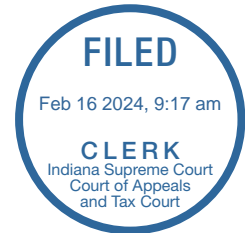


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

A.D.,

Appellant-Respondent

v.

State of Indiana,

Appellee-Petitioner

February 16, 2024

Court of Appeals Case No.
23A-JV-1683

Appeal from the Elkhart Circuit Court

The Honorable Mary Beth Bonaventura, Senior Judge

Trial Court Cause No.
20C01-2008-JD-279

Memorandum Decision by Judge Crone
Judges Riley and Mathias concur.

Crone, Judge.

Case Summary

- [1] A.D. was adjudicated a juvenile delinquent for committing conduct that, if he were an adult, would constitute burglary. Thereafter, various placements were attempted, and four modification petitions were filed. Eventually, the trial court held a dispositional hearing and modified A.D.’s placement to the Indiana Department of Correction (DOC) “for housing in any correctional facility for children.” Appealed Order at 3. A.D. appeals, claiming that, because he did not receive aftercare and lacked supervision during the evenings, the trial court abused its discretion in ordering him to the DOC. We affirm.

Facts and Procedural History

- [2] Fourteen-year-old A.D. lived with his mother in Elkhart County in 2020. In late May or early June, A.D., without the owner’s permission, entered a neighbor’s storage trailer and took a television set and an airsoft gun that did not belong to him. On or about June 10, 2020, A.D., again without the owner’s permission, forced open the door of a different trailer, entered it, retrieved Pokémon cards that belonged to A.D., and took additional items that did not belong to him.
- [3] In August 2020, the State filed a delinquency petition alleging that A.D. committed what would constitute level 5 felony burglary and class A misdemeanor theft if committed by an adult. At a hearing in October, A.D. admitted both alleged acts. The trial court adjudicated and closed the theft case, adjudicated the burglary, placed A.D. on probation, and ordered various

therapies, programs, and case management. A.D. executed an electronic monitoring contract.

[4] By mid December 2020, A.D. had accessed the internet without supervision, regularly watched pornography, possessed toy guys, carved knives from wood, broken the tips from kitchen knives, punched a hole in a wall during an argument with his mother, failed to charge his electronic monitoring device, and pried the lock off a door in the home. As such, the probation department filed a modification report alleging probation violations and requesting that A.D. be placed in the county's juvenile detention center. The trial court found that probation was violated, ordered that A.D. remain in the juvenile detention center, and required that the probation department seek residential placement. Bashor Children's Home (Bashor) agreed to placement.

[5] In mid February 2021, A.D. moved into Bashor. In early April 2021, A.D. attended a group outing to Walmart, where he took approximately \$70 worth of merchandise without paying for the items. Later that month, A.D. broke into his mother's trailer and took property that he had no permission to take. A.D. was charged with class A misdemeanor theft and level 5 felony burglary if committed by an adult. In June 2021, the probation department filed another modification report. In July 2021, the trial court held a hearing, found that A.D.'s two new offenses constituted probation violations, and continued A.D.'s placement at Bashor. At a December 2021 hearing, discussion was had regarding releasing A.D., upon successful completion of the Bashor program, to his grandmother (Grandmother) in Michigan. A May 2022 order confirmed

that plan, noting that upon placement with Grandmother, probation supervision would be transferred to Michigan “through the Interstate Compact.” Appellant’s App. Vol. 2 at 155.

- [6] A.D. finished the Bashor program in August 2022 and went to live with Grandmother and her significant other in Michigan. By October 2022 and into November, A.D. was not following rules in Grandmother’s home, was not completing homework, had lost school laptop privileges due to inappropriate conduct, was accessing pornography, and was being investigated in Michigan for possible sexual assault and sexual harassment. Tr. Vol. 2 at 115-20. Michigan accepted transfer in early December 2022. A.D. was placed on electronic monitoring through Michigan due to a new case within that state.
- [7] In mid March 2023, then-seventeen-year-old A.D. cut off his electronic monitoring band and left Grandmother’s home without her permission. On March 20, 2023, Elkhart County’s probation department filed a modification report, which stated that A.D. continued to struggle with his behaviors, noted that his whereabouts were unknown, and recommended that he be placed in secure detention.
- [8] In June 2023, A.D. was found in Madison County, Indiana. At that time, outstanding warrants had been issued from Michigan and Indiana. A.D. was arrested, and he tested positive for cocaine. He was transported to Elkhart County, where he was held at the juvenile detention center. Another modification petition was filed, this time alleging that A.D. was failing to obey

the interstate compact terms and conditions, was failing to attend school, was failing to follow home rules, had left Michigan without permission, and had tested positive for cocaine. The probation department requested that A.D. be found in violation of probation, be made a ward of the DOC, remain in secure detention until transported to the DOC, and be “dishonorably discharged from juvenile probation and this case closed.” Appellant’s App. Vol. 2 at 213. After holding a hearing on the matter, the trial court issued a four-page order granting the petition.

[9] A.D. appeals.

