In this appeal from his delinquency adjudication and disposition, in which he was committed to the Arizona Department of Juvenile Corrections (ADJC), R.F. contends that his due process rights were violated in relation to his commitment and that he received ineffective assistance of counsel. Finding no error, we affirm.

¶2 R.F. was adjudicated delinquent after admitting to attempted public sexual indecency. The juvenile court placed him on one year of intensive probation in March 2014. The state filed a petition to revoke R.F.'s probation in October 2014, and R.F. admitted having had contact with his sister without permission in violation of the terms of his probation. The court returned him to probation for one year, beginning in December 2014.

¶3 In May 2015, the state again filed a petition to revoke R.F.'s probation. R.F. was placed in a treatment facility in June 2015. In December 2015, after R.F. "fail[ed] to make progress in residential treatment," the state again petitioned to revoke his probation. R.F. again admitted having violated the terms of his probation, and the court committed him to the ADJC for "a minimum term of thirty (30) days and maximum of up to his 18th birthday." This appeal followed.

¶4 We review the facts in the light most favorable to sustaining the adjudication. *In re John M.*, 201 Ariz. 424, ¶ 7, 36 P.3d 772, 774 (App. 2001). At the outset of the proceeding in August 2013, the juvenile court ordered R.F. to be examined for competency. Examiners were appointed and ordered to give their opinion as to

R.F.'s competency and whether he was a danger to himself or others or gravely, persistently, or acutely disabled. The examiners submitted reports, and the court found R.F. competent to stand trial.

¶5 When R.F. was adjudicated delinquent in February 2014, the juvenile court ordered a psychosexual evaluation. Thereafter, R.F.'s case was transferred from Maricopa County to Gila County. At the transfer hearing, R.F.'s father "inquire[d] of counseling for [him]," and the state indicated that a "referral ha[d] been made." In a December 2014 report of its predisposition investigation, the state indicated that R.F.'s family had not submitted any formal diagnoses to probation, despite reports that he had previously received prescribed medication. And the report indicated that R.F. was receiving "support services." The report stated that probation had requested a psychiatric evaluation, but R.F.'s father had "bec[o]me highly defensive and stated he w[ould] not permit it." R.F. was, however, "attending specified Sex Offender Counseling" and the report summarized progress and difficulties from April 2014 forward. Apparently as a result of R.F.'s father's refusal to "allow a psychiatric evaluation . . . to address any mental health issues," and in response to R.F.'s reported "anxiety issues," the state asked that the court order such an evaluation. In its disposition, the court ordered the state "to consult with [R.F.'s] counselor . . . to determine which evaluation is needed; social work, psychiatric or psychological" and indicated the state should request a court order if "needed." In a later disposition report update, the state indicated, "[n]o referral by the therapist was ever recommended" and "when Probation requested [R.F.] be evaluated by a Psychiatrist the father refused."

¶6 At R.F.'s admission hearing in December 2015, R.F. and his attorney requested that "another updated psychological evaluation be done." The probation officer indicated that R.F.'s psychosexual exam had "encompasse[d] psychological," but agreed that one could be conducted if the court so ordered.[1] As a result, a

[1]At an earlier disposition hearing in 2014, in connection with the state's request for a psychiatric exam, however, the probation

psychological evaluation was completed in January 2016. In it the psychologist diagnosed R.F. with Autism Spectrum Disorder, "in the mild range of symptoms (high functioning)," as well as "[u]nspecified anxiety disorder," "[f]eatures of attention-deficit/hyperactivity disorder," and learning disorders.

¶7 At the disposition hearing that month, the juvenile court and the parties discussed the report, and the probation officer indicated they had "exhausted the inpatient and outpatient services and probation has nothing else to offer," but that "ADJC can provide [additional] services," including "sex offender specified treatment program." The court found that there were no appropriate treatment alternatives available that had not been tried, and that "further efforts of rehabilitation need to take place in a secure facility for the protection of the community."

¶8 R.F. contends on appeal that his due process rights were violated "by virtue of the inordinate delay in conducting a psychological evaluation and providing appropriate treatment based upon his psychological condition." He contends that remand to ADJC was "inappropriate and avoidable" based on his being diagnosed with an "autism spectrum disorder." "It is within the juvenile court's discretion to determine the disposition of a juvenile following an adjudication of delinquency and, absent clear abuse of discretion, we will not disturb that disposition." *In re Sean M.*, 189 Ariz. 323, 324, 942 P.2d 482, 483 (App. 1997).

¶9 "After receiving and considering the evidence on the proper disposition of the case," the juvenile court may "award a delinquent juvenile . . . [t]o the department of juvenile corrections." A.R.S. § 8-341(A)(1)(e). But, the court must exercise its jurisdiction "in accordance with due process standards." *In re Richard M.*, 196 Ariz. 84, ¶ 11, 993 P.2d 1048, 1050-51 (App. 1999), *quoting In re Maricopa Cty. Juv. Action No. JV-508488*, 185 Ariz. 295, 301 n.2, 915 P.2d 1250, 1256 n.2 (App. 1996). Such due process generally requires

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officer stated, "[H]e hasn't had a psychological. It was a psychosexual."

