ATTORNEY FOR APPELLANT:

ELIZABETH A. GABIG
Marion County Public Defender
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ELLEN H. MEILAENDER
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF F.M.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0603-JV-243
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Ann Moores, Judge
The Honorable Geoffrey Gaither, Magistrate
Cause No. 49D09-0512-JD-5266

November 30, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, F.M., appeals the trial court's decision to commit him to the Department of Correction based on its adjudication of him as a delinquent.

We affirm.

ISSUE

F.M. raises one issue on appeal, which we restate as: Whether the trial court abused its discretion in ordering F.M. to be committed to the Department of Correction for six months.

FACTS AND PROCEDURAL HISTORY

On September 16, 2005, F.M., sixteen years old, broke and entered into the residence of Donita Miller and removed property, including a gun belt and service revolver.[1] In October of 2005, F.M. was detained and the State filed a delinquency petition, charging F.M. with burglary, a Class B felony, Ind. Code § 35-43-2-1, and theft, a Class D felony, I.C. § 35-43-4-2. While this cause was pending, F.M. was released on the condition of electronic monitoring.

On December 6, 2005, while still subject to electronic monitoring, F.M., along with several other individuals, broke and entered the residence of Evelyn Bushrod and removed property. As a result, on December 8, 2005, the State filed a delinquency petition alleging that F.M. committed five counts of burglary and four counts of theft, offenses that would be Class B and D felonies, respectively, if F.M. were an adult. I.C. §§ 35-43-2-1, 35-43-4-2. The additional counts of burglary and theft arose from

[1] The record indicates that Donita Miller is a police officer, and that the revolver taken by F.M. was never recovered.

allegations that F.M. broke and entered into several other residences on December 6, 2005, removing property from them as well – including electronics, jewelry, credit cards, and another handgun. At the time this delinquency petition was filed, the State requested a waiver of juvenile jurisdiction, asking that F.M. be tried as an adult.

On January 17, 2006, F.M. and the State entered into a plea agreement whereby F.M. pled guilty to one count of burglary in the first cause, and one count of burglary in the second cause, both Class B felonies. In exchange for pleading guilty, the State dismissed the remaining counts against F.M. in both pending causes and dismissed its request for a waiver of juvenile jurisdiction. On February 16, 2006, a dispositional hearing was held and the trial court committed F.M. to the Department of Correction for six months, ordered F.M. to participate in counseling and ordered him to complete a vocational or GED program.

F.M. now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

F.M. argues that the trial court improperly sentenced him to six months in the Department of Correction. Specifically, F.M. contends that the trial court erred in failing to consider the factors within Ind.Code § 31-37-18-6 and the potential benefits of placing F.M. in a community corrections program where he could participate in counseling and rehabilitation.

Determining the disposition of a juvenile is within the sound discretion of the trial court "subject to the statutory considerations of the welfare of the child, the community's safety, and the Indiana Code's policy of favoring the least harsh disposition." *E.H. v.*

State, 764 N.E.2d 681, 684 (Ind. Ct. App. 2002), *reh'g denied, trans. denied*. A juvenile disposition will not be reversed absent a showing of an abuse of discretion. *Id*. A juvenile court abuses its discretion if 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 deductions to be drawn therefrom. *Id*.

I.C. § 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 restrain 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.

Without question, I.C. § 31-37-18-6 requires the trial court to select the least restrictive placement in most situations. However, the statute contains language indicating that under certain circumstances a more restrictive placement might be appropriate. *K.A. v. State*, 775 N.E.2d 382, 386-87 (Ind. Ct. App. 2002), *trans. denied*. That is, the statute requires placement in the least restrictive setting only "[i]f consistent with the safety of the community and the best interest of the child." I.C. § 31-37-18-6;

see also M.R. v. State, 605 N.E.2d 204, 208 (Ind. Ct. App. 1992) (noting that, while commitment to the Indiana Boys School "should be resorted to only if less severe dispositions are inadequate, there are times when such commitment is in the best interests of the juvenile and society in general").

While we have previously ruled, under certain circumstances, that a trial court's commitment of a juvenile to the Department of Correction is overly harsh, we do not believe such punishment is overly harsh in F.M.'s case. *See D.P. v. State*, 783 N.E.2d 767, 769 (Ind. Ct. App. 2003), *reh'g denied*. In the instant case, the record reveals that in a three-month period, F.M. broke and entered the residences of more than five individuals and families, removing property from all of them. During a majority of these break-ins, F.M. already had a delinquency petition pending against him for previous burglary and theft charges, and was on electronic monitoring. Therefore, F.M.'s argument that the trial court could have restrained F.M. adequately by placing him on electronic monitoring rather than committing him to the Department of Correction holds little value.

In addition, we note the record's reflection that at the dispositional hearing, the trial court iterated strong grounds for F.M.'s commitment to the Department of Correction by emphasizing the similarity and the seriousness of the offenses that F.M. committed. As highlighted by the trial court at F.M.'s plea hearing, if F.M. was an adult and the State had not offered its lenient plea agreement, F.M. could have received a sentence of up to 135 years. Furthermore, the record discloses that earlier in 2005, F.M. had a juvenile adjudication for possession of marijuana. Thus, because F.M.'s misconduct has been repetitive and serious, we cannot find that the trial court erred in

placing F.M. in a more restrictive setting. *See id*. (discussing the decision of *In re Ort*, 407 N.E.2d 1162, 1164-65 (Ind. Ct. App. 1980), where we upheld the trial court's commitment of a juvenile to the Department of Correction because of repeated offenses, some of which were "not minor"). Moreover, we cannot find any merit in F.M.'s argument that commitment to the Department of Correction impacted his ability to receive counseling and rehabilitation, as the record clearly shows that the trial court ordered F.M. to continue his educational program and individual counseling while in the Department of Correction.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion in ordering F.M. to be committed to the Department of Correction for six months.

Affirmed.

BAILEY, J., and MAY, J., concur.