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IN THE COURT OF APPEALS OF INDIANA

D. T.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0703-JV-234
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Geoffrey Gaither, Magistrate
Cause No. 49D09-0512-JD-5351

December 13, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

D.T. appeals the dispositional order of the juvenile court following his admission to an act that would be escape as a class D felony[1] if committed by an adult. D.T. raises one issue, which we revise and restate as whether the juvenile court abused its discretion when it made him a ward of the Indiana Department of Correction ("DOC") and recommended that he be committed to the DOC. We affirm.

The relevant facts follow. D.T. was born on June 13, 1989. He has been diagnosed as "Mildly Mentally Handicapped, with a full scale I.Q. of 65." Appellant's Appendix at 23. On December 11, 2005, D.T. was released by the juvenile court on an electronic monitoring device and advised to stay at his residence. That same day, angry that Child Protective Services had removed his daughter after an incident arising in his home, he removed the electronic monitor without permission and left home. He knew that leaving home was a violation and would result in new charges being filed but nonetheless stayed at a friend's house for several months. The State alleged that he was delinquent for an act that would be escape as a class D felony if committed by an adult. On June 20 2006, D.T. admitted to the allegation, and the State dismissed additional allegations, arising from other incidents, of violation of suspended commitment, criminal trespass[2] and fleeing law enforcement[3] as class A misdemeanors if committed by an

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[1] Ind. Code § 35-44-3-5(b) (2004).

[2] Ind. Code § 35-43-2-2 (2004).

[3] Ind. Code § 35-44-3-3 (2004) (subsequently amended by Pub. L. No. 143-2006, § 2 (eff. July 1, 2006)).

adult, and possession of marijuana or hash oil or hashish as a class A misdemeanor[4] if committed by an adult.

The juvenile court continued the dispositional hearing to October 31, 2006, and then to November 14, 2006, in part to give D.T. the opportunity to cooperate fully with the Department of Child Services. When D.T. failed to appear at the hearing on November 14, 2006, the court issued a detention order for him. After a final dispositional hearing on February 5, 2007, the juvenile court entered true findings and adjudicated D.T. to be a delinquent child for committing an act that would be escape as a class D felony if committed by an adult. Following the recommendation of the probation department, the juvenile court awarded wardship of D.T. to the DOC for housing in a correctional facility for children until the age of twenty-one, unless sooner released by the DOC, and recommended that D.T. be committed to the DOC for a period of six months, complete individual counseling, and complete a vocational or GED program.

The sole issue is whether the juvenile court abused its discretion when it made D.T. a ward of the DOC and recommended a commitment of six months to the DOC. D.T. contends that the juvenile court abused its discretion because wardship is not the least restrictive statutory alternative and is not in his best interests, given his low I.Q. and his wish to maintain a relationship with his daughter. He further notes that the felony for

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[4] Ind. Code § 35-48-4-11 (2004).

which he was adjudicated a delinquent is nonviolent and therefore does not implicate the safety of the community.

The choice of a specific disposition of a juvenile adjudicated a delinquent child is within the sound discretion of the juvenile 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. C.T.S. v. State, 781 N.E.2d 1193, 1202 (Ind. Ct. App. 2003) (quoting E.H. v. State, 764 N.E.2d 681, 684 (Ind. Ct. App. 2002), trans. denied), trans. denied. We will not reverse a juvenile disposition absent a showing of an abuse of discretion. Id. "An abuse of discretion occurs when the [juvenile] court's 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. (quoting E.H., 764 N.E.2d at 684).

The statutory scheme for dealing with juveniles who commit illegal acts is vastly different from the statutory scheme for sentencing adults who commit crimes. Id. "American society [has] rejected treating juvenile law violators no differently from adult criminals in favor of individualized diagnosis and treatment." Id. (quoting State ex rel. Camden v. Gibson Circuit Court, 640 N.E.2d 696, 697 (Ind. 1994)). Indiana has a well-established policy of ensuring that "children within the juvenile justice system are treated as persons in need of care, protection, treatment, and rehabilitation." Id.

