

MEMORANDUM DECISION

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.



ATTORNEYS FOR APPELLANT

Paul M. Blanton
Meghan F. Campbell
Blanton & Pierce, LLC
Jeffersonville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Steven J. Hosler
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

T.P.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Plaintiff

October 27, 2021

Court of Appeals Case No.
21A-JV-926

Appeal from the Martin Circuit
Court

The Honorable Lynne E. Ellis,
Judge

Trial Court Cause No.
51C01-2008-JD-55

May, Judge.

- [1] T.P. appeals from the trial court’s dispositional order, which placed T.P. in the Indiana Department of Correction (“DOC”) for an indeterminate length of

time. T.P. asserts the trial court abused its discretion when making that placement. We affirm.

Facts and Procedural History

- [2] In the early morning hours of August 5, 2020, fifteen-year-old T.P. was at his Guardian’s house in Shoals, Indiana, with friends, but without adult supervision. T.P. and his friends stayed up all night and used drugs. At some point, T.P. retrieved his Guardian’s gun from beneath her bed. Around 6:00 am, under circumstances not fully clear from the record because the teens provided conflicting stories, T.P. shot his best friend, twelve-year-old B.C., in the chest. B.C. died at the scene.
- [3] The State alleged T.P. was a juvenile delinquent for committing an act that would be Level 5 felony reckless homicide¹ if committed by an adult. T.P. admitted that allegation, and the court ordered preparation of a pre-dispositional report (“PDR”). While awaiting disposition, T.P. was placed in secure detention at Southwest Indiana Regional Youth Village (“Southwest”).
- [4] At the initial dispositional hearing on February 24, 2021, the trial court heard evidence and argument. The Probation Department recommended placement in the DOC, and the State argued T.P. should be placed in DOC until he turns twenty-one. T.P. presented character witnesses and argued for probation and

¹ Ind. Code § 35-42-1-5.

home detention. At the end of the hearing, the trial court expressed dissatisfaction with either of those options. First, the court addressed why it would not release T.P. to the custody of his Guardian:

Unfortunately, this young man is a product of our society. We talk about least restrictive and family autonomy. [Guardian], I had a conversation with you, and you sat back there in the gallery when your husband . . . asked for a modification of his child molesting and I told you at that time, you understand that he can't be around children under the age of 16. And you didn't follow through with that. You're – you proved to the Court that you had no interest in obeying Court orders. You left town with a loaded gun in the house. And didn't have supervision. And unfortunately, [B.C.] suffered your lack of parenting.

And I say that with – with broken heart. Because the concern that I have is that the parent doesn't tell a child and teach a child the difference between right and wrong and to obey the law and to stand by your word then they're not going to have a chance in society. And that is a reason why I will not consider home detention or probation. Because I believe [T.P.] has a better opportunity of becoming . . . a productive adult and member of society.

(Tr. Vol. 2 at 115-6.) Second, the court explained its concern that T.P. would be released from DOC after only six months, when the record indicated he needed treatment for much longer to “be the best person he can be.” (*Id.* at 118.) Accordingly, the court continued the dispositional hearing for thirty days so that the parties had time to investigate alternative placements: “I don't want him to suffer in DOC. So if you find a place in Indianapolis, or you find a

place in, you know, Maine, find me a place he can go besides DOC.” (*Id.* at 118.)

[5] The parties returned to continue the dispositional hearing on April 30, 2021. T.P.’s probation officer Melissa Lottes testified she had contacted four residential youth facilities and three had declined to accept T.P. due to the seriousness of his delinquent act. The fourth, Southwest, where T.P. had been housed awaiting disposition, was willing to accept T.P. in a residential placement, but he did not meet the criteria for their drug treatment program and, thus, would not receive intensive drug treatment if he were placed there.² This led Lottes to opine that T.P. should be placed in the DOC to receive the proper treatment.

[6] The President and CEO of Southwest, Mollie Ewing, testified that Southwest’s residential program was “staff secure” – meaning that “children are never without staff supervision” – but it is not a “private secure” facility, for which all the egress doors would be locked. (Tr. Vol. 2 at 147.) In contrast, the secure detention facility at Southwest, where T.P. had been staying for a year awaiting disposition, was a locked secure facility that met DOC facility standards. Ewing was unsure, given T.P.’s outbursts and destruction of property in Southwest’s secure detention, how T.P. would adjust when he transferred from

² The President and CEO of Southwest, Mollie Ewing, testified by telephone that Southwest, as a private facility, provides intensive group substance abuse treatment to those residents for whom it can receive reimbursement from Medicaid. However, “Medicaid doesn’t recognize cannabis abuse,” even for daily drug users like T.P. (Tr. Vol. 2 at 149-50.)

a locked facility to a staff secure facility. The Director of Detention at Southwest, James Workman, who had been interacting with T.P. on a regular basis since his detention began, testified “my belief is [T.P.] does better in the type of environment that I provide.” (Tr. Vol. 2 at 158.)

[7] After hearing that additional evidence, the trial court committed T.P. to the DOC. The court’s dispositional order included the following findings:

- 1) Nature of the crime prevented a less restrictive placement;
- 2) Safety of the community is at risk if juvenile does not receive necessary counseling and therapy;
- 3) Current detention director testified that a more structured environment was in the juvenile’s best interest;
- 4) Inability of the guardian to supervise the juvenile;
- 5) Juvenile had numerous write-ups while in secure detention;
- 6) The staff secure residential placement that would accept the juvenile could not provide adequate substance abuse therapy as recommended by the Diagnosis Evaluation;
- 7) There were letters of denied acceptance to other residential facilities due to the nature of the offense;
- 8) A commitment to the Indiana Department of Corrections is in the juvenile’s best interest.

