

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE K.Y.

No. 2 CA-JV 2020-0099
Filed March 9, 2021

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NOT FOR PUBLICATION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. JV201900001
The Honorable Monica L. Stauffer, Judge

VACATED AND REMANDED

COUNSEL

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Counsel for Minor

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MEMORANDUM DECISION

Vice Chief Judge Staring authored the decision of the Court, in which Presiding Judge Espinosa and Judge Eckerstrom concurred.

STARING, Vice Chief Judge:

¶1 In this appeal, K.Y. challenges the juvenile court's acceptance of her admission to having violated the terms of her probation and its subsequent disposition. Because we conclude the court did not adequately advise her of the consequences of her admission, we vacate the court's acceptance and remand for it to determine if K.Y. was aware of the consequences despite its failure to advise her on the record.

¶2 In March 2019, K.Y. was adjudicated delinquent after admitting to possession of drug paraphernalia. The juvenile court placed her on a one-year term of probation. In May 2019, the court reinstated her on juvenile intensive probation for a one-year term after she admitted having violated the terms of her probation. In May 2020, K.Y. again admitted to having violated the terms of her probation, and the court ordered the matter transferred to Maricopa County for disposition.

¶3 In August 2020, however, K.Y.'s probation officer filed another petition to revoke probation, recommending the juvenile court issue a bench warrant for K.Y.'s arrest as she had left home without permission and her "whereabouts [we]re unknown." K.Y. appeared days later in Greenlee County and admitted having refused contact with her parents and probation officer and having used marijuana, heroin, and fentanyl. The court committed K.Y. to the Arizona Department of Juvenile Corrections (ADJC) for "no less than 12 months, or not to exceed [her] 18th Birthday." This appeal followed.

¶4 On appeal, K.Y. first argues "[t]he juvenile court erred when it failed to advise [her] that a potential consequence of her admission was that she might be awarded to the custody of ADJC until age eighteen." As K.Y. correctly posits, before accepting an admission of a probation violation, a juvenile court must advise a juvenile of any applicable constitutional rights. *See* Ariz. R. P. Juv. Ct. 32(D)(2). The court must also find "that the juvenile knowingly, intelligently and voluntarily waives"

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those rights. Ariz. R. P. Juv. Ct. 32(D)(2)(g)(i). The record “must affirmatively establish that the juvenile was aware of these rights and the potential consequences” when entering an admission. *In re Melissa K.*, 197 Ariz. 491, ¶ 7 (App. 2000). Specifically relevant here, the court must ensure the juvenile is aware of the range of potential dispositions it may elect, including the maximum punishment of commitment to ADJC until age eighteen. *See id.* ¶ 8; *In re Amber S.*, 225 Ariz. 364, ¶ 10 (App. 2010).

¶5 In this case, the juvenile court failed to advise K.Y. that her admissions could result in commitment to ADJC until her eighteenth birthday. Indeed, as K.Y. points out, although the record shows K.Y. was informed at various times that she might be committed to ADJC, it does not establish that she was expressly told the length of time to which that commitment could extend. Because “the record does not reflect the juvenile’s knowledge of th[is] fact[], a remand is necessary to permit the juvenile court to determine whether the juvenile was aware of [it] notwithstanding the failure” of the court to advise her on the record. *Melissa K.*, 197 Ariz. 491, ¶ 8.

¶6 Because the juvenile court may affirm its acceptance of K.Y.’s admission on remand if it finds she was aware of the possibility of commitment until she reached majority, *see id.*, we address K.Y.’s remaining arguments. K.Y. asserts the juvenile court “committed fundamental error when it accepted [her] fentanyl probation violation admission because there was an insufficient factual basis due to the lack of mens rea.” And she maintains the court fundamentally erred in accepting her admission “because the State was not able to prove a factual basis for the fentanyl probation violation allegation.” Because K.Y. did not object, we review for fundamental error. *See State v. Henderson*, 210 Ariz. 561, ¶ 19 (2005).

¶7 “Due process . . . requires that some factual basis for a juvenile’s admission be established.” *In re Maricopa Cnty. Juv. Action No. J-86715*, 122 Ariz. 300, 303 (App. 1979). But, to establish a violation of the terms of a juvenile’s probation, “[t]he state is only required to establish by a preponderance of the evidence that the violation of probation occurred as alleged in the petition.” *In re Maricopa Cnty. Juv. Action No. J-72918-S*, 111 Ariz. 135, 138 (1974). The amended petition to revoke K.Y.’s probation alleged she had “consumed fentanyl in violation of” a term of her probation. At the hearing on the motion, K.Y. initially stated, “I didn’t know that I was consuming Fentanyl, but I don’t know if that will change anything, Your Honor.” But, later when asked if she admitted she had “consumed fentanyl,” as alleged in the petition, she admitted she had, and

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the parties noted a report confirming the use of fentanyl. Indeed, a report from August 2020 showed urine testing had confirmed K.Y.'s use of fentanyl.

¶8 The relevant condition of K.Y.'s probation stated that she would "not use or possess any illegal drugs, toxic substances or vapors." K.Y.'s comment at the hearing suggested she had been unaware the substance she consumed was fentanyl but did not suggest she had been unaware she was consuming something in violation of the prohibition above. In conjunction with the positive fentanyl test and K.Y.'s later admission, we cannot say the facts before the juvenile court were insufficient to establish the factual basis for K.Y.'s violation by a preponderance of the evidence. *See Maricopa Cnty. No. J-72918-S*, 111 Ariz. at 138. The court did not, therefore, err on that basis in accepting the admission, much less fundamentally so.

¶9 K.Y. further contends her disposition was "overly harsh" and inappropriate for her based on her offenses and her past success on probation. 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 to commitment 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, ¶ 19 (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 In re Kristen C.*, 193 Ariz. 562, ¶ 7 (App. 1999). K.Y.'s argument amounts to a request that we reweigh the factors relevant to her disposition. We decline to do so. *Cf. State v. Towery*, 186 Ariz. 168, 189 (1996) (appellate court will not reweigh sentencing factors).

¶10 For these reasons, we vacate the juvenile court's acceptance of K.Y.'s admission and remand to the juvenile court to determine whether she was aware of the possibility that she could be committed to ADJC until age eighteen. "Depending on the court's findings, the previous acceptance of the admission can be affirmed or the admission must be withdrawn and proceedings begun anew." *Melissa K.*, 197 Ariz. 491, ¶ 8.