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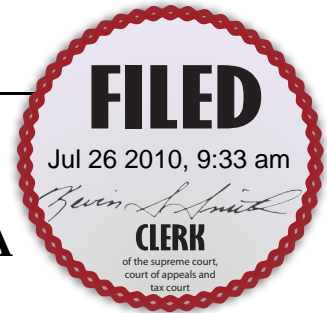
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**IN THE  
COURT OF APPEALS OF INDIANA**



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

No. 71A03-0912-JV-582

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APPEAL FROM THE ST. JOSEPH PROBATE COURT  
The Honorable Peter J. Nemeth, Judge  
Cause No. 71J01-0905-JD-000306

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**JULY 26, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPNACK, Senior Judge**

STATEMENT OF THE CASE

Appellant A.T.J. appeals the juvenile court's order that he be placed in the custody of the Department of Correction (D.O.C.). We affirm.

ISSUE

A.T.J. raises one issue for our review: Whether the juvenile court abused its discretion in not choosing a less restrictive disposition.

FACTS AND PROCEDURAL HISTORY

On May 22, 2009, the State charged fifteen-year-old A.T.J. with battery, a Class A misdemeanor if committed by an adult, after he confronted J.P., also a juvenile, punched him in the face and wrestled him to the ground. J.P., who suffered a swollen eye and several abrasions, required hospital treatment.

After an initial hearing on June 15, 2009, A.T.J. was equipped with an electronic monitor and released to the care of his grandparents. A.T.J. violated his release on August 31, 2009, when he went out of range of the monitor. He later tested positive for marijuana use.

On September 29, 2009, A.T.J. was adjudicated delinquent for committing the amended offense of disorderly conduct as a Class B misdemeanor if committed by an adult.<sup>1</sup> The juvenile court adopted the recommendation of the Probation Department, which considered A.T.J.'s failure to comply with probation in the past, his failed placement at Canyon State Academy, his previous completion of D.O.C. and Community Transition Plans, his most recent monitoring violation, his marijuana use and the likelihood of further violence. A.T.J. was placed under the wardship of the D.O.C. for assignment to Boy's School. A.T.J. now appeals.

#### DISCUSSION AND DECISION

A.T.J. contends that the juvenile court abused its discretion by failing to order the least restrictive (most family like) disposition pursuant to Ind. Code § 31-37-18-6. Specifically, A.T.J. contends that the juvenile court failed to consider his improvement in academics because of enrollment in an alternative school, his renewed relationship with his mother, and his improvement in behavior. A.T.J. suggests that probation with a suspended commitment is the most appropriate disposition.

The disposition of a child adjudicated to be delinquent is left to the sound discretion of the juvenile court, subject to the statutory considerations of the child's welfare, the community's safety, and the policy of favoring the least restrictive disposition. *J.B. v. State*, 849 N.E.2d 714, 717 (Ind. Ct. App. 2006). The juvenile court's disposition will be reversed only upon a showing of an abuse of discretion, which occurs

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<sup>1</sup> By agreement, the battery allegation was dismissed.

where the 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.*

A.T.J. centers his argument on *E.H. v. State*, 764 N.E.2d 681 (Ind. Ct. App. 2002), *trans. denied*. In *E.H.*, the juvenile court placed the child with the D.O.C. for a one-year term in a juvenile detention center. In determining that the one-year commitment was punitive and was not in furtherance of the rehabilitative goals of the juvenile justice system, this court noted that the juvenile court failed to consider neglect and abuse by the child's parents, the child's significant improvements with adjustment and reunification issues, and the lack of evidence that the child was a threat to the community. *Id.* at 686. We also noted that the only explanation provided by the juvenile court was that commitment to the D.O.C. was the next step after a suspended commitment. *Id.*

Our review of the evidence and the juvenile court's disposition order reveals significant differences between the present case and *E.H.* A.T.J. has shown on two occasions that he resorts to violence when provoked. In addition, the step-father of the victim in the present case testified that A.T.J. continues to harass the victim. The juvenile court adopted the probation report which reasonably considers that there is a high risk that A.T.J. will re-offend based upon the Youth Assessment Screening Instrument.

A.T.J. violated probation in a prior case and while awaiting disposition in this case, he violated his electronic monitoring and tested positive for use of marijuana. Moreover, A.T.J. formed the Mid-West Gang and has not so coincidentally been present when other juveniles have committed acts of theft, property damage (to J.P.'s girlfriend's vehicle), and flight from police. The juvenile court recognized that commitment to the D.O.C.'s Boy's School will provide safety to the community.

Furthermore, unlike in *E.H.*, the juvenile court considered improvements in the child's educational achievement and family reunification and determined that commitment to the D.O.C.'s Boy's School would continue these improvements by giving A.T.J. a more structured environment and by increasing his chances of success in the community.

After reviewing the evidence before the juvenile court, we cannot say that the court abused its discretion in ordering commitment to the D.O.C.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.