NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

T.N., Petitioner, v. GARY PORTESY, Detention Superintendent, Hillsborough Regional Juvenile Detention Center, Respondent.	)	Case No. 2D05-01

Opinion filed October 7, 2005.

Petition for Writ of Habeas Corpus to the Circuit Court for Hillsborough County; Jack Espinosa, Jr., Judge.

Julianne M. Holt, Public Defender, and James Anthony Julian, Assistant Public Defender, Tampa, for Petitioner.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Helene S. Parnes, Assistant Attorney General, Tampa, for Respondent.

PER CURIAM.

T.N., a juvenile, petitioned this court for a writ of habeas corpus seeking immediate release from custody after he was detained pursuant to an order of indirect criminal contempt issued on December 15, 2004. On January 5, 2005, after reviewing

the petition, this court issued an unpublished order granting the petition for writ of habeas corpus and ordering T.N. to be immediately released from his detention. This opinion now follows.

T.N. was originally charged with possession of cannabis in violation of section 893.13(6)(b), Florida Statutes (2004). On June 30, 2004, without being arraigned on the charges, T.N. and his mother entered into an agreement with the State, by which he agreed to participate in the Juvenile Drug Court Program.[1] This agreement was ratified by the trial court on June 30, 2004.

As part of the agreement, T.N. was subject to mandated drug treatment and testing to ensure that he remained drug free. Additionally, the agreement specified that if T.N. failed to comply with the terms of the agreement, the trial court could find him in contempt and impose one or more of several enumerated sanctions. The list of possible sanctions included placement in a secure facility and placement in a residential treatment program.

On more than one occasion afterwards, T.N. tested positive for marijuana, and after August 16, 2004, he apparently stopped attempting to participate in any drug treatment program.

As a result, the trial court found T.N. to be noncompliant with the agreement and issued an order directing him to show cause why he should not be held in contempt of court for abandoning his drug treatment obligations. Pursuant to this order, the trial court held a hearing, which resulted in the entry of an order holding T.N.

[1] This program is outlined in section 985.306, Florida Statutes (2004), as a program that allows a juvenile to receive substance abuse education and treatment prior to adjudication.

in indirect criminal contempt pursuant to section 985.216(2), Florida Statutes (2004). The court sanctioned T.N. by placing him in secure detention for ten days, after which he was to be transported to the ACTS Addiction Receiving Facility to be held there until he could be placed in residential treatment.

In his petition, T.N. claims that the legislative intent of section 985.216 was not to incarcerate juveniles who participate in the juvenile drug court program to avoid being adjudicated delinquent. Accordingly, T.N. argues that when a juvenile fails to uphold the terms of a drug court agreement, the appropriate procedure is not to hold the child in indirect criminal contempt, but rather to dismiss the child from the drug court program and return him or her to court for adjudication based on the original charges.

Although the terms of the agreement were originally part of a contract between T.N. and the State, by ratifying the agreement, the trial court placed T.N. under direct order to comply with the terms of the agreement. T.N.'s failure to do so subjected him to being found in indirect criminal contempt for failing to comply with the trial court's order. Although we do not find the trial court's finding that T.N. was in indirect criminal contempt of court to be error, we conclude that the sanction that the trial court imposed was in error.

The legislature has specified the possible sanctions that a trial court may impose for indirect criminal contempt. See § 985.216(2)-(3). Because the trial court's use of the ACTS Addiction Receiving Facility and the residential drug treatment program as sanctions for indirect criminal contempt are not contemplated within the statute, those sanctions were improperly imposed.

Accordingly, we quash that portion of the trial court's order that imposed these sanctions. On January 25, 2005, this court granted T.N.'s petition for writ of habeas corpus and ordered his immediate release.

CASANUEVA and CANADY, JJ., Concur.
DAVIS, J., Concurs with opinion.

DAVIS, Judge, Concurring.

I fully concur with the majority's opinion. However, I write to point out the difficult position in which the current status of the law places the trial court when dealing with juvenile drug offenders.

In an attempt to provide education and treatment for certain first-offender juveniles, the legislature authorized the implementation of the pretrial intervention program. Section 985.306 provides that pending charges may be dismissed as to those juveniles who comply with the program. However, the same statute provides that if the court finds that the juvenile did not successfully comply with the program, the court may order the juvenile to continue "in an education, treatment, or urine monitoring program" or the court may order that the prosecution on the pending charges be commenced. § 985.306(1)(c)(1). However, the statute is silent as to whether the treatment options may include the involuntary placement of the child in a residential drug treatment center.

As part of the procedure used to implement this statute, the juvenile court below attempted to address this issue by having T.N. enter into a contract by which he agreed that if he failed to comply with the intervention requirements, he could be placed in such a facility against his will. However, to provide the trial court with the authority to

enter such an order, the contract also states that the child agrees that his noncompliance would subject him to prosecution for indirect contempt of court and that upon such a finding, the court could impose the residential treatment as a sanction.

This is where the problem arises. In addition to establishing the intervention program and allowing the court to order "treatment" for noncompliance, the legislature also has limited the sanctions available to the trial court for use in punishing indirect criminal contempt. § 985.216. As the majority opinion notes, the use of a residential treatment center is not included as a possible sanction. We applaud the juvenile court for its attempt to implement the intervention program. We understand that for such a program to work, there must be some means of enforcement. However, the child's consent does not give the trial court the option of imposing sanctions not authorized by the legislature.

If the legislature intends for the court to have the authority to involuntarily order a noncompliant child into a residential treatment program prior to the adjudication of delinquency, the statute establishing the intervention program should so specify. If it is contemplated that such an order is an appropriate sanction for a finding of indirect criminal contempt, that provision should so state. However, until either of these statutes is amended, the trial court is left with a statutorily-created intervention plan that leaves unanswered multiple questions as to how to handle a noncompliant participant.