

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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IN THE COURT OF APPEALS OF INDIANA

K.T.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 28, 2022

Court of Appeals Case No.
22A-JV-2144

Appeal from the Allen Superior
Court

The Honorable Andrea R. Trevino,
Judge

Trial Court Cause No.
02D07-2203-JD-216

Brown, Judge.

- [1] K.T. appeals the trial court’s order awarding wardship of him to the Indiana Department of Correction (the “DOC”) for housing in a correctional facility for children. We affirm.

Facts and Procedural History

- [2] On March 5, 2022, K.T.’s father confronted K.T., who was born in May 2007, about an empty wallet and money he had found and told him he was going to keep the money. K.T. became very upset. When K.T.’s father turned to walk down the hall, he heard two gunshots, felt pain in his upper back and shoulder, thought he heard two more gunshots, and saw K.T. run out the front door. K.T.’s father suffered a gunshot wound to the upper left shoulder.
- [3] On March 8, 2022, the State filed a request for authorization to file a petition alleging that K.T. was a delinquent. In a Detention Review Order dated March 8, 2022, the court authorized the State to file a delinquency petition and ordered K.T. into temporary secure detention at the Allen County Juvenile Center (the “ACJC”).
- [4] On March 15, 2022, the State alleged that K.T. committed delinquent acts on or about March 5, 2022, which if committed by an adult would constitute aggravated battery as a level 3 felony, carrying a handgun without a license as a class A misdemeanor, criminal recklessness as a level 5 felony, and battery by means of a deadly weapon as a level 5 felony.

- [5] In an order titled Initial Hearing Order dated March 16, 2022, the court found that K.T. denied the allegations, continued his placement at the ACJC, and scheduled a factfinding hearing.
- [6] On July 11, 2022, the court found that K.T. admitted to the acts which if committed by an adult would constitute carrying a handgun without a license as a class A misdemeanor and criminal recklessness as a level 5 felony and dismissed the other allegations. The court entered judgment that K.T. was a delinquent child and set the matter for a dispositional hearing.
- [7] On August 11, 2022, the court held a dispositional hearing. Probation Officer Tadd Hettinger stated that K.T. had thirty-two write-ups “through his whole stay [during] detention.” Transcript Volume II at 9. He stated that K.T.’s behavior had improved slightly but he still had numerous write-ups. He also indicated that Probation recommended that K.T. be committed to the DOC.
- [8] On August 11, 2022, the court entered a dispositional order taking judicial notice of the record and incorporated the findings, conclusions, reasons, and recommendations in the ACJC Court Report dated August 8, 2022, the Pre-Dispositional Report dated August 10, 2022, the Placement Board Staffing Report dated August 8, 2022, and the Psychological Evaluation dated August 2, 2022, that were “consistent with the findings, conclusion and orders set forth hereinafter.” Appellant’s Appendix Volume III at 39. The court found:

1. The act committed by the juvenile would constitute a felony if committed by an adult.

2. The juvenile minimizes delinquent behavior.
3. The juvenile must learn the logical and natural consequences of delinquent behavior.
4. The juvenile is in need of rehabilitation and will benefit from a highly structured environment.
5. The parent has little control over juvenile's behavior.
6. The juvenile is a danger to the community.
7. The Court also finds that the disposition set forth hereinafter is appropriate due to the seriousness of the offense.
8. The Court finds that the juvenile is in danger of reaching 18 years of age without a high school diploma or high school equivalency (HSE) diploma certificate. The Court finds that the juvenile is significantly behind in accumulated high school credits and is not on course to graduate from high school. The Court finds that the juvenile has been offered numerous education opportunities. The Court finds that the juvenile's educational advancement requires the highly structured environment provided by the [ACJC].
9. Probation and/or community services have been exhausted and/or will be ineffective to effectuate the juvenile's care, treatment and rehabilitation.
10. The juvenile's IYAS score shows that the juvenile is at a high risk to reoffend.
11. The Psychological Test Report recommends commitment to the [DOC].
12. It is the unanimous recommendation of the Placement Board that the juvenile be committed to the [DOC].

Id. at 39-40. The court awarded wardship of K.T. to the DOC for housing in a correctional facility for children.

Discussion

[9] K.T. asserts that the court abused its discretion in awarding wardship to the DOC. He does not contest the trial court's findings of fact and challenges only whether the findings support the judgment. He contends that he was only fourteen years old at the time of the delinquent acts, he had no prior juvenile delinquent adjudications, and it was possible he may have responded to the structure of the Electronic Monitoring Program. He asserts the court should have placed him in the Electronic Monitoring Program first to determine if he could succeed. He contends that only five of the disciplinary reports he received during his detention were of a serious nature.

[10] 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). Ind. Code § 31-37-18-6 provides:

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.

We will not reverse the court's disposition absent a showing of an abuse of discretion, which occurs if its actions are clearly against the logic and effect of the facts and circumstances or the reasonable inferences that can be drawn from them. *R.H. v. State*, 937 N.E.2d 386, 388 (Ind. Ct. App. 2010).

[11] The record reveals that the ACJC Court Report dated August 8, 2022, asserted that K.T. had "seven disciplinary reports on file to date, since his last court report dated July 6, 2022," including three reports where he "wanted to remain in his room and not join the general population," two reports where he argued "with two different residents and had to be separated," and two reports for contraband. Appellant's Appendix Volume III at 24. It stated that "[s]taff working [K.T.'s] unit state his overall behavior has been ok" and "[h]e has shown improvements since his last court report." *Id.* The August 8, 2022 Placement Board Staffing Report concluded: "RECOMMENDATION: Unanimous Recommendation for Commitment to the [DOC] (6-0 votes)." *Id.* at 37.

[12] The Pre-Dispositional Report dated August 10, 2022, which was signed by Probation Officer Hettinger, indicated that K.T.'s father found an empty wallet and twenty dollars, confronted K.T., and K.T. shot him in the back. The report

indicated that K.T.'s father had stated that K.T. came to stay with him because K.T.'s mother was not able to handle him. It stated that K.T. "was stealing, leaving the house without permission, and . . . not attending school." *Id.* at 33. The report referenced the August 8, 2022 ACJC report and noted that the seven incident reports at the ACJC since the prior hearing was an improvement in his behavior as he previously received twenty-five disciplinary reports, five of which were for inappropriate behavior in the ACJC school setting. It stated that a psychological assessment was completed on August 1, 2022, which identified K.T. as having features of "Conduct Disorder, Persistent Depressive Disorder, Cannabis Use Disorder, Attention-Deficit/Hyperactivity Disorder, and Alcohol Use Disorder" and recommended that K.T. be committed to the DOC which would allow him to participate in and benefit from the therapeutic and educational services offered there. *Id.* at 32. It referenced the Indiana Youth Assessment System and stated that K.T.'s "overall risk assessment score puts the youth in the **High** risk category to reoffend." *Id.* at 33. It observed that "[p]lacement" and probation were not considered options due to the serious nature of the offenses, relative care was not an option because there was no fit or willing relative to take custody, and a commitment to the DOC was considered an appropriate option because it would provide the structure and supervision K.T. would need to complete treatment. *Id.*

[13] Under the circumstances as described above and in the record, we conclude the placement ordered by the court is consistent with K.T.'s best interest and the safety of the community and find no abuse of discretion.

[14] For the foregoing reasons, we affirm the court's order.

[15] Affirmed.

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