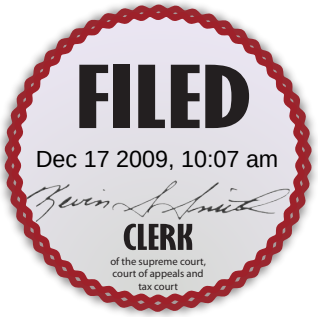


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# IN THE
# COURT OF APPEALS OF INDIANA

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|---|---|---|
| T.L., | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 49A02-0906-JV-583 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Scott B. Stowers, Magistrate
Cause No. 49D09-0901-JD-12

**December 17, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

T.L. appeals the modification of his juvenile delinquency disposition, presenting the following restated issue for review: Did the juvenile court err in committing T.L. to the Department of Correction without conducting an evidentiary hearing?

We affirm.

The underlying facts are that on January 5, 2009, the State filed a delinquency petition alleging T.L. had committed acts that would constitute the offenses of class B felony auto theft, class A misdemeanor criminal trespass, and class B misdemeanor unlawful entry of a vehicle if committed by an adult. On January 23, 2009, T.L. and the State entered into a plea agreement whereby he agreed to admit the allegation of auto theft in exchange for the State's agreement to dismiss the other two allegations. The two sides agreed that T.L. would be placed on formal probation, but that "[t]he plea agreement does not preclude or prohibit placement outside the home, if the Court deems it appropriate." *Appellant's Appendix* at 45. The probation department prepared a pre-dispositional report, dated January 27, 2009, for the juvenile court's use at the dispositional hearing. The report detailed T.L.'s lengthy history of arrests, true findings of juvenile delinquency, violations of previous probations, and unsuccessful home detentions. Noting this history, and the fact that T.L. had on many previous occasions received services through the juvenile court, the probation department recommended a period of commitment to the Department of Correction (DOC), followed by a period of formal probation. In a February 6, 2009 dispositional order, however, the juvenile court rejected the recommendation for commitment to the DOC and placed T.L. on probation. The court also determined that T.L. should be placed at Lutherwood, a treatment

facility, where he would be required to adhere to a treatment plan and recommendations made by Lutherwood personnel.

On April 16, 2009, the probation department filed an Information of a Delinquent Child Technical Violation of Probation, seeking modification of the terms of probation. The information alleged: "On 4-16-09, around 6:20 am [T.L.] pushed a staff member and hit him in the head then grabbed the staff's keys and ran from the facility eventually throwing the keys back at the staff who pursued him. [T.L.'s] whereabouts currently remain unknown to Lutherwood or this Court." *Id*. at 75. T.L. was apprehended two days later and tested positive for marijuana at the time. Lutherwood was not willing to take T.L. back because of the danger he posed. On April 20, 2009, the probation department filed a review summary concerning T.L.'s time at Lutherwood. According to Lutherwood, in addition to the events described above, T.L. had sexual intercourse with a female resident on two occasions, hit another resident in the eye, and did not follow his treatment plan.

On April 20, 2009, at the initial hearing on the allegation of probation violation, T.L. denied the allegations of violations and asked for an attorney. The juvenile court granted that request and determined that T.L. would be placed outside the home because he represented "a threat to public safety[.]" *Id*. at 82. At the May 11 hearing on the petition to modify probation, the juvenile court rejected T.L.'s request for continued probation and services and committed T.L. to the custody of the DOC. T.L. challenges the juvenile court's order.

1.

When reviewing a specific disposition for a delinquent child, our standard of review is

as follows:

> [T]he choice of the specific disposition of a juvenile adjudicated a delinquent child is a matter within the sound discretion of the juvenile court and will only be reversed if there has been an abuse of that discretion. The juvenile court's discretion is subject to the statutory considerations of the welfare of the child, the safety of the community, and the policy of favoring the least harsh disposition. An abuse of discretion occurs when the juvenile court's action is clearly erroneous and against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual inferences that can be drawn therefrom. Hence, the juvenile court is accorded wide latitude and great flexibility in its dealings with juveniles.

*J.S. v. State,* 881 N.E.2d 26, 28 (Ind. Ct. App. 2008) (internal citations omitted).

T.L. challenges his commitment to the DOC based upon the contention that the juvenile court violated his due process rights by committing him to the DOC based upon a violation of conditions of probation without conducting an evidentiary hearing before making that determination. Essentially, he asks that we impose a per se requirement that a juvenile court must conduct an evidentiary hearing when a dispositional decree is modified based upon allegations of misconduct.

In evaluating T.L.'s contention, we begin by noting that a juvenile court has wide latitude in dealing with juveniles, with the primary goal being to rehabilitate rather than to punish. *Matter of L.J.M.*, 473 N.E.2d 637, 640 (Ind. Ct. App. 1985). The governing statutes reflect this. Ind. Code Ann. § 31-30-2-1 (West, PREMISE through 2009 1st Regular Sess.) provides that a juvenile court has jurisdiction over a delinquent child until the child reaches the age of twenty-one or the DOC is awarded guardianship of the child. *R.E.I. v. State*, 885 N.E.2d 93 (Ind. Ct. App. 2008). Ind. Code Ann. § 31-37-20-2(c) (West, PREMISE through 2009 1st Regular Sess.) provides that a juvenile court shall conduct a review of the

dispositional decree at least every six months, "or more often, if ordered by the court." Such a review may be triggered, among other things, by the court's own motion or, as here, by a petition for modification of the dispositional decree filed by the probation department. *See* I.C. § 31-37-22-1 (West, PREMISE through 2009 1st Regular Sess.). When a hearing is conducted on a motion for modification filed by the probation department, "the probation officer shall give notice to the persons affected and the juvenile court shall hold a hearing on the question if requested." I.C. § 31-37-22-3 (West, PREMISE through 2009 1st Regular Sess.). At that hearing, the juvenile must be afforded an opportunity to be heard and to make recommendations to the court on the juvenile's behalf. *See* I.C. § 31-37-18-1.3 (West, PREMISE through 2009 1st Regular Sess.).