A juvenile court has wide latitude and great flexibility in dealing with juveniles; however, its goal is to rehabilitate rather than to punish. Id. at 1203. Ind. Code § 31-37-

18-6 provides a list of factors that the juvenile court must consider in entering a dispositional decree. Id. The statute 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.

Ind. Code § 31-37-18-6.

Although less harsh options than commitment to an institution are available for the juvenile court to use, "there are times when commitment to a suitable public institution is in the 'best interest' of the juvenile and of society." D.S. v. State, 829 N.E.2d 1081, 1085 (Ind. Ct. App. 2005) (quoting S.C. v. State, 779 N.E.2d 937, 940 (Ind. Ct. App. 2002), trans. denied). Stated differently, the law requires only that the disposition selected be the least restrictive disposition that is "consistent with the safety of the community and the best interest of the child." Id.; see Ind. Code § 31-37-18-6.

Here, the juvenile court's dispositional order stated as its bases for disposition that: (1) D.T. has a prior history of delinquent activity and true findings; (2) previous dispositional alternatives had been exercised (docket fee, probation, probation fees, probation administrative fees, counseling, community service work, suspended

commitment to DOC, tutoring, home based counseling, formal home detention, informal home detention, electronic monitoring, substance abuse counseling); (3) the delinquent act was not heinous or of an aggravating character; and (4) D.T. is in need of care, treatment, rehabilitation, or placement. It is clear from the transcript of the dispositional hearing that, after reviewing the ineffectiveness of previous dispositional alternatives, the court determined that anything less than making D.T. a ward of the DOC would not be in his best interest.

D.T. relies on D.P. v. State, 783 N.E.2d 767, 770 (Ind. Ct. App. 2003), reh'g denied, for the proposition that "a child's low I.Q. is a circumstance that should be taken into account in determining whether the child should become ward of the DOC." Appellant's Brief at 8-9. In D.P., we held that the decision to award guardianship of defendant to the DOC was "overly-harsh," where the defendant had a full-scale I.Q. of 65, suffered from seizures, and had only one prior contact with the juvenile justice system. 783 N.E.2d at 770. Furthermore, the defendant had successfully completed probation for the earlier misconduct and had "stayed out of trouble for five years." Id. at 770-771. Unlike the defendant in that case, however, D.T. has had numerous contacts with the juvenile justice system, has failed to stay out of trouble, and has not responded to lesser measures.

On December 2, 2002, D.T. was adjudicated a delinquent for an act that would be intimidation as a class A misdemeanor if committed by an adult. On June 16, 2004, he was adjudicated a delinquent for an act that would be resisting law enforcement as a class

A misdemeanor if committed by an adult. He has had true findings for violations of probation. In return for his admitting to the present offense, the State dismissed allegations, arising from other incidents, of violation of suspended commitment, criminal trespass and fleeing law enforcement as class A misdemeanors if committed by an adult, and possession of marijuana or hash oil or hashish as a class A misdemeanor if committed by an adult. D.T. had tested positive for marijuana and cocaine use while placed on suspended commitment. Finally, we note that D.T. failed to appear at a dispositional hearing concerning the present offense, and this failure resulted in the issuance of a detention order.

Given D.T.'s failure to respond to the numerous lesser measures already afforded him, we cannot say that the juvenile court abused its discretion by concluding that its disposition was the least restrictive alternative consistent with the safety of the community and the best interests of the child. Thus, we cannot say that the juvenile court abused its discretion by making D.T. a ward of the DOC and recommending a six month commitment to the DOC. See D.S., 829 N.E.2d at 1086 (holding that in light of defendant's failure to respond to the numerous less restrictive alternatives already afforded to him, the juvenile court did not abuse its discretion in committing him to the DOC).

For the foregoing reasons, we affirm the juvenile court's commitment of D.T. to the DOC.

Affirmed.

RILEY, J. and FRIEDLANDER, J. concur