

## 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.



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### ATTORNEY FOR APPELLANT

Karyn Price  
Lake County Juvenile Public Defender  
Crown Point, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
Samuel J. Dayton  
Deputy Attorney General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

C.T.L.,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

September 29, 2022

Court of Appeals Case No.  
22A-JV-962

Appeal from the Lake Superior  
Court

The Honorable Thomas P.  
Stefaniak, Jr., Judge

The Honorable Jeffrey Miller,  
Magistrate

Trial Court Cause No.  
45D06-2011-JD-464

**Brown, Judge.**

[1] C.T.L. appeals the juvenile court's order committing him to the Indiana Department of Correction (the "DOC") and argues that the juvenile court violated Ind. Criminal Rule 25 by not providing him the opportunity to consult with counsel prior to a hearing on July 13, 2021. He also asserts the court abused its discretion when it awarded wardship to the DOC. We affirm.

### *Facts and Procedural History*

[2] On November 9, 2020, the State filed a Request for Authorization to File Petition alleging that C.T.L. was a delinquent. Specifically, the State alleged that C.T.L. committed acts which, if committed by an adult, would constitute two counts of domestic battery as class A misdemeanors and criminal mischief as a class B misdemeanor. That same day, the court authorized the filing of the petition.

[3] On January 12, 2021, the court entered an Order on Plea Agreement and Dispositional Decree which found that C.T.L. admitted to committing battery which would constitute a class B misdemeanor if committed by an adult and that the State agreed to dismiss the remaining allegations. The court placed C.T.L. on probation for a period of six months and ordered him to participate in home-based services with Family Focus and attend the Day Treatment Program at Campagna.

[4] On April 28, 2021, the Juvenile Probation Office filed a Request for Additional Services asking to increase C.T.L.'s services to including mentoring with Urban Suns. The trial court granted the request on May 7, 2021.

[5] On June 17, 2021, Probation Officer Enith Jo Walters filed a Verified Motion for Modification alleging that C.T.L. violated the terms of probation by failing to attend Campagna Academy regularly, refusing to participate in court ordered home-based services, and testing positive for THC on May 27, 2021. Probation Officer Walters asserted that she believed that the following modification was necessary: “Psychological evaluation to determine potential cognitive limitations or behavioral disorders, for recommendation of residential treatment.” Appellant’s Appendix Volume II at 77. She requested that the court “make a preliminary inquiry to determine whether the interest of the public or the child require[d] that further action be taken.” *Id.*

[6] On July 13, 2021, the court held a hearing at which C.T.L. and his mother appeared. Upon questioning by the court, C.T.L. and his mother indicated that they understood the allegations. The following exchange then occurred:

THE COURT: Do you all want to get an attorney to represent you or do you want to go forward without one?

THE MOTHER: I guess without an attorney because I don’t have one.

THE COURT: Do you want him to have one?

THE MOTHER: I don’t have any money to pay for one. I do not have any attorney.

Transcript Volume II at 5. Upon questioning by the court, C.T.L. admitted to violating his probation. The court reset the matter for disposition and granted the modification petition.

- [7] On July 20, 2021, the court entered an Order Continuing the Dispositional Hearing in which it appointed counsel for C.T.L. On September 28, 2021, the court held a hearing at which C.T.L., his counsel, and his mother appeared. C.T.L.'s counsel stated in part: "I would, also, for the Record, point out that [C.T.L.] wasn't appointed counsel at the modification hearing; and he admitted without the benefit of talking to counsel." *Id.* at 17-18. He also argued that there was not a need to send C.T.L. to the DOC. After some discussion, the court "set the matter over for further disposition." *Id.* at 27.
- [8] On September 30, 2021, the Indiana Department of Child Services filed a Consideration Report recommending in part that C.T.L. be ordered to participate in CAF services through Geminus.
- [9] On October 19, 2021, the court held a hearing. The court asked C.T.L.'s counsel if he was prepared to go forward with the dispositional hearing, and counsel answered affirmatively. The court informed C.T.L. that it thought "we have to let you participate in your decision here" and asked him what he wanted. *Id.* at 46. C.T.L. indicated that he wanted to "[g]o back to high school, normal high school." *Id.* The court indicated that C.T.L. would still be on probation and probation would be checking on his school attendance. The court took the matter under advisement "in order to give them a chance to see if they can get him enrolled." *Id.* at 49.
- [10] On November 9, 2021, the court entered a Status Order ordering C.T.L. to remain on probation and participate in Circle Around Families services through

Geminus, Day Reporting with 4th and Goal, mentoring, individual and group counseling, and random drug screens. The court also discontinued services of Family Focus and Campagna.