Discussion and Decision

[10] A.D. asserts that modifying wardship to the DOC was an abuse of the trial court’s discretion because the “juvenile system failed” him. Appellant’s Br. at 22. The disposition of a juvenile adjudicated a delinquent is a matter committed to the trial court’s discretion, subject to the statutory considerations of the child’s welfare, community safety, and the policy favoring the least harsh disposition. *R.H. v. State*, 937 N.E.2d 386, 388 (Ind. Ct. App. 2010); *see also* Ind. Code § 31-37-18-6. We review the trial court’s dispositions and modification thereof for an abuse of discretion, which occurs if its decision is clearly against the logic and effect of the facts and circumstances before it or the reasonable inferences that may be drawn therefrom. *R.H.*, 937 N.E.2d at 388; *see also K.A. v. State*, 775 N.E.2d 382, 387 (Ind. Ct. App. 2002) (applying abuse of discretion standard where juvenile challenged modification of placement to DOC

following her violation of terms of suspended commitment), *trans. denied*. In determining whether a trial court has abused its discretion, we do not reweigh evidence or judge witness credibility. *J.S. v. State*, 110 N.E.3d 1173, 1175 (Ind. Ct. App. 2018), *trans. denied* (2019).

[11] In arguing that he should be ordered back to Bashor, A.D. contends that he had not received the aftercare ordered by the trial court and that he lacked supervision in Grandmother's home in the evenings. More broadly, he seems to present a policy argument for an ideal, comprehensive aftercare system that would begin prior to a delinquent offender's release from a residential facility, include intensive intervention and/or treatment while the juvenile was in the facility, prepare the juvenile with needed tools, and seamlessly segue into additional services and constant supervision for the juvenile's first six months outside the facility. This, A.D. argues, would lower the odds of a recurrence of antisocial behavior and increase the odds of a successful reintegration into a community.

[12] We do not disagree with the description of a perfect juvenile system that would do everything possible to support and transform children who have made mistakes into healthy, hardworking, law-abiding adults. However, the judicial branch must work within the legislative framework and the confines of everyday realities. Indiana Code Section 31-37-18-6 sets forth the following factors that a trial court must consider when entering a dispositional decree:

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.

Importantly, although the statute generally requires that the juvenile court choose the least restrictive placement, there are certain circumstances that justify a more restrictive placement. *M.C. v. State*, 134 N.E.3d 453, 459 (Ind. Ct. App. 2019), *trans. denied* (2020), *cert. denied*. The statute requires placement in the least restrictive setting only if it is consistent with the child's best interest and community safety. *Id.* Although wardship to the DOC is the most restrictive option, DOC placement is warranted when it is found necessary to

prevent the juvenile “from continuing to commit acts that are harmful to himself and the community.” *Id.*

[13] Here, in its dispositional decree, the trial court found that a body attachment was issued for A.D. when he ran away, that A.D. tested positive for cocaine, and that A.D. admitted being around others who were “smoking crack.”
Appealed Order at 1. The court also found that A.D., while on electronic monitoring, failed to participate in counseling, failed to attend school, failed to comply with interstate compact conditions, and received new delinquency referrals in Michigan. Additionally, the trial court found that Grandmother had concerns that A.D. would run from Bashor and that A.D. was associated with gang members. Even A.D. described being in “very dangerous situations that place both himself and the community at risk.” *Id.* at 2.

[14] The dispositional decree also noted A.D.’s four prior delinquent acts and outlined more than a dozen services that had been provided. The services included probation, prohibitions from social media and the internet, placement with A.D.’s mother, assessments, therapies, programs, interstate compact, electronic monitoring, seventeen months at Bashor residential with its attendant counseling and treatments, juvenile detention center, and placement with Grandmother. In granting the modification petition at issue, the trial court reasoned that community resources had been exhausted, that A.D.’s behavior “is dangerous to himself and the community and therefore requires the most restrictive placement available to the Court,” that placement with the DOC is in A.D.’s best interest because it will give him “the opportunity for more intensive

rehabilitation in a secure setting,” and that A.D. “has engaged in repetitive or serious misconduct warranting” commitment in the DOC. *Id.* at 3-4.

[15] Ordering a juvenile to the DOC is not a decision that judges relish or take lightly. However, as our detailed recitation of the facts reveals, this was not A.D.’s first foray into delinquent behavior, nor was this the first attempt to provide services designed to alter his path. Despite the variety of graduated disciplinary and rehabilitative measures, A.D.’s behavior continued a downward trend, eventually reaching the point where even he realized that it was dangerous and risky to himself and others. It is true that Michigan did not immediately accept transfer of A.D., that services did not begin overnight, and that Medicaid benefits that would pay for services took time to be established. It is also true that the only relative willing to take A.D. was his grandmother in Michigan. Yet, phone calls were made, applications were completed, and various efforts were put forth to set the wheels in motion for continued services. Hearing all the evidence, the trial court still concluded that placement with the DOC was in A.D.’s best interest once he was eventually located and tested positive for cocaine.

[16] Given A.D.’s numerous transgressions and despite the various attempts to assist him, we conclude that the trial court’s decision to place A.D. with the DOC was not against the logic and effect of the facts and circumstances before the court and was, therefore, within the trial court’s discretion. *See C.C. v. State*, 831 N.E.2d 215, 218-19 (Ind. Ct. App. 2005) (observing that juvenile’s repeated involvement with juvenile justice system and repeated failures at rehabilitation

efforts, coupled with failure to alter behavior despite several placements, supported grant of wardship to DOC). To conclude otherwise would be to impermissibly reweigh the evidence, which we will not do. In reaching our conclusion, we cannot say that the juvenile system failed A.D. Indeed, it functioned as best as it could when faced with the inevitable extra layers of complexity created by the necessity of an out-of-state relative placement. The trial court's placement of A.D. with the DOC is consistent with his best interest and the safety of the community, and therefore we affirm the disposition.

[17] Affirmed.

Riley, J., and Mathias, J., concur.

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