To the above requirements (i.e., notice, and opportunity to be heard and make recommendations), T.L. asks this court to add a requirement that there must be an evidentiary hearing with all of the attended features thereof (e.g., the right to present evidence and cross-examine witnesses). We are reluctant to engraft such a requirement where the legislature has heretofore not been inclined to do so. Among other things, we believe such would be inconsistent with "wide latitude and great flexibility" accorded to juvenile courts in their dealings with juveniles. *J.S. v. State,* 881 N.E.2d at 28. Perhaps it is for this reason that the legislature has not enacted, nor have our courts engrafted, a full panoply of specific procedural hallmarks of due process in this setting. Rather, "[t]he standard for determining what due process requires in a particular juvenile proceeding is 'fundamental fairness.'" *S.L.B. v. State,* 434 N.E.2d 155, 156 (Ind. Ct. App. 1982). That is, rather than create a

checklist of procedural requirements, thereby arguably diminishing the desired flexibility, we assess the fundamental fairness of the proceeding. Thus, for instance, we have held that although written notice alleging the grounds for executing previously suspended commitment might be preferable, the fundamental fairness standard was met where the juvenile attended the hearing and did, in fact, know of the allegations of violation. *See id*.

Although we can certainly envision circumstances in which due process would require an evidentiary hearing, this is not one of them. T.L. was apprised of the allegations of violations upon which the probation department's petition for modification was based and was notified of the hearing date and subject matter. He attended the hearing, was represented by counsel, and was given an opportunity to address the probation department's petition as he saw fit. Although not addressing any particular allegation, his counsel admitted to the court at the hearing that "[T.L.] was not successful at Lutherwood[.]" *Transcript* at 8. Thereafter, the court modified its dispositional decree and remanded T.L. to the custody of the DOC. If T.L. had not admitted his lack of success at Lutherwood, or if the juvenile court's disposition was based upon a finding that T.L. had violated specific conditions as alleged in the petition for modification, then due process might counsel in favor of requiring an evidentiary hearing. Neither of these occurred, however. Under these circumstances, T.L. was not deprived of due process and I.C. § 31-37-22-1 is not unconstitutional as applied to him. We note, in fact, that the juvenile court specifically declined to enter a finding on any of the allegations contained in the modification petition. Instead, it "order[ed] the violation dated 4/16/09 dismissed and closed." *Appellant's Appendix* at 93. Moreover, the court noted that "[t]he

parties advise[d] the Court they wish to rely on the Pre-Dispositional Report under Cause Number 49D090901JD000012 and proceed to disposition[.]" *Id*. In other words, by agreement of the parties, the court modified T.L.'s disposition considering only the January 27, 2009 pre-dispositional report it had originally considered at the February 6 hearing. That report, it will be remembered, detailed T.L.'s lengthy history of juvenile delinquent behavior and his history of failures at rehabilitation and services previously ordered by the court. It also contained the probation department's recommendation that T.L. be committed to the DOC. The only "new" information before the court at the May 11 review hearing was the admission by T.L.'s attorney that T.L.'s commitment to Lutherwood was unsuccessful.

In summary, although the May 11 hearing was prompted by the probation department's petition for modification of disposition, it functioned as a periodic review hearing under I.C. § 31-37-20-2(c). The State did not present evidence to substantiate the allegations contained in the petition for modification, but this is of no importance as the juvenile court dismissed the petition and proceeded to disposition upon the basis of the February 6 pre-dispositional report, by agreement of the parties. Upon the information contained in that report, and mindful of T.L.'s admission through his attorney that his placement at Lutherwood had been unsuccessful, the trial court modified the dispositional order and committed T.L. to the DOC. We conclude that these proceedings were fundamentally fair and thus consistent with due process. Therefore, the juvenile court did not

abuse its discretion in committing T.L. to the DOC.[1]

Judgment affirmed.

NAJAM, J., and BRADFORD, J., concur.

[1] We observe in passing that T.L.'s attorney argued at the May 11 hearing that because the plea agreement called for probation, the juvenile court had no authority to commit T.L. to the DOC. T.L. has not presented this argument on appeal. Nonetheless, the State notes this argument and addresses the possibility that "by accepting this plea agreement, the court may have been accepting a limit on its otherwise expansive ability to modify the disposition, namely a limit that it could only modify upon a finding of violation." *Appellee's Brief* at 9. The State cites language in the plea agreement to the effect that "[t]he plea agreement does not preclude or prohibit placement outside the home, if the Court deems it appropriate." *Appellant's Appendix* at 45. The State posits that commitment to the DOC is "placement outside the home" and thus not precluded by terms of the plea agreement. Indeed, with this plea agreement in place, the State argued for commitment to the DOC at the original dispositional hearing, an argument that the court originally rejected because it chose to give T.L. another chance. T.L. acknowledged as much at the May 11 hearing as he argued for yet another one: "Judge Stowers I know that I've asked you for chances on top of chances and you gave them to me multiple times. I'm just asking just this last time." *Transcript* at 12. Upon reconsideration and review at the May 11 hearing, the court implemented the probation department's original recommendation.