

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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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE ADRIANA V.

) 2 CA-JV 2008-0106
) DEPARTMENT A
)
) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. JV05000204

Honorable Ann R. Littrell, Judge

AFFIRMED

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H O W A R D, Presiding Judge.

¶1 The state appeals from the juvenile court’s order denying its motion to withdraw from a plea agreement and dismissing the delinquency petition against appellee Adriana V. with prejudice. For the following reasons, we affirm.

¶2 Approximately three months before Adriana’s eighteenth birthday, the state filed a delinquency petition alleging she had possessed marijuana and drug paraphernalia. The state entered into a plea agreement whereby Adriana admitted a single misdemeanor

count of possession of marijuana. The juvenile court accepted the plea at the advisory hearing, adjudicated Adriana delinquent, and set a disposition hearing for a later date. When Adriana failed to appear at the hearing, the court issued a warrant for her arrest. Adriana turned eighteen, however, about a month later, before the warrant was served, and no disposition order was ever entered.

¶3 After Adriana's eighteenth birthday, the state moved to withdraw from the plea agreement. It argued that Adriana had breached the terms of the agreement by failing to appear for disposition and asked the juvenile court to dismiss the delinquency petition without prejudice and reinstate the original charges. The court denied the state's motion. The state attempted to appeal the court's order; however, because the order was not final, this court dismissed the appeal. The state then filed a "motion to correct" the juvenile court's order, essentially asking it to reconsider its earlier decision. This time, after finding "good cause" to correct its order, the juvenile court dismissed the delinquency petition with prejudice, and this appeal followed.

¶4 The state first argues that the juvenile court abused its discretion by denying its request to withdraw from the plea agreement. In the analogous context of adult plea agreements, a trial court, "in its discretion, may allow withdrawal of a plea of guilty or no contest when necessary to correct a manifest injustice." Ariz. R. Crim. P. 17.5. Once a court accepts a plea, however, "the state generally may not withdraw from the agreement because jeopardy has attached," although "[a]n exception exists when a defendant breaches his or her obligations under the agreement." *Coy v. Fields*, 200 Ariz. 442, ¶ 5, 27 P.3d 799, 801 (App. 2001).

¶5 As it did below, the state argues that Adriana breached the plea agreement by failing to appear at the disposition hearing. We agree with the juvenile court, however, that the state’s expectation that Adriana would appear at the disposition hearing, although reasonable in and of itself, was “not reason to allow it to withdraw from the plea agreement where that requirement was not outlined in the agreement itself.” As the court noted, “[d]espite the fact that [Adriana] would be turning 18 two months after the plea was entered, the State did not ask the court to delay adjudication until disposition or expressly condition the Plea Agreement on [Adriana’s] appearance at future hearings.” We find no abuse of discretion in the court’s denial of the state’s motion to withdraw from the plea agreement.

¶6 No manifest injustice was evident from Adriana’s failure to appear for her disposition. As the state acknowledges in its reply brief, “there was no reason for the State to withdraw from the plea agreement at the time of the Disposition Hearing” because “the State knew Adriana’s whereabouts” and “there was no reason to believe she would not be brought before the Juvenile Court on the warrant before her 18th birthday.” Yet the state offered no explanation below or on appeal for its failure to arrest Adriana during the nearly five-week period between the original disposition hearing and her eighteenth birthday. Moreover, as the state points out in its opening brief, A.R.S. § 8-302(D) provides:

If a juvenile reaches eighteen years of age during the pendency of a delinquency action or before completion of the sentence in any court in this state for an act that if committed by an adult would be a misdemeanor or petty offense or a civil traffic violation, the court shall transfer the case to the appropriate criminal court, together with all of the original accusatory pleadings and other papers, documents and transcripts of any testimony relating to the case and any sentencing order. The appropriate criminal court shall then proceed with all further proceedings as if a uniform Arizona traffic ticket and complaint form or a complaint alleging a misdemeanor or petty offense or a civil traffic violation had been filed with the appropriate

criminal court pursuant to § 13-3903 or the Arizona rules of criminal procedure, the rules of procedure in traffic cases or the rules of procedure in civil traffic violation cases.

The state acknowledges that the juvenile court at least “arguably *could* have followed the procedure set forth in [this section] . . . and transferred the case to the appropriate court for sentencing” and that “such a transfer would have allowed the bargained-for plea to stand” without “unjustly enrich[ing] or unfairly harm[ing]” either party.

¶7 Inexplicably, however, the state did not ask the juvenile court to transfer the case below, even though it asserts on appeal that it “would have preferred that outcome.” Nor has it asked this court to consider ordering such relief on appeal. Rather, it requests we reverse the juvenile court’s dismissal order in its second argument on appeal only “if this court finds that the juvenile court abused its discretion when it denied the state’s request to withdraw from the plea agreement.” Because, as explained above, we have found no abuse of discretion in the juvenile court’s denial of that motion, we do not consider this argument. Accordingly, the juvenile court’s order denying the motion to withdraw from the plea agreement and dismissing the delinquency petition is affirmed.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

PHILIP G. ESPINOSA, Judge