

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE W.J.

No. 2 CA-JV 2019-0061
Filed April 17, 2020

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NOT FOR PUBLICATION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 Pinal County
No. S1100JV201600372
The Honorable Christopher J. O'Neil, Judge

AFFIRMED

COUNSEL

Kent P. Volkmer, Pinal County Attorney
By Thomas C. McDermott, Appellate Bureau Chief, Florence
Counsel for State

Harriette P. Levitt, Tucson
Counsel for Minor

IN RE W.J.
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Eppich authored the decision of the Court, in which Judge Espinosa and Judge Eckerstrom concurred.

E P P I C H, Presiding Judge:

¶1 W.J. appeals from the juvenile court's April 2019 disposition order entered after probation revocation proceedings, committing him to the Arizona Department of Juvenile Corrections (ADJC) and rejecting his request that he be placed on Juvenile Intensive Probation Supervision (JIPS). Finding no abuse by the juvenile court of its broad discretion in determining the appropriate disposition, we affirm.

¶2 W.J. was adjudicated delinquent in January 2018 based on a November 2017 delinquency petition, after admitting to an amended count of attempted robbery, a class five felony. An earlier petition charging him with burglary was dismissed and he was placed on nine months' supervised probation. In October 2018, W.J. was charged with shoplifting and false reporting.

¶3 During the November 2018 advisory hearing on the October petition, as W.J. was about to enter an admission, he and another juvenile became involved in a physical altercation. The juvenile court noted in its minute entry order that W.J.'s "behavior became out of control and [he] was removed" from the courtroom, and taken into custody. In connection with that incident, the state filed a delinquency petition charging W.J. with disorderly conduct, interfering with a judicial proceeding, and two counts of assault. W.J. subsequently admitted to the charges of shoplifting and interfering with a judicial proceeding. The state filed a petition to revoke probation in January 2019 based on W.J.'s violation of conditions of probation (failing to attend school and not being at home in the evening when the probation officer checked), and he admitted these allegations.

¶4 In January 2019, after a disposition hearing on the October and November 2018 delinquency petitions, and the November 2018 and January 2019 petitions to revoke probation, the juvenile court placed W.J. on JIPS for twelve months, with discretion to release him to an inpatient behavioral health program or Canyon State Academy on standard probation. In so doing, the court found it in W.J.'s and the community's interest to place him outside the home. In March, the state filed yet another

IN RE W.J.
Decision of the Court

petition to revoke probation, alleging W.J. had violated conditions of probation by failing to complete his treatment program. In early April, he admitted he had violated probation by failing to complete the Canyon State Academy program “after struggling to follow the directions and engaging in assaultive behavior.”

¶5 Counsel argued at the April 30, 2019 disposition hearing, that W.J. acknowledged he had made “mistakes” but desired to change and asked the juvenile court to consider “intensive probation with an ankle monitor.” According to W.J.’s guardian ad litem, W.J. had spent over 110 days in detention and despite trying a variety of programs, including Canyon State Academy, he had a tendency to make things worse. The guardian opined that W.J. needed a restricted environment, such as ADJC or a secure care and education facility managed by ADJC, where he would not pose safety issues to himself or others. Addressing W.J. directly, the court acknowledged his difficult childhood, but emphasized that his disruptive behavior had persisted, stating, “I don’t know what else could be tried or attempted for you,” and “all lower levels of care and all other possible options have been exhausted, are unsuccessful, and there is no other realistic or reasonable alternative.” The court placed him at the secure care and education facility, because he continued to be a danger to himself and to others and to the community.

¶6 The juvenile court found neither standard probation nor JIPS was a “viable alternative” for W.J., and that “the least restrictive setting for [him] is a commitment to the Arizona Department of Juvenile Corrections.” The court committed him to ADJC for an indeterminate period. This appeal followed.

¶7 Acknowledging the juvenile court has broad discretion to determine the appropriate disposition, *see In re Niky R.*, 203 Ariz. 387, ¶ 10 (App. 2002), W.J. nevertheless contends the court abused its discretion. He observes that the primary “purpose of probation in the juvenile court system is to rehabilitate the juvenile offender while recognizing that he is still a child and still developing socially, mentally and emotionally.” He argues the record “is clear” that he “suffered from a serious mental illness since childhood,” noting that initially the court had found him incompetent to stand trial, though he was restored to competency. He also asserts that his mother was incapable of adequately parenting him and had refused to consent to the administration of his prescribed medications and failed to ensure that he took them. He contends the court should have “given credence” to the mother’s request that W.J. be placed on an ankle monitor and that he should have been given an opportunity to be supervised

IN RE W.J.
Decision of the Court

through JIPS, asserting “[t]he court failed to consider this intermediate level of care at the final disposition hearing.”

¶8 The juvenile court has the statutory authority to determine the disposition in a delinquency and probation revocation proceeding as provided in A.R.S. § 8-341. See also A.R.S. § 8-246 (pertaining to commitment department of juvenile corrections). We will not disturb the disposition absent an abuse of its “broad discretion to determine an appropriate disposition for a delinquent.” *Niky R.*, 203 Ariz. 387, ¶ 10. When considering whether to commit a juvenile to ADJC, under the Arizona Supreme Court Guidelines, Ariz. Code of Jud. Admin. § 6-304(C)(1), the court must consider: whether commitment in a secure care facility is necessary to protect the community; whether commitment to ADJC is a final opportunity to rehabilitate the juvenile and a way of holding him accountable for a serious delinquent act or acts; and the nature of the offense, the risk the juvenile poses to the community, and whether less restrictive alternatives exist and are appropriate. The court must additionally “identify . . . 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.* The court is not required to follow the Guidelines, which do not limit the court’s discretion, rather the court must consider them. *In re Melissa K.*, 197 Ariz. 491, ¶ 14 (App. 2000).

¶9 The record reflects that the juvenile court considered the factors in the Guidelines, particularly W.J.’s risk to the community based on his persistent refusal to abide by the terms of probation, and his aggressive and violent conduct in the community and at Canyon State Academy. The court’s comments demonstrate it concluded commitment was necessary to rehabilitate W.J., and that other options had been exhausted or were not realistic. We reject W.J.’s argument that the court abused its discretion by not considering placing him on JIPS with an ankle monitor. As the state correctly points out, the court did consider such a placement, having done so during the January 2019 disposition hearing. But by the time of the April 2019 final disposition hearing, the court did not believe JIPS was an option based on W.J.’s behavior.

¶10 The juvenile court properly exercised its discretion here and we have no basis for interfering. We therefore affirm the orders adjudicating W.J. delinquent, finding he violated probation, and committing him to ADJC.