- [11] On February 9, 2022, Probation Officer Walters filed a Verified Motion for Modification alleging that C.T.L. had failed to attend 4th and Goal during January for day reporting, tested positive for marijuana on January 10 and 18, 2022, failed to participate in individual therapy, and had not attended Hammond High School after his first week of enrollment on January 18, 2022.
- [12] On March 29, 2022, the court held a hearing at which C.T.L. appeared with counsel who indicated that he believed C.T.L. was prepared to admit to the terms of the modification. C.T.L. indicated that he was willing to admit that he violated his probation and stated that he did not want to go to trial. C.T.L. admitted that he failed to attend 4th and Goal in January for his day reporting, tested positive for marijuana on two occasions, failed to participate in individual therapy, and had not attended Hammond High School since January 2022.
- [13] Probation Officer Walters recommended that C.T.L. be remanded to the DOC for placement at the Indiana Boys School. The prosecutor asserted the best placement for C.T.L. was the DOC “for him to receive the services in a secured environment where we know he’s going to receive both educational and other services that he’s in need of from the Division of Youth Services.” *Id.* at 58.

[14] C.T.L. testified in part that his mother was “not a good person” and he wanted to live with his father in Illinois who had not been active in his life until he was ten years old and who had not talked much with him until he was fourteen or fifteen years old. *Id.* at 61. C.T.L.’s mother stated:

[C.T.L. has] never allowed me to guide him. He’s always – at home, he refuses to do anything. He wants to be smoking marijuana. He doesn’t want to go to school. Same thing that is happening here. He’s very violent with his youngest brother. I don’t want him in my home because he’s very violent at home. He refuses to go to work. He refuses to go to school. He refuses to do anything at home. I have always supported him with psychologists. I have taken him to psychologists since he was little and dealing with those issues in school. I take him to the dentist. I take him to the pediatrics. I make his food. I don’t know why he is saying those things in here and I don’t want him with me. He can go with his dad because he’s very ungrateful. He’s very violent. I cannot even talk to him because he is very angry. He doesn’t listen to me. If you want to give him advice, he refuses to listen. He’s closed minded. He just won’t listen.

*Id.* at 67-68.

[15] After some discussion between the court and C.T.L., the court stated that it did not believe C.T.L., it had given him “every opportunity to do better,” and C.T.L. refused. *Id.* at 83. That same day, the court entered an Order on Factfinding and Modified Dispositional Decree which awarded wardship of C.T.L. to the DOC for housing in any correctional facility for children.

## ***Discussion***

### **I.**

[16] C.T.L. argues that the trial court violated Ind. Criminal Rule 25 for not providing him the opportunity to consult with counsel prior to the July 13, 2021 hearing. The State argues that, although the juvenile court did not appoint counsel for C.T.L. when he admitted to violating his probation for the first time, C.T.L. did have counsel when he admitted to violating his probation as outlined in the second modification petition, and those admissions were sufficient to support his placement in the DOC.

[17] Ind. Criminal Rule 25 is titled “Right to Counsel in Juvenile Delinquency Proceedings” and Rule 25(B)(3) provides:

[C]ounsel for the child must be appointed:

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(3) before convening any hearing in which the court may find facts (or the child may admit to facts) on the basis of which the court may impose the following:

- (a) wardship of the child to the Department of Correction;
- (b) placement of the child in a community based correctional facility for children;
- (c) confinement or continued confinement of the child in a juvenile detention center following the earlier of an initial or detention hearing;
- (d) placement or continued placement of the child in a secure private facility following the earlier of an initial or detention hearing;

(e) placement or continued placement of the child in a shelter care facility following the earlier of an initial or detention hearing; or

(f) placement or continued placement of the child in any other non-relative out of home placement following the earlier of an initial or detention hearing; or unless or until a valid waiver has been or is made under subsection (C) below.

Rule 25(C) provides that “[f]ollowing the appointment of counsel under subsection (B), any waiver of the right to counsel shall be made in open court, on the record and confirmed in writing, and in the presence of the child’s attorney.”

[18] While the juvenile court did not appoint counsel to represent C.T.L. at the July 13, 2021 hearing, the court ultimately reset the matter for disposition and subsequently appointed counsel for C.T.L. C.T.L. does not assert that he was placed in any of the situations addressed by Rule 25(B)(3)(a)-(f) following that hearing and before counsel was appointed. Further, Probation Officer Walters subsequently filed a second motion for modification, and C.T.L. appeared at the March 29, 2022 hearing with counsel who indicated that he believed C.T.L. was prepared to admit to the terms of the modification. While represented by counsel, C.T.L. admitted that he failed to attend 4th and Goal in January for his day reporting, tested positive for marijuana on two occasions, failed to participate in individual therapy, and had not attended Hammond High School since January 2022. Under these circumstances, we cannot say that reversal is warranted on the basis of Ind. Criminal Rule 25.



