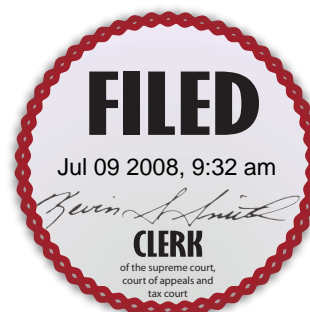


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

T.D., )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 49A02-0712-JV-1082

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Gary Chavers, Judge Pro Tempore  
The Honorable Scott B. Stowers, Magistrate  
Cause No. 49D09-0706-JD-1896

**July 9, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

T.D. appeals from the dispositional order entered after she was adjudicated a delinquent for committing Escape, as a Class C felony, when committed by an adult. T.D. presents a single issue for our review, namely, whether the evidence supports the adjudication.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

In 2006, T.D. was placed on suspended commitment to the Department of Correction after the trial court adjudicated her a delinquent child in cause numbers 49D09-0611-JD-4161 (“Cause Number 4161”) and 49D09-0609-JD-3296 (“Cause Number 3296”). As a result of the delinquency adjudications, the trial court ordered T.D. to be placed at Ladoga Academy (“Academy”).

On June 15, 2007, Tyra Tavert, a case manager at the Academy and another Academy staff member transported T.D. to court in Indianapolis for a hearing on a violation of her suspended commitment. At the conclusion of the hearing, the trial court ordered T.D. to return to the Academy. However, after leaving court, T.D. refused to get back into the Academy van and ran toward 25th Street. Tavert and the other Academy staff member reported the incident to the probation department and then returned to the Academy. T.D.’s mother later found her and returned her to the court.

The State filed an information alleging that T.D. was a delinquent child because she had committed two counts of escape, one as a Class C felony and one as a Class D felony, if committed by an adult. The court magistrates held an initial hearing on June 18

and an evidentiary denial hearing on July 9.<sup>1</sup> At the conclusion of the denial hearing, the court requested that the parties file briefs on the issue of whether “a secure residential facility, residential placement facility [is] lawful detention for purposes of the escape statute.” Transcript at 31. The parties filed their respective briefs to the court,<sup>2</sup> and, at a hearing on August 10, the court entered a true finding as to escape, as a Class C felony, and a not true finding as to escape, as a Class D felony.

On September 14, 2007, the court issued its dispositional order, which, contrary to the ruling announced on August 10, found that T.D. had admitted to both charges in the information. T.D. filed a Motion to Correct Dispositional Order and Quest History. On September 24, 2007, the court issued a nunc pro tunc order, purporting to correct the errors in the dispositional order. In November 2007, T.D. filed another motion for order nunc pro tunc, again requesting corrections to the dispositional order. In response, on November 9, 2007, the court issued a clarifying order, which provides in relevant part:

Comes now the Court having reviewed the motion and being duly advised in the premises CLARIFIES [its] order of 9/24/07 as follows:

“The Court having reviewed the testimony and evidence presented at Trial in this matter and having considered the Memorandum of Law presented by [T.D.’s] counsel, now finds, consistent with the Court’s specific findings in [its] order dated July 26, 2007 and issued on August 10, 2007, that count 1, Escape, a Class C Felony, if committed by an adult, is true; and also finds that count 2, Escape, a Class D Felony,

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<sup>1</sup> The transcript provides that the hearings in this case were held before magistrates, Gary Chavers and Scott Stowers. However, the transcript does not indicate which hearings were held before which magistrate. Gary Chavers, acting as Judge Pro Tempore, also signed the November clarifying order, which is the order appealed from.

<sup>2</sup> T.D. filed her brief on July 23. The State’s brief is included in the Appendix, but it is not file-stamped, nor does the Chronological Case Summary contain an entry showing that the State filed the brief with the trial court.

if committed by an adult, is not true. All other orders issued in the Court's order dated September 14, 2007, specifically the order closing this case are affirmed by this clarification."

Appellant's App. at 73. T.D. now appeals.

### **DISCUSSION AND DECISION**

T.D. contends that the evidence is insufficient to support the finding that she committed escape, as a Class C felony, if committed by an adult. Specifically, she argues that the State failed to prove that she was "lawfully detained when she ran from Ladoga staff." Appellant's Brief at 6. T.D. has waived the issue for review.

To prove the offense of escape, as a Class C felony, the State was required to show that she intentionally fled from lawful detention. See Ind. Code § 35-44-3-5(a) (LEXIS 2008). "Lawful detention" is defined as follows:

- (1) arrest;
- (2) custody following surrender in lieu of arrest;
- (3) detention in a penal facility;
- (4) detention in a facility for custody of persons alleged or found to be delinquent children;
- (5) detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance;
- (6) detention or extradition or deportation;
- (7) placement in a community corrections program's residential facility;
- (8) electronic monitoring;
- (9) custody for purposes incident to any of the above including transportation, medical diagnosis or treatment, court appearances, work, or recreation; or
- (10) any other detention for law enforcement purposes.

Ind. Code § 35-41-1-18(a).

In the charging information, the State alleged that T.D.

did knowingly or intentionally fail to return to lawful detention after being granted a limited period of leave, that is: by having been transferred by

representatives from Ladoga Academy to attend a court hearing in Marion County [sic] Superior Court, Judicial Division, and after having been ordered to return to Ladoga Academy to her secure placement, having failed to do so.

Appellant's App. at 11. T.D. argues that the State alleged escape under Indiana Code Section 35-41-1-18(a)(4), but failed to satisfy that subsection by not demonstrating that the Academy was a "secure placement facility." Appellant's Brief at 7. However, at the denial hearing, the trial court took judicial notice of the dispositional order in Cause Number 4161 with regard to the nature of T.D.'s placement at the Academy. T.D. did not include any pleadings or other documentation regarding her placement under Cause Number 4161, so we ordered her to supplement the record with the placement order from that case and any other order or document that was submitted to the trial court and was related to her disposition and placement in that case.

In response, T.D. supplemented the record with a copy of a pleading dated July 9, 2007, entitled "Denial Hearing on Violation Of: Probation/Suspended Commitment" in Cause Number 4161.<sup>3</sup> But T.D. is appealing from an adjudication that she committed the offense of escape on June 15, 2007. The order contained in the supplemental appendix was issued after the escape and as a result of an alleged escape on June 15; the supplemental appendix does not contain the placement order in Cause Number 4161 that existed on June 15.

We cannot determine the nature of T.D.'s placement at the Academy without reviewing a copy of the order for that placement. We asked T.D. to supplement the

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<sup>3</sup> The order contained in Appellant's Supplemental Appendix was issued after a denial hearing on the State's information charging that T.D. had violated the conditions of her probation/suspended commitment in Cause Number 4161.

appendix with that order, but she has not done so. As a result, T.D. has failed to meet her burden of presenting a complete record with respect to the issues raised on appeal. Finke v. N. Ind. Pub. Serv. Co., 862 N.E.2d 266, 272 (Ind. Ct. App. 2006), trans. denied. Thus, T.D. has waived the issue presented in her appeal.

Affirmed.

DARDEN, J., and BROWN, J., concur.