

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

FILED BY CLERK
DEC 10 2010
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE OFIR Z.)
) 2 CA-JV 2010-0085
) DEPARTMENT B
)
) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure
)
)
_____)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17821701

Honorable Danelle B. Liwski, Judge Pro Tempore
Honorable Karen S. Adam, Judge Pro Tempore

AFFIRMED

Robert J. Hirsh, Pima County Public Defender
By Susan C.L. Kelly

Tucson
Attorneys for Minor

ECKERSTROM, Judge.

¶1 Just before his seventeenth birthday, appellant Ofir Z. was adjudicated delinquent after he entered a plea agreement with the state pursuant to which he admitted having committed simple assault, a class one misdemeanor, as alleged in a June 8, 2010, delinquency petition. He also admitted having violated probation he was serving for a previous adjudication of delinquency, as alleged in two petitions to revoke probation, one filed on June 9, 2010, and the other filed on June 11, 2010. The juvenile court adjudicated Ofir delinquent based on the June 8, 2010, petition and revoked his term of probation. The court committed him to the Arizona Department of Juvenile Corrections (ADJC) for a minimum of twelve months in a Level IV secure care facility, with commitment not to exceed his eighteenth birthday. Ofir’s counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999); *see also In re Maricopa County Juv. Action No. JV-117258*, 163 Ariz. 484, 788 P.2d 1235 (App. 1989). Counsel asks this court to consider, as an “arguable issue,” whether the court abused its discretion when it revoked probation and committed Ofir to ADJC.

¶2 The juvenile court “has broad discretion in determining the proper disposition of a delinquent juvenile” and, absent an abuse of that discretion, we will not disturb the court’s order. *In re Themika M.*, 206 Ariz. 553, ¶ 5, 81 P.3d 344, 345 (App. 2003); *see also In re Miguel R.*, 204 Ariz. 328, ¶ 3, 63 P.3d 1065, 1068 (App. 2003). In the analogous context of adult sentencing, a court abuses its discretion when its decision is arbitrary or capricious or it fails to adequately investigate facts relevant to sentencing.

State v. Stotts, 144 Ariz. 72, 87, 695 P.2d 1110, 1125 (1985). To determine whether ADJC commitment is the proper disposition for a delinquent juvenile, a court also must consider guidelines for commitment promulgated by the Arizona Supreme Court. *See In re Melissa K.*, 197 Ariz. 491, ¶ 14, 4 P.3d 1034, 1038 (App. 2000); *see also* A.R.S. § 8-246(C) (requiring promulgation of commitment guidelines); Ariz. Code of Jud. Admin. § 6-304(C) (Commitment Guidelines). Those guidelines require the court to consider “the nature of the offense,” the “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).

¶3 The record establishes the juvenile court exercised its discretion soundly and appropriately. Ofir’s history of criminal conduct is extensive and persistent. It appears he was first adjudicated delinquent in April 2007 and placed on probation. He continued to engage in criminal conduct thereafter and violated conditions of probation, resulting in the filing of numerous delinquency petitions and petitions to revoke probation. The probation officer testified at the disposition hearing that he had been Ofir’s probation officer for Juvenile Intensive Probation Supervision (JIPS) since April 2009, noting, “He’s been in front of us June 25, 2009, July 27, 2009, December 30, 2009[,] and finally June 8, 2010.” The probation officer stated Ofir had already had four chances and had asked for yet another one, but added that “he meets all the requirements for commitment to [ADJC].” Noting Ofir had “seriously assaulted his girlfriend,” the probation officer stated, “Your Honor, at this point JIPS has nothing further to offer. And

I'm here to tell you that it grieves me beyond belief with all of the hard work that I have done with Ofir”

¶4 The prosecutor agreed with the probation officer, noting the efforts the probation officer and the school had made to help Ofir and pointing out the serious nature of his most recent offense. The prosecutor stated, “I think we’ve had it. There’s nothing more that we can do with him here.” In contrast, defense counsel urged the court to consider the positive changes Ofir had made and the fact that his childhood has been difficult and he has had mental health issues to address. Similarly, Ofir’s mother asked the court to consider her son’s progress and alternatives to incarceration.

¶5 In committing Ofir to ADJC, the juvenile court noted the numerous opportunities Ofir had been given to rehabilitate himself and commented it had recently given him yet another chance despite the multitude of previous referrals. The court added, “[A]t this point you have had every single opportunity that we can possibly offer” The court’s comments reflect it considered all of the relevant factors, including Ofir’s difficult childhood and the fact that he had “engaged in a pattern of . . . persistent . . . delinquent offenses that cannot be controlled in a less secure setting as demonstrated by the previous use of other alternatives.” The court stated it had considered the guidelines for commitment, including the nature of the offense, level of risk to the community and the availability of a less restrictive alternative, concluding Ofir met “[e]very single criteria” for commitment. We have no basis for disturbing the court’s order.

¶6 As requested, we have searched the record but have found no reversible error. Rather, the record supports the juvenile court's findings that Ofir's admissions were knowing, voluntary and intelligent and that there were adequate factual bases for those admissions. Additionally, as we have stated, the court did not abuse its discretion when it committed Ofir to ADJC, with a release date no later than his eighteenth birthday. Therefore, the court's orders adjudicating Ofir delinquent, revoking probation, and committing him to ADJC are affirmed.

/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