

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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IN RE R.B.

No. 2 CA-JV 2021-0023  
Filed August 11, 2021

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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NOT FOR PUBLICATION  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).

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Appeal from the Superior Court in Pima County  
No. JV20200065  
The Honorable Jane Butler, Judge Pro Tempore

**AFFIRMED**

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COUNSEL

Joel Feinman, Pima County Public Defender  
By Susan C. L. Kelly, Assistant Public Defender, Tucson  
*Counsel for Minor*

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**MEMORANDUM DECISION**

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

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ESPINOSA, Presiding Judge:

¶1 R.B. appeals from the juvenile court's March 9, 2021 disposition order committing him to the Arizona Department of Juvenile Corrections (ADJC) for a minimum of thirty days.<sup>1</sup> Counsel has filed a brief purporting, as explained below, to be in compliance with *Anders v. California*, 386 U.S. 738 (1967); see *In re Maricopa Cnty. Juv. Action No. JV-117258*, 163 Ariz. 484, 486-87 (App. 1989). She asks this court to consider as an arguable issue whether the court violated the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (ADA),<sup>2</sup> in failing to place R.B. in a residential, behavioral setting rather than ADJC, and requests that we review the record for fundamental error. We affirm.

¶2 In February, June, and July 2020, the state filed delinquency petitions alleging R.B. had committed various offenses in 2019 and 2020.<sup>3</sup> In July 2020, the juvenile court ordered R.B. to be examined for competency. Although the court concluded he was incompetent to stand trial, R.B. was restored to competency in November 2020. In December 2020, the court adjudicated R.B. delinquent after he admitted sexual abuse of a minor fifteen years of age or more, as alleged in the July 2020 delinquency petition.

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<sup>1</sup>R.B. "does not dispute the facts which formed the basis of his [delinquency] adjudication."

<sup>2</sup> Section 12132 of the ADA prohibits public entities from discriminating against disabled persons by excluding them from participation in or denying them the benefits of public services and programs.

<sup>3</sup>The state refiled the June delinquency petition in July 2020, along with a notice of intent to retain jurisdiction of R.B., born in February 2003, until his nineteenth birthday. See A.R.S. § 8-202(H). The juvenile court accordingly dismissed the June petition. Although § 8-202 has been amended since the juvenile court decided this matter, the changes are of no consequence here. See 2021 Ariz. Sess. Laws, ch. 240, § 1.

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The court dismissed the remaining count in the July petition and dismissed the entire February petition.

¶3 At the January 2021 disposition hearing, R.B.'s attorney told the juvenile court she was "surprised, horrified, angry, [and] dismayed" with the predisposition report probation officer Cimmon Lewis had prepared (the report), in which Lewis had recommended that R.B. be committed to ADJC. She requested a continuance to prepare an opposition to the report, which the court granted. At the conclusion of the two-day continued disposition hearing, which took place in March 2021, the court ordered R.B. to serve a minimum of thirty days in ADJC, recommending he be enrolled in ADJC's Journey Program.<sup>4</sup>

¶4 The juvenile court retains broad powers to determine an appropriate disposition for a delinquent juvenile, and we will not disturb the court's disposition order absent an abuse of that discretion. *See In re Kristen C.*, 193 Ariz. 562, ¶ 7 (App. 1999). 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). However, they "do not mandate that the less restrictive alternative be ordered." *In re Niky R.*, 203 Ariz. 387, ¶ 19 (App. 2002).

¶5 Acknowledging the discretionary nature of the juvenile court's disposition determination following a delinquency adjudication, counsel nonetheless asserts "the appellate court can only review these issues for fundamental, reversible error," and suggests as an arguable issue "which appear[s] to exist" that the ADA "was violated by the failure to seek reasonable adjustments and accommodations to enable placement in a residential, behavioral setting other than ADJC."<sup>5</sup> Relying on portions of the report, counsel provides a summary of R.B.'s difficult childhood, including the fact that he has an IQ of fifty-nine and has been hospitalized numerous times due to mental illness. Counsel also maintains she "can find no grounds to assert that fundamental, reversible error occurred in the present case."

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<sup>4</sup> The Journey Program treats juveniles who exhibit sexually maladaptive behavior.

<sup>5</sup>Counsel also argues the ADA was violated by the failure to continue to seek such accommodations.

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¶6 Counsel has filed what appears to be a merits brief, which raises an arguable issue and also requests that we review the entire record for fundamental error that inures to R.B.'s benefit. That procedure is not in compliance with *Anders*. See *State v. Thompson*, 229 Ariz. 43, ¶ 3 (App. 2012) ("In Arizona, we do not require defense counsel to list non-meritorious arguments in an *Anders* brief to alert us to issues that 'might arguably support the appeal.'" (quoting *Anders*, 386 U.S. at 744) (citing *State v. Clark*, 196 Ariz. 530, ¶ 31 (App. 1989))). In the interest of expediting this juvenile appeal, we have treated this brief as a merits brief, rather than striking it,<sup>6</sup> and have reviewed the issue raised.

