

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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OCT -8 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE BRENARD B.

) 2 CA-JV 2010-0065
) DEPARTMENT B
)
) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure
)

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100JV200800379

Honorable Stephen F. McCarville, Judge

SPECIAL ACTION JURISDICTION ACCEPTED; RELIEF DENIED

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E C K E R S T R O M, Judge.

¶1 Brenard B. appeals from the juvenile court’s June 4, 2010 order committing him to the Arizona Department of Juvenile Corrections (ADJC) for a nine-month term and scheduling a restitution hearing for June 29, 2010. For the following reasons, we construe Brenard’s appeal as a petition for special action, accept review, and deny relief.

Jurisdiction

¶2 “Any aggrieved party in any juvenile court proceeding under [title 8, A.R.S.,] may appeal from a final order of the juvenile court” A.R.S. § 8-235(A). But our supreme court has made clear that, when a delinquency case involves restitution, “the restitution order constitutes the final order for appeal purposes.” *In re Alton D.*, 196 Ariz. 195, ¶ 9, 994 P.2d 402, 404 (2000); *see also In re Eric L.*, 189 Ariz. 482, 484, 943 P.2d 842, 844 (App. 1997) (delinquency disposition order “necessarily interlocutory in nature when restitution remains an unresolved issue”). When Brenard’s appeal came at issue, our record lacked a notice of appeal from the juvenile court’s restitution order, and the record did not indicate whether such an order had been issued.

¶3 We subsequently requested that the clerk of the Pinal County superior court supplement our record. We have since learned that the restitution hearing originally scheduled for June 29 has been continued three times and is currently scheduled for October 26, apparently because Brenard has not been transported from his ADJC placement for the scheduled hearings, despite juvenile court orders on file directing his transport on June 29, August 3, and September 10.¹ We strongly disapprove of such a delay in resolving the issue of restitution, which effectively denies a juvenile his or her right to “a prompt, expedited appeal” *In re Frank H.*, 193 Ariz. 433, ¶ 15, 973 P.2d

¹From this record, we are unable to determine the reasons Brenard was not transported to the hearings.

1194, 1197-98 (App. 1998); *see* § 8-235(C) (giving appeals from juvenile court priority “over all other actions except extraordinary writs or special actions”). We note that by the date of his October restitution hearing, Brenard will have served over half of his nine-month term of commitment. Moreover, victims have an interest in the prompt resolution of their entitlement to restitution. Thus, although we lack jurisdiction over his appeal, we exercise our discretion to treat it as a petition for special action given the unavailability of a speedy and adequate remedy by appeal. *See Ariz. R. P. Spec. Actions* 1(a) (describing circumstances when special action unavailable); *Ruesga v. Kindred Nursing Ctrs. W., L.L.C.*, 215 Ariz. 589, ¶ 16, 161 P.3d 1253, 1258 (App. 2007) (recognizing court’s discretion to exercise special action jurisdiction in absence of appellate jurisdiction).

Commitment Order

¶4 Brenard maintains the juvenile court abused its discretion in committing him to the ADJC instead of adopting a plan that included probation and close family supervision proposed by his mother and aunt. Although he does not challenge the accuracy of the ADJC Revised Public Safety Risk Assessment or the ADJC Risk/Length of Stay Classification Matrix utilized by the juvenile probation officer assigned to his case, he argues these assessment tools fail to give adequate weight to positive or mitigating factors and asks us to “review *de novo*” the court’s use of these guidelines.

¶5 Our inquiry in considering special action relief is whether the juvenile court abused its discretion in committing Brenard to the ADJC. *See Ariz. R. P. Spec. Actions* 3(c). This is the same standard we would apply on direct appeal. *See In re Themika M.*, 206 Ariz. 553, ¶ 5, 81 P.3d 344, 345 (App. 2003). “A juvenile court has broad discretion in determining the proper disposition of a delinquent juvenile.” *Id.* In the analogous

context of adult sentencing, a court abuses its discretion if it acts arbitrarily or capriciously or fails to conduct an adequate investigation of relevant facts. *State v. Stotts*, 144 Ariz. 72, 87, 695 P.2d 1110, 1125 (1985).

¶6 In a delinquency case, a juvenile court may also abuse its discretion by failing to consider the advisory guidelines established by our supreme court for the commitment of minors to the ADJC. *In re Melissa K.*, 197 Ariz. 491, ¶ 14, 4 P.3d 1034, 1038 (App. 2000); *see A.R.S. § 8-246(C)* (requiring promulgation of commitment guidelines); Ariz. Code of Jud. Admin. § 6-304 (“Commitment Guidelines”). According to those guidelines, before committing a juvenile to the ADJC, the court must weigh “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). The guidelines do not, however, “mandate that [a] less restrictive alternative be ordered.” *In re Niky R.*, 203 Ariz. 387, ¶ 19, 55 P.3d 81, 85 (App. 2002). Rather, the court should consider less restrictive alternatives in light of the other factors found in the commitment guidelines, to provide for a ““particularized consideration of juveniles on an individual basis.”” *Id.*, quoting *In re Maricopa County Juv. Action No. J-90110*, 127 Ariz. 389, 392, 621 P.2d 298, 301 (App. 1980).

¶7 Here, the juvenile court specifically addressed the probation plan Brenard had proposed as an alternative to commitment but found the ADJC was “clearly the best placement . . . at this time” because it provided the level of secure supervision Brenard needed in light of his repeated referrals to the court and his failure to benefit from services provided while he had been on juvenile intensive probation. Such considerations were appropriate under the guidelines. *See Ariz. Code of Jud. Admin. § 6-304(C)(1)(a)*,

(c); *see also* A.R.S. § 41-2816(A) (directing ADJC to provide secure facilities for “youth who pose a threat to public safety . . . [or] who have engaged in a pattern of conduct characterized by persistent and delinquent offenses that, as demonstrated through the use of other alternatives, cannot be controlled in a less secure setting”).

Conclusion

¶8 The juvenile court’s commitment order was well within its discretion, and Brenard has presented no legal basis to disturb it. Accordingly, special action relief is denied.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge