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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF K. H., )

Appellant-Defendant, )

vs. )

STATE OF INDIANA, )

Appellee-Plaintiff. )

No. 49A05-0701-JV-45

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Marilyn A. Moores, Judge  
The Honorable Geoffrey Gaither, Magistrate  
Cause Nos. 49D09-0608-JD-3241, 49D09-0606-JD-2529 & 49D09-0601-JD-356

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**November 27, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPNACK, Judge**

K.H. appeals the dispositional order of the juvenile court following her admission to acts that would be residential entry as a class D felony<sup>1</sup> if committed by an adult and criminal conversion as a class A misdemeanor<sup>2</sup> if committed by an adult. K.H. raises one issue, which we revise and restate as whether the juvenile court abused its discretion when it made her a ward of the Indiana Department of Correction (“DOC”). We affirm.

The relevant facts follow. K.H. was born on November 15, 1989. Sometime in June 2006, she entered her grandmother’s house with a key but without permission. K.H. subsequently took her grandmother’s car out and “dr[o]ve it around,” resulting in damage to the car. Transcript at 7. The State alleged that she was delinquent for: (1) Count I, committing an act that would be burglary as a class B felony if committed by an adult;<sup>3</sup> (2) Count II, committing an act that would be auto theft as a class D felony if committed by an adult;<sup>4</sup> and (3) Count III, committing an act that would be criminal mischief as a class A misdemeanor if committed by an adult.<sup>5</sup> On November 6, 2006, K.H. admitted to the lesser offenses of residential entry and conversion, and the State dismissed the remaining charges.

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<sup>1</sup> Ind. Code § 35-43-2-1.5 (2004).

<sup>2</sup> Ind. Code § 35-43-4-3(a) (Supp. 2005).

<sup>3</sup> Ind. Code § 35-43-2-1 (2004).

<sup>4</sup> Ind. Code § 35-43-4-2.5 (2004).

<sup>5</sup> Ind. Code § 35-43-1-2 (2004) (subsequently amended by Pub. L. No. 140-2006, § 33 (eff. July 1, 2006) and by Pub. L. No. 173-2006, § 33 (eff. July 1, 2006)).

After a dispositional hearing, the juvenile court entered true findings and adjudicated K.H. to be a delinquent child for committing acts that would be residential entry as a class D felony and conversion as a class A misdemeanor if committed by an adult. The juvenile court declined to follow the recommendation of the probation department that K.H. be put on suspended commitment and electronic surveillance. Instead, it awarded wardship of K.H. 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 K.H. be committed to the DOC for a period of six months.

The sole issue is whether the juvenile court abused its discretion when it made K.H. a ward of the DOC and recommended a commitment of six months to the DOC. K.H. contends that the juvenile court abused its discretion because wardship is not the least restrictive statutory alternative. Specifically, K.H. argues that “commitment to the DOC is not necessary to ensure that [she] receives counseling and her education; home based counseling and an educational program are available to [her], as such, the DOC is not the least restrictive alternative.” Appellant’s Brief at 10.

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 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) K.H. has a prior history of delinquent activity and true findings; (2) previous dispositional alternatives had been exercised (docket fee, probation, probation fees, suspended commitment to Department of Correction, restorative justice, informal home detention, formal home detention, tutoring, and diversion); and (3) K.H. was 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 K.H. a ward of the DOC would not be in her best interest. On February 13, 2006, K.H. was charged with battery of a police officer as a class D felony if committed by an adult, resisting law enforcement as a class A misdemeanor if committed by an adult, and disorderly conduct as a class B

misdemeanor if committed by an adult. K.H. admitted to disorderly conduct and to having violated the suspended sentence from an earlier offense, and the State dismissed the remaining charges. On June 29, 2006, K.H. was charged with theft as a class D felony if committed by an adult. She admitted to the charge and to a violation of her suspended commitment. Within two months, K.H. was charged with the present offenses.

Given K.H.'s failure to respond to the numerous lesser measures already afforded her, 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 K.H. a ward of the DOC and recommending a six month commitment to the DOC.<sup>6</sup> 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 K.H. to the Indiana Department of Correction.

Affirmed.

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<sup>6</sup> K.H. also argