MEMORANDUM DECISION

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IN THE

Court of Appeals of Indiana

T.T.,

Appellant-Respondent

v.

State of Indiana,

Appellee-Petitioner

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Court of Appeals Case No.
23A-JV-1985

Appeal from the Clark Circuit Court

The Honorable Vicki L. Carmichael, Judge

Trial Court Cause No.
10C04-2206-JD-110

Memorandum Decision by Judge Crone
Judges Bailey and Pyle concur.

Crone, Judge.

Case Summary

[1] T.T. appeals the dispositional order that placed him in the youth center of the Indiana Department of Correction (DOC). We affirm.

Facts and Procedural History

[2] In June 2022, fourteen-year-old T.T. was on probation for other adjudications when he allegedly committed what would be, if he were an adult, seven felony offenses. These allegations included robbery while armed with a deadly weapon, intimidation with a deadly weapon, and strangulation. Appellant's App. Vol. 2 at 3. A July 2022 initial hearing addressed whether T.T. should be released or held in custody. His mother stated that as a full-time worker and "single mother of four" children, she would not be able to provide twenty-four hour supervision of T.T. Tr. Vol. 2 at 6. Given the serious allegations plus the probation violation, T.T.'s probation officer recommended that T.T. remain in detention for his, and the community's, safety. The trial court agreed.

[3] In August 2022, a deal was reached whereby T.T. admitted to conduct that, if he were an adult, would constitute class A misdemeanor dangerous possession of a firearm. In exchange, the State dismissed the other allegations. It was agreed that T.T. would serve sixty days in the county juvenile detention center and a year of probation. Toward the end of the hearing, the prosecutor encouraged T.T. that he was "smart, personable," and could "do better." *Id*. at

20. However, she also warned him that future charges could lead to more serious repercussions.

[4] In May 2023, the State alleged new probation violations including positive test results for fentanyl and THC. T.T.'s mother felt that he was "at a risk for overdose" and was "worried that if he doesn't stay somewhere where he can't be in contact" with certain people, she might lose her son. *Id*. at 22. There was also concern that he was missing school. The probation department recommended that T.T. continue in the juvenile detention center "for the safety of himself and the community." *Id.* at 21. Based upon the allegations as well as the concerns voiced by T.T.'s mother and the probation department, the trial court found that "secure detention remains essential" and that "continuation in the home is contrary to the safety and welfare of" T.T. *Id*. at 22.

[5] In June 2023, T.T. admitted failing a drug test, which violated his probation. The trial court ordered that T.T. stay in detention until a hearing could be had in July. However, on June 11, 2023, T.T. was released to have an appendectomy. Following surgery that day, T.T. was sent home. In late June, T.T. tested positive for an "extremely high" level of fentanyl and was taken into custody. *Id.* at 31. T.T.'s probation officer prepared a predispositional report. In early July 2023, the trial court held a hearing regarding whether T.T. should remain in custody or be released pending the disposition hearing. The trial court ordered that he be detained "to protect [T.T.] or the community." *Id*. at 33.

[6] At the July 24, 2023 dispositional hearing, T.T.'s probation officer listed the services that had been provided starting as early as 2019; these included interviews, assessments, programs, therapy, counseling, and detention. A July 2023 report by social worker Maja Reuter recommended that T.T. be placed in "inpatient rehabilitation." *Id*. at 39. T.T.'s case manager "[a]bsolutely" agreed with the recommendation for inpatient rehabilitation. *Id*. at 70. The probation officer testified that she had reached out to many rehabilitation facilities. She found that none would take T.T., and she explained that "due to his physical aggression and his criminal history, secured detention was the recommendation" from the facilities. *Id.* at 37. T.T.'s mother testified that he had been dismissed from various schools for "being a danger." *Id.* at 58. T.T.'s mother also stated that she "had called over forty" facilities in the prior three months and found nothing. *Id.* at 59. Although she had concerns about T.T. associating with certain people, T.T.'s mother requested house arrest so that he could do educational credit recovery and work. At the hearing, Reuter equivocated as to her earlier inpatient rehabilitation recommendation. Ultimately, the probation officer recommended that T.T. be ordered to the juvenile center of the DOC, which could provide rehabilitation as well as education within a secure environment.

[7] At the conclusion of the dispositional hearing, the trial court "enter[ed] Disposition of the [DOC] Youth Division" and explained its reasoning as follows:

> So, based upon the Court's review of the Pre-Dispositional Report, as well as the Juvenile's Brief, and the mother's recommendation, [T.T.], my concern is for your well-being. My concern is that we've seen you [since] you were twelve (12) years old, and that things have continued to escalate, that the services that have been offered have not been sufficient, have not changed your behavior. The continued drug use, specifically, fentanyl, is going to cause you problems. You're going to die. Period. If you keep using, that's what happens. I mean, I think we've been trying since you were twelve (12) to put you on the right track and nothing is working. You know, I appreciate that mom has made every effort to put something in place that she thinks is going to work, but while you were waiting on disposition, waiting for this Court to make a decision, you continued to use. You were released for a medical emergency and you continued to use. That's behavior that this Court will not tolerate, does not tolerate. So, the Court is going to find that the probation recommendation of placement at the [DOC] Youth Division is the least restrictive alternative at this time. That other efforts have been made to prevent such a placement. That every facility that was requested to look at your case, to take you in, has rejected it, saying you need a more secure facility, that you need that kind of environment to get you on the right track. … Your stay at the [DOC] Youth Division is really dependent upon your behavior and your willingness to engage in services, and therapy, and treatment, and school. And they will send periodic reports to the Court. When you are released, you will probably be placed on probation until your eighteenth (18th) birthday because we're going to keep tabs on you.

Id. at 72-74.

[8] The resulting written order "award[ed] wardship of T.T. to the [DOC] for housing in any correctional facility for children." Appealed Order at 2. T.T. appeals.

Discussion and Decision

[9] T.T. challenges his commitment to the DOC. The trial "court is accorded wide latitude and great flexibility in its dealings with juveniles." *M.C. v. State*, 134 N.E.3d 453, 458 (Ind. Ct. App. 2019), *trans. denied* (2020), *cert. denied*. Thus, we will reverse the court's choice of the specific disposition of a juvenile adjudicated a delinquent child only for an abuse of discretion. *Id.* The trial court abuses its discretion when its "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." *Id.* The "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." *Id.* 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).

[10] The choice of an appropriate disposition is governed by Indiana Code Section 31-37-18-6, which provides as follows:

> 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.

[11] The statute "states that placement in the least restrictive setting is required only "[i]f consistent with the safety of the community and the best interest of the child." *R.H. v. State*, 937 N.E.2d 386, 391 (Ind. Ct. App. 2010) (quoting Ind. Code § 31-37-18-6). "Thus, the statute recognizes that in certain situations the best interest of the child is better served by a more restrictive placement." *J.S. v. State*, 881 N.E.2d 26, 29 (Ind. Ct. App. 2008).

[12] T.T. argues that the trial court abused its discretion by placing him with the DOC. For support, he relies heavily upon the social worker's recently changed opinion as well as an assessment tool that labeled him at low risk of reoffending. In addition, T.T. focuses upon a brief comment made by the prosecutor during her closing statement. She referred to T.T.'s mother's efforts, to cobble together a situation that might meet his needs when no inpatient facility would take him, as "good plans." Tr. Vol. 2 at 71. T.T. also questions the idea that safety was an issue.

[13] Reuter, the social worker, originally recommended in her report inpatient treatment for T.T. However, she admitted during testimony that her original recommendation was based upon assessments that were unfinished due to T.T.'s arrest. A few weeks later, at the dispositional hearing, she altered her recommendation to outpatient treatment, explaining, "I also want to be clear that it's not that my opinion has changed, it's that there's a standard and criteria that I have to follow" that concerns when the last substance use happened. *Id.* at 55. T.T.'s detention-induced sobriety, past drug use at home, and association with the types of people that T.T.'s mother worried about, did not factor into Reuter's altered recommendation. Given these shortcomings plus the caveats acknowledged by Reuter, the trial court was well within its discretion to view Reuter's newly changed recommendation with skepticism.

[14] As of June 12, 2023, when the predispositional report was prepared, T.T.'s overall risk assessment score, according to the Indiana Youth Assessment System-Disposition Tool (IYAS-DIS), put him in the "[l]ow risk category to reoffend." Appellant's App. Vol. 2 at 17, 23. This low risk score was based upon an assessment that occurred prior to T.T.'s release from detention for an appendectomy and prior to his ensuing positive test result for an "extremely high" level of fentanyl. Tr. Vol. 2 at 31. In considering the IYAS-DIS, we are guided by our supreme court's instruction on similar assessments in the context of criminal cases:

> The results of an LSI-R or SASSI assessment are not in the nature of, nor do they provide evidence constituting, an

> aggravating or mitigating circumstance. In considering and weighing aggravating and mitigating circumstances shown by other evidence, however, *trial courts are encouraged to employ evidence-based offender assessment instruments*, including, where appropriate, the LSI–R or SASSI, *as supplemental considerations in crafting a penal program tailored to each individual defendant*.

Malenchik v. State, 928 N.E.2d 564, 575 (Ind. 2010) (emphases added). That is to say, assessments, while helpful, are not determinative. Rather, trial courts should utilize these instruments as supplemental considerations in crafting an appropriately tailored placement.

[15] Here, it is understandable that the trial court would weigh other factors more strongly than what turned out to be a questionable IYAS-DIS assessment score. Indeed, the trial court was faced with a fifteen-year-old whose record already included a dozen prior delinquency adjudications over the course of just a few years. T.T.'s transgressions ranged from leaving home without permission and habitual disobedience of parent, guardian, or custodian, to battery resulting in bodily injury, theft of a firearm, pointing a firearm, criminal recklessness by shooting a firearm into a building, auto theft, operating a vehicle without ever receiving a license, leaving the scene of an accident, and possessing a firearm with a previous adjudication. Appellant's App. Vol. 2 at 19-20. With that history, combined with the recent positive test of a high level of a potentially lethal drug, it is hardly a stretch to conclude that T.T.'s and the community's safety were at risk if he continued in an unsecure placement.

[16] As for T.T.'s mother's proposal to keep her son at home, the prosecutor's characterization of it as a good plan was neither inaccurate nor inconsistent with the trial court's dispositional order. T.T.'s mother had set him up to begin credit recovery for his education needs, secured a job for him, installed two cameras in her home, and arranged for more possible supervision when she was at work. Her efforts were commendable. However, many other services had already been offered, and they were all to no avail. Those unsuccessful services, the inpatient rehabilitation recommendations, and T.T.'s serious prior history with offenses and drugs convince us that the trial court's decision to place T.T. 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 D.S. v. State*, 829 N.E.2d 1081, 1086 (Ind. Ct. App. 2005) (affirming placement with DOC where child failed to respond to "numerous less restrictive alternatives already afforded to him"); *K.A. v. State*, 775 N.E.2d 382, 387 (Ind. Ct. App. 2002) (affirming placement with DOC where prior placements had proven unsuccessful and child had been given several chances to reform her behavior), *trans. denied*. To conclude otherwise would be to impermissibly reweigh the evidence, which we will not do. The trial court's placement of T.T. with the DOC is consistent with his best interest and the safety of the community, and therefore we affirm the disposition.

[17] Affirmed.

Bailey, J., and Pyle, J., concur.

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