

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE G.R.

No. 2 CA-JV 2017-0055
Filed July 26, 2017

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NOT FOR PUBLICATION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 Greenlee County
No. JV201700003
The Honorable Monica L. Stauffer, Judge

AFFIRMED

COUNSEL

The Stavris Law Firm, PLLC, Scottsdale
By Christopher Stavris
Counsel for Minor

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Kelly¹ concurred.

ECKERSTROM, Chief Judge:

¶1 Sixteen-year-old G.R. appeals from the juvenile court’s March 2017 disposition, after an adjudication of delinquency, committing him to the Arizona Department of Juvenile Corrections (ADJC). For the following reasons, we affirm the court’s ruling.

¶2 G.R. was adjudicated delinquent for hindering prosecution in the first degree, a felony offense, after admitting that he agreed to take possession of a firearm his friend had used to accost another individual during their school lunch period. According to a predisposition report prepared by a deputy probation officer, G.R. “showed very little remorse for his actions” and “minimized his involvement in the incident.” She reported G.R. had “great love and support from his family,” who hoped he would be placed on probation and returned home. But she noted he had been “long-term suspended” from high school for a year, and, if returned to the community, he would have “little structure in [his] life,” as he would be unable to attend public high school anywhere in the county. Noting “the lack of [rehabilitative] resources available” in G.R.’s home county, she recommended that he be committed to ADJC.

¶3 At the disposition hearing, the juvenile court related G.R.’s previous contacts with the court system for offenses of criminal damage, trespass, and consumption of alcohol, noting that

¹The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

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he had continued to commit offenses “[e]ven with the diversion programs and assistance of the community and family.” The court also noted G.R.’s reported use of alcohol and marijuana and spoke of the “serious” nature of this most recent offense – which involved possession of a firearm on school grounds – and its harmful effect on the community and its reputation. Like the probation officer who prepared the predisposition report, the court noted ADJC has “programs of assistance . . . [and] expertise in areas that many communities, including ours, don’t share,” and “trained professionals and staff that we don’t have.” Stating it had considered the offense, the comments it had received, and “the guidelines for commitment to [ADJC] issued by the [Arizona] Supreme Court,” the court found commitment to ADJC was in the interest of “[G.R.]’s own good and [the] best interest of the State,” and it ordered G.R. committed to ADJC for a minimum term of seven months, twenty-four days, with a predisposition detention credit of fifty-four days, and a maximum term not to exceed his eighteenth birthday.

¶4 On appeal, G.R. contends the juvenile court “never expressly considered each of the commitment guidelines,” and, specifically, “failed to identify a less restrictive alternative to ADJC and whether such placement would be appropriate.” Relying on *In re Niky R.*, 203 Ariz. 387, ¶ 19, 55 P.3d 81, 85 (App. 2002), he acknowledges the court was not required to order any less restrictive alternative in lieu of commitment to ADJC, but he argues the commitment guidelines “mandate that such [alternatives] be identified and reviewed in the context of ‘the nature of the offense at issue and the specific risk the juvenile poses.’” He asks that we vacate the court’s order and remand the case for a new disposition hearing.

¶5 “We will not disturb a juvenile court’s disposition order absent an abuse of discretion.” *In re John G.*, 191 Ariz. 205, ¶ 8, 953 P.2d 1258, 1260 (App. 1998). We find none here.

¶6 Commitment to ADJC is among the disposition alternatives available to the juvenile court for a minor adjudicated delinquent. See A.R.S. § 8-341(A)(1)(e). In determining the

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appropriate disposition for a delinquent juvenile, and before committing him to ADJC, the court must consider the commitment guidelines in § 6-304, Ariz. Code of Jud. Admin.² See *Niky R.*, 203 Ariz. 387, ¶¶ 11-12, 55 P.3d at 84; see also A.R.S. § 8-246(C) (requiring promulgation of commitment guidelines). Courts should not “apply the guidelines in a mechanical fashion,” but must instead “determine whether, under the unique circumstances of the particular juvenile, commitment to ADJC is appropriate.” *Niky R.*, 203 Ariz. 387, ¶ 13, 55 P.3d at 84. The guidelines do not “mandate that [a] less restrictive alternative be ordered” if one is found to exist. *Id.* ¶ 19.

²Section 6-304(C)(1) provides as follows:

When considering the commitment of a juvenile to the care and custody of ADJC, the 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.

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¶7 Contrary to G.R.'s argument, *Niky R.* does not stand for the proposition that a juvenile court must "expressly consider[]," on the record of a disposition hearing, each of the guidelines in § 6-304. It appears, based on the opinion in *Niky R.*, that the juvenile court in that case had omitted any reference to the commitment guidelines when entering its disposition. *Id.* ¶ 8. But this court nonetheless rejected the argument that the commitment guidelines require a juvenile court judge "to affirmatively set forth, and in fact provide findings demonstrating, that he or she explored all alternatives" to ADJC commitment. *Id.* ¶ 20. We stated, "Neither the new guidelines, the statute, nor our prior decisions require specific findings, or a record showing, that the trial judge has 'explored all alternatives' to ADJC prior to an adjudication committing a juvenile to ADJC. We assume that judges follow and apply the law." *Id.* ¶ 21.

¶8 The record fully supports the juvenile court's statements that it considered the commitment guidelines and did not "take lightly" the "serious responsibility" of committing G.R. to ADJC. Indeed, consistent with consideration of "appropriate less restrictive alternatives to commitment exist[ing] within the community," § 6-304(C)(1)(c), the court specifically addressed available community resources and found them lacking. Finding no error or abuse of discretion, we affirm the court's adjudication of delinquency and the disposition imposed.