FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2686

C.H., a child,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court in Gilchrist County.
Robert K. Groeb, Judge.

June 24, 2021

LONG, J.

C.H. appeals the trial court's order adjudicating him delinquent and committing him to the custody of the Department of Juvenile Justice. At issue is the restrictiveness level ordered by the trial court. A nonsecure placement was recommended by the Department. And the trial court ordered a nonsecure residential placement in the standard juvenile commitment order. But a week later, the trial court entered a "departure" order mandating C.H. be committed to a "medium" security level placement. Florida law outlines the different commitment restrictiveness levels. A "medium" restrictiveness level is not one of them. The trial court also defined the criteria for this "medium" level facility. But the trial court's requirements are more restrictive than the statutory definition of a nonsecure facility and appear to reflect the statutory

definition of a high-risk residential facility. *See* § 985.03(44)(b)–(c), Fla. Stat. (2020).

Though we ordered the State to inform us, we still do not know at what commitment level C.H. is being held. The trial court's two disposition orders are at least unclear, if not contradictory. If the trial court did deviate from the Department's recommendation, it did so in error because its decision was based only on the protection of the public without regard for the interests of C.H. *See E.A.R. v. State*, 4 So. 3d 614, 634 (Fla. 2009) (holding that in order to deviate from the Department's recommended restrictiveness level, a trial court must "[identify] significant information that the DJJ has overlooked, failed to sufficiently consider, or misconstrued with regard to the child's programmatic, rehabilitative needs along with the risks that the unrehabilitated child poses to the public"); *P.Y. v. State*, 976 So. 2d 1168, 1169 (Fla. 1st DCA 2008) ("Basing its decision on the protection of the public did not absolve the court of its responsibility to relate the level of commitment it imposed to the needs or attributes of the particular child."). That error is fundamental. *D.L.T. v. State*, 275 So. 3d 651, 652 (Fla. 4th DCA 2019) ("[F]ailure to comply with *E.A.R.* constitutes fundamental error . . . .").

If, however, the trial court committed the child to a nonsecure residential facility, then it did not deviate from the Department's recommended restrictiveness level. And the trial court's decision to commit C.H. rather than order probation is unreviewable. § 985.433(6), Fla. Stat. (2020). The trial court's rejection of the Department's probation recommendation is not a determination of restrictiveness level and requires no special reasoning pursuant to *E.A.R. See B.K.A. v. State*, 122 So. 3d 928, 930 (Fla. 1st DCA 2013).

We find the most reasonable resolution is to remand to the trial court for clarification or modification of the ordered restrictiveness level in accord with this opinion.

REVERSED and REMANDED for clarification or modification.

RAY, C.J., and TANENBAUM, J., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jessica J. Yeary, Public Defender, and Jasmine Quintera Russell, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, Tallahassee, for Appellee.