## II.

[19] C.T.L. next asserts the juvenile court abused its discretion in awarding wardship to the DOC. The juvenile court is given wide latitude and great flexibility in determining the disposition of a delinquent child. *D.A. v. State*, 967 N.E.2d 59, 65 (Ind. Ct. App. 2012). However, its discretion is circumscribed by Ind. Code § 31-37-18-6, which provides that, “[i]f consistent with the safety of the community and the best interest of the child,” the juvenile court shall enter a dispositional decree that is “in the least restrictive (most family like) and most appropriate setting available” and “close to the parents’ home, consistent with the best interest and special needs of the child”; least interferes with family autonomy; is least disruptive of family life; imposes the least restraint on the freedom of the child and the child’s parent, guardian, or custodian; and provides a reasonable opportunity for participation by the child’s parent, guardian, or custodian. Under the statute, placement in the least restrictive and most appropriate setting available applies only “[i]f consistent with the safety of the community and the best interest of the child.” *J.D. v. State*, 859 N.E.2d 341, 346 (Ind. 2007) (citing Ind. Code § 31-37-18-6). We review the juvenile court’s disposition for an abuse of discretion. *R.H. v. State*, 937 N.E.2d 386, 388 (Ind. Ct. App. 2010).

[20] The record reveals that, at the March 29, 2022 hearing, C.T.L. admitted that he failed to attend 4th and Goal in January for his day reporting, tested positive for marijuana on two occasions, failed to participate in individual therapy, and had not attended Hammond High School since January 2022 despite his request at

the October 19, 2021 hearing that he attend normal high school. When asked why she was recommending that C.T.L. be remanded to the DOC for placement at the Indiana Boys School, Probation Officer Walters answered:

Probation is making this recommendation due his [sic] noncompliance in the home and the community. Also, he's been afforded numerous services through the realm of the Juvenile Court. Everything from placement services, day treatment services, individual/group counseling and mentoring all through Circle Around Families and yet, he has failed to avail himself of said services.

Transcript Volume II at 56.

[21] When asked by the court if C.T.L. went to regular school, Probation Officer Walters stated that he enrolled in January but failed to participate and that “[t]hey even did an altered schedule for him where it would benefit him to just go a few hours a day and he still failed to participate.” *Id.* She also stated that “[t]hey were offering . . . to do some . . . special education testing, but he never appeared at school for them to start the testing services.” *Id.* She also testified that C.T.L. had several appointments with Circle Around Families assisting him in scheduling appointments “but at every turn, he made himself unavailable to make these appointments.” *Id.* at 59.

[22] C.T.L.’s counsel asked Probation Officer Walters if there were any other services that would be available to C.T.L. that he had not previously received, and she answered:

[C.T.L.] has received the gamut of services within the realm of Juvenile Court. We afforded him placement services, individual counseling, group counseling. He received Circle Around Families within the gamut of services with mentoring, tutoring, if he made himself available. They assist in job hunting, the educational component; however, all service providers have had much difficulty. They've been met with much resistance with [C.T.L.] in reference to rendering these services to him. So, he hasn't received any because he does not avail himself to the service providers.

*Id.* She also stated that they had scheduled team meetings, they had “constantly gone to his residence and he’s not there,” C.T.L. was playing video games during the last service provider team meeting, and C.T.L. “got on [a] call with no shirt on” and “a blanket over his head” and “it’s pretty much just some defiance happening as well as him just not availing himself.” *Id.* at 60.

[23] C.T.L.’s mother stated that C.T.L. “refuses to do anything,” wants to smoke marijuana, does not want to go to school, and was “very violent.” *Id.* at 67-68. The court stated that it had given C.T.L. “every opportunity to do better” and he refused. *Id.* at 83.

[24] Based upon the record and under the circumstances, we conclude that the court’s ordered placement is consistent with C.T.L.’s best interests and the safety of the community and find no abuse of discretion. *See D.E. v. State*, 962 N.E.2d 94, 97 (Ind. Ct. App. 2011) (holding the juvenile court did not abuse its discretion in placing D.E. in a DOC facility where earlier attempts to rehabilitate his behavior were unsuccessful).

[25] For the foregoing reasons, we affirm the juvenile court.

[26] Affirmed.

Altice, J., and Tavitas, J., concur.