"notice and a hearing before a juvenile is subject to . . . detention." *In re Miguel R.*, 204 Ariz. 328, ¶ 22, 63 P.3d 1065, 1071 (App. 2003).

¶10 Section 6-304(C), Ariz. Code of Jud. Admin., provides guidelines for commitment of juveniles to ADJC. It requires a juvenile court to commit only a juvenile "whom the court believes require[s] placement in a secure care facility for the protection of the community." Ariz. Code of Jud. Admin. § 6-304(C)(1)(a). The court must also "[c]onsider commitment to ADJC as a final opportunity for rehabilitation of the juvenile"; "[g]ive 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 "[c]learly identify . . . the offense . . . 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." Ariz. Code of Jud. Admin. §6-304(C)(1)(b), (c), (d).

¶11 R.F. does not contend there was insufficient evidence from which the juvenile court could conclude he was a risk to the community. Instead, he argues "other less restrictive and more appropriate sanctions were available," particularly a provider "who was competent to deal with" patients on the autistic spectrum. The record does not support his contention that any additional, specific provider was available. Indeed, as detailed above, the record shows R.F. received considerable treatment, and the court concluded it did "not appear that there are treatment alternatives that are available or haven't been tried before." The court therefore considered the factors required by § 6-304(C). R.F. has cited no authority to suggest anything more than those standards must be met in order to satisfy due process. *See In re Niky R.*, 203 Ariz. 387, ¶ 19, 55 P.3d 81, 85 (App. 2002) (guidelines require court to consider whether less restrictive alternatives exist within community, but "do not mandate that the less restrictive alternative be ordered").

¶12 Furthermore, to the extent R.F. contends "[t]he [] evaluation [ordered in December 2014] was not conducted because neither the probation officer nor defense counsel followed up on th[e] matter" and he was "set . . . up for failure" by the state, the

record belies his argument. As outlined above, R.F. undertook a psychosexual evaluation early in the process, which the probation officer explained had included a psychological component. After that, as detailed above, R.F.'s father thwarted efforts by probation to obtain a psychiatric evaluation. It was only when defense counsel asked for an updated psychological evaluation in December 2015 that R.F. submitted. On this record, we cannot say the state was to blame for any failure to obtain an updated evaluation of R.F., be it psychological or psychiatric.

¶13 R.F. also contends he was "denied his constitutional right to effective assistance of counsel." While claims of ineffective assistance of counsel in adult criminal cases will not be addressed on direct appeal but instead must be pursued in a post-conviction proceeding under Rule 32 of the Arizona Rules of Criminal Procedure, *see State v. Spreitz*, 202 Ariz. 1, ¶ 4, 39 P.3d 525, 526 (2002), there is no corollary proceeding under the Rules of Procedure for the Juvenile Court. We will thus address claims of ineffective assistance of counsel in a juvenile delinquency appeal. *See In re Maricopa Cty. Juv. Action No. JV-511576*, 186 Ariz. 604, 606-07, 925 P.2d 745, 747-48 (App. 1996). If, however, as in this case, an ineffective assistance claim has not been presented to the juvenile court, our review is limited to determining whether there is a colorable claim. If a colorable claim is asserted, we will remand for fact finding by the juvenile court.

¶14 To prevail on a claim of ineffective assistance of counsel, an appellant must show (1) deficient representation and (2) a reasonable probability that the result of the proceeding would have been different but for counsel's unprofessional errors. *State v. Gerlaugh*, 144 Ariz. 449, 455, 698 P.2d 694, 700 (1985), *citing Strickland v. Washington*, 466 U.S. 668, 694 (1984). Deficient representation is proved "only if, after examining all the circumstances existing at the time of the alleged act of ineffective assistance, we conclude that counsel's actions fell below objective standards of reasonable representation." *Id.* The acts or omissions constituting ineffective assistance of counsel must be specified and must amount to more than mere speculation. *See State v. Rosario*, 195 Ariz. 264, 268, 987 P.2d 226, 230 (App. 1999).

¶15 In this case, R.F. asserts counsel was ineffective in failing to take "action of his own to obtain the previously approved psychological evaluation" or "to educate himself about autism spectrum disorder." On the record before us, however, R.F. has not established what further action counsel could have taken to obtain further evaluation while R.F.'s father resisted. Nor can we say that had counsel further "educate[d] himself" on R.F.'s diagnosis in January 2016, it would have changed the disposition, given the risk R.F. posed to the community and the apparent lack of treatment alternatives that had not been exhausted. We therefore cannot say R.F. has established a colorable claim of ineffective assistance of counsel.

¶16 For all these reasons, we affirm the juvenile court's adjudication and disposition.