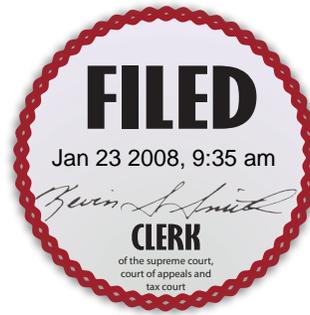


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

C.T.S.,)
)
Appellant-Defendant,)
)
vs.) No. 71A03-0708-JV-364
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
Cause No. 71J01-0704-JD-272

January 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

C.T.S. appeals his commitment to the Indiana Department of Correction (“the DOC”) following his admission that he committed an act that would constitute battery if committed by an adult. We reverse the dispositional order and remand.

Issue

C.T.S. presents a single issue for review: whether the juvenile court’s dispositional order awarding guardianship of C.T.S. to the Department of Correction is an abuse of discretion.

Facts and Procedural History

On April 10, 2007, thirteen-year-old C.T.S. was present at Brown Intermediate Center in South Bend and was verbally reprimanded by his teacher, Daniel Hoffman (“Hoffman”). C.T.S. attempted to strike Hoffman, but missed. C.T.S. then charged Hoffman, causing them both to fall to the floor. They wrestled until Hoffman was able to subdue C.T.S. During the scuffle, C.T.S. broke his thumb and injured his collarbone. Hoffman later experienced muscle soreness in his back.

C.T.S. was arrested the following day, but was released on electronic monitoring. On April 20, 2007, the State filed a delinquency petition alleging that C.T.S. committed acts that would have constituted battery and disorderly conduct if committed by an adult. On April 25, 2007, C.T.S. admitted the truth of the battery allegation, and the State moved to dismiss the disorderly conduct allegation.

On July 3, 2007, the juvenile court conducted a dispositional hearing and awarded wardship of C.T.S. to the DOC for housing in a correctional facility for children or a community-based correctional facility for children. C.T.S. now appeals.

Discussion and Decision

C.T.S. contends that the juvenile court's dispositional order awarding his guardianship to the DOC is punitive and rests upon the erroneous premise that he had a past delinquent history and had violated the terms of his probation.

The choice of a specific disposition of a juvenile adjudicated a delinquent child is generally within the discretion of the juvenile court, subject to the statutory considerations of the welfare of the child, the community's safety, and the policy of favoring the least-harsh disposition. D.P. v. State, 783 N.E.2d 767, 769 (Ind. Ct. App. 2003). A juvenile disposition will not be reversed absent a showing of an abuse of discretion. Id. An abuse of discretion occurs when the trial court's action is clearly erroneous and against the logic and effect of the facts and circumstances before the court, or against the reasonable, probable, and actual deductions to be drawn therefrom. Id.

At the dispositional hearing, probation officer Aaron Bucha made the following report to the juvenile court:

[C.T.S.] is thirteen years of age. He appears before the Court for the first time for disposition. The offense is one count of Battery, a Class D felony, when committed by an adult. He was detained, served four days in secure custody with no incident reports. His drug screen was negative upon detention intake. He is currently on the electronic monitoring program. He has been on that for 78 days. While on the monitor he has been residing with his grandmother, who has reported no problems with him. Prior to his detention he was living with his mother and she reported that he usually followed her rules. Our

concerns, Your Honor, other than negative peers that [C.T.S.] associates with and the problems at school, as indicted in the report, he was expelled from school. There was a history of behavioral problems. He's never been on probation. He's been doing okay since released from custody. Based on that, we are recommending that he be placed on probation. According to the Youth Assessment Screening Instrument, he's at a high risk to re-offend with a low amount of protective factors. Your Honor, due to the seriousness of the offense, the problems that he has had at school and his high risk, we would ask that he – as part of his probation continue on the electronic monitoring program for a period of up to ninety days.

(Tr. 3-4) (emphasis added). Although the probation officer and the Pre-Dispositional Report advised the juvenile court that C.T.S. lacked prior juvenile adjudications and had never been on probation, the juvenile court awarded wardship of C.T.S. to the DOC, stating the following reasons:

The juvenile has failed to abide by Court ordered terms of probation.
The present offense is serious in nature warranting placement in a secure facility.
The juvenile's past history of delinquent acts, even though less serious, warrants placement in a secure facility.
Lesser restrictive means of controlling the juvenile's behavior have been investigated or tried.
Furthermore, the juvenile's right to personal freedom is outweighed by the community's right to protection.

(App. 17.) C.T.S. had no final disposition in juvenile court prior to the instant matter. Nor had he ever been placed on probation and violated the terms of probation.¹ However, the dispositional alternative selected by the juvenile court clearly rests upon the erroneous premise that C.T.S. had a prior juvenile adjudication and had violated the terms of his probation. In light of the statutory policy favoring the least-harsh disposition, we reverse the

¹ C.T.S. had been referred to juvenile court at age nine for the commission of an act that would constitute battery if committed by an adult; the matter was successfully disposed of via an informal adjustment.

dispositional orders and remand to the juvenile court for consideration of the appropriate rehabilitative disposition for a juvenile who has committed an offense that would be battery if committed by an adult.

Reversed and remanded.

NAJAM, J., and CRONE, J., concur.

Subsequently, an allegation of criminal mischief was made and dismissed. Finally, C.T.S. was alleged to have been a runaway, but no action was taken.