(Appellant’s App. Vol. 3 at 95 (errors in original).) Furthermore, the court noted that, while T.P. did not have any prior adjudications as a delinquent, the commitment to DOC was necessary “due to the seriousness of the offense; the repeated write-ups in secure detention that include destruction of property at Southwest Indiana Regional Youth Villages resulting in a \$1,506.00 judgment entered against said juvenile; and, to ensure the safety of the community.” (*Id.*) The court recommended T.P. receive the following treatments in the DOC, as recommended by the Diagnostic Evaluation: “substantial substance abuse

counseling; grief therapy; cognitive behavioral thinking; stress management; healthy coping strategies; and family therapy.” (*Id.* at 96.) The court then reiterated that T.P.’s disposition to the DOC was made because it was in the “[b]est interests of community safety and the best option for juvenile to receive rehabilitative programs as referred to in the diagnostic evaluation.” (*Id.* at 96-7.)

Discussion and Decision

[8] T.P. challenges the order that he be placed in the custody of the DOC. “The specific disposition of a delinquent child is within the juvenile court’s discretion,” *K.S. v. State*, 114 N.E.3d 849, 854 (Ind. Ct. App. 2018), *trans. denied*, and we thus review a trial court’s dispositional order for an abuse of discretion. *Id.* A decision is an abuse of discretion if it is clearly against the logic and effect of the facts and circumstances before the court or against “the reasonable, probable, and actual deductions to be drawn” from those facts and circumstances. *Id.*

[9] While juvenile courts have “wide latitude and great flexibility” in fashioning dispositions for delinquents, *id.* (quoting *C.T.S. v. State*, 781 N.E.2d 1193, 1203 (Ind. Ct. App. 2003), *trans. denied*), our legislature delineated factors the trial court should consider as it makes its decision:

If consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that:

(1) is:

(A) in the least restrictive (most family like) and most appropriate setting available; and

(B) close to the parents' home, consistent with the best interest and special needs of the child;

(2) least interferes with family autonomy;

(3) is least disruptive of family life;

(4) imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian; and

(5) provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

Ind. Code § 31-37-18-6.

[10] T.P. argues the trial court's decision "violated the statutory considerations of the welfare of the child, the safety of the community, and the policy of favoring the least harsh disposition." (Appellant's Br. at 13 (italics removed).) In support, T.P. cites portions of the PDR and the DOC's Diagnostic Evaluation and Psychological Evaluation, which demonstrate such facts as: T.P.'s remorse, his insignificant juvenile history, his absent biological parents, his substance abuse and employment histories, his low risk to reoffend, and his need for "extensive" individual and family therapy. (*Id.* at 16.)

[11] We acknowledge the facts cited by T.P., but we nevertheless cannot find the trial court abused its discretion under the circumstances it faced. As the trial court made abundantly clear at the end of the initial dispositional hearing, the court did not want to place T.P. in the DOC. (*See* Tr. Vol. 2 at 116-18.) The

court wanted to place T.P. in a secure residential facility where he could receive extended therapy, work toward finishing high school, and become a productive member of society. This is why the court delayed its dispositional decision while giving the parties additional time to find a more proper placement for T.P. Unfortunately, the only placement that could be located – because most residential facilities would not accept a juvenile who had committed an act that would be reckless homicide – was a facility that would not provide the intensive group substance abuse treatment that T.P. needed for his daily marijuana abuse.

[12] The trial court's refusal to place T.P. in home detention or probation was supported by evidence in the record, including the testimony of T.P.'s probation officer, Melissa Lottes:

One, as noted in the PDR, is the lack of supervision in the home. The family's had prior involvement with DCS. At the time of the offense, [Guardian] was not home, and he was allowed access to a gun without any adult supervision. Also, the seriousness of the offense. We now have a deceased youth from our community. And so with not much prior criminal history for the youth, this is a big one.

As well as the continued noncompliance with the – at Southwest while in detention. There's – I think it was discussed in the – in the report that he had destroyed a day room, causing over \$1,500 worth of damage that they're requesting restitution for. Aggressive – or aggressive behavior towards staff. There was also a report, during that incident, the staff member had written up that he threatened to want to kill another youth at the facility. Peers, when he's out with his friends, he even stated they tend to

be troublemakers. And so there was just a continuum of bad choices when he was with his friends, and I just feel like the [DOC] will put him into the programs that he is appropriate for, and they will determine what kind of structure and plan that he needs.

(Tr. Vol. 2 at 19.)

- [13] The court's refusal to place T.P. in Southwest's staff-secure residential program was supported by the testimony indicating T.P. would not receive intensive group therapy for his daily cannabis abuse in that program and by the testimony of the Director of Detention who had been working with T.P. for a year and believed T.P. would do better in a more secure and structured program. While DOC may not be the ideal placement, the evidence supported the trial court's findings that it was the least restrictive placement that would serve T.P.'s best interests. *See R.H. v. State*, 937 N.E.2d 386, 391 (Ind. Ct. App. 2010) (placement in DOC was in juvenile's best interests, despite lack of prior juvenile history, based on seriousness of delinquent acts, behavior while in detention, and parents' enabling attitudes). Accordingly, the trial court did not abuse its discretion when it placed T.P. in the DOC.

Conclusion

- [14] Because T.P. has not demonstrated the trial court abused its discretion when it placed him in the DOC, we affirm.

- [15] Affirmed.

Vaidik, J., and Molter, J., concur.