¶7 Notably, the report explains that R.B. has a history of moving from one group home to another, and that during his time at some of the homes, he had exhibited violence toward staff and other residents, verbal aggression, destruction of property, and had run away.<sup>7</sup> The report includes comments from Dr. Perkins,<sup>8</sup> who performed a psychosexual evaluation on R.B., and who quoted another physician who had treated R.B. when he was hospitalized in 2018: "I believe [R.B.] is extremely dangerous . . . I believe he enjoys the idea of killing other people, especially his parents . . . . He has no empathy, and this is worrisome."

¶8 At the disposition hearing, Patrick Schonbachler, a psychologist for ADJC and supervisor at the Adobe Mountain School, testified that the focus at Adobe is rehabilitation and therapeutic intervention, rather than incarceration, and described ADJC's Journey Program. Dr. Schonbachler explained that appropriate juveniles are placed in the unit with the Journey Program, that many of those individuals are "delayed" on some level, and that the program is served by a master's level therapist, a third-year doctoral intern, a medical director, and a psychiatrist.

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<sup>6</sup>Generally, "[i]f any issue revealed in the briefing is arguable on its merits and therefore not wholly frivolous, the court will inform the parties of its finding, strike the briefs, and order the case to proceed as any other criminal appeal." *Thompson*, 229 Ariz. 43, ¶ 6.

<sup>7</sup>In fact, the incident which led to the instant adjudication involved the sexual abuse of an employee who worked in the group home where R.B. was then living.

<sup>8</sup>Dr. Perkins's report does not appear to be part of the record on appeal.

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¶9 Lewis also testified at the hearing, pointing out the inaccuracies of counsel's criticisms of the report and detailing the probation department's exhaustive and continuous efforts to find an appropriate placement for R.B. She explained, "It's been a process trying to find an appropriate placement for him. And the last thing we want for him is to be either kicked out on the street, into some placement and we don't know where he's going to go, because that's basically where he was when he got in trouble." She added, "we were trying to find what's most appropriate for him so the community can be safe and he can be as well."

¶10 Similarly, Lewis stated in her report that during R.B.'s seven-month detention, referrals for placement in residential and inpatient facilities to every contracted facility in Arizona and to multiple placements in other states had been submitted. She reported that every provider had denied R.B. acceptance into their program, with each denial letter noting that "either [R.B.'s] level of violence, current charges, or age make him ineligible." Noting R.B. "cannot be controlled in an unsecured setting," Lewis recommended commitment to ADJC with placement in the Journey Program, pointing out it "will give [R.B.] this final opportunity for rehabilitation while ensuring community protection."

¶11 The state similarly pointed out the extensive efforts the probation department had made to place R.B. in a residential facility, expressing its frustration with the circumstances, but noting that based on the serious nature of the most recent incident, the description of the Journey Program, and the benefits of placing R.B. with juveniles, ADJC "is the appropriate alternative at this point." Counsel for R.B. countered, however, that although ADJC is "[t]he easy answer," it is not "the right answer," and asked the juvenile court to consider terminating R.B. based on the time he had spent in detention and permitting him to seek care as an adult. The court rejected that suggestion, concluding that doing so would result in "waiting for him to recommit another offense, and he'd be charged as an adult for sure."

¶12 The juvenile court's statements at the disposition hearing clearly reflected its consideration of the Guidelines, including the extensive efforts the probation department had made to find an appropriate residential placement for R.B. The court was aware that twenty-one facilities had declined to take R.B., and made clear it understood he would be given much-needed assistance to transition back into the community upon his release from ADJC, including possibly facilitating his relocation to a residential facility in New York, near his mother.

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¶13 Before announcing its disposition committing R.B. to ADJC, the juvenile court noted that R.B. “needs treatment,” and that it had considered “the type of offense that he committed . . . and the fact that probation ha[d] worked really hard to try and find a level one or a level two placement that would accept [R.B.] . . . and that’s not possible.” The court added that R.B.’s rehabilitation needed to take place in a secure facility “for the protection of the community.”

¶14 The record does not suggest the juvenile court discriminated against R.B. or excluded him from services because of his disability, as required to maintain a claim under the ADA. *See* 42 U.S.C. § 12132. And, although R.B. asserts that “[t]he ADA applies . . . to sentencing matters,” we agree with the California Court of Appeal that Congress intended such claims to be raised “by means of a complaint in an independent civil action,” not “in the context of a direct appeal from a [juvenile court’s] dispositional order.” *In re M.S.*, 95 Cal. Rptr. 3d 273, 283-84 (App. 2009). As here, the juvenile in that case was “attempting to assert an ADA violation as grounds to set aside an otherwise valid dispositional order.” *Id.* at 282. In any event, based on this record, the court did not abuse its discretion by committing R.B. to ADJC.

¶15 The juvenile court’s order adjudicating R.B. delinquent and its disposition order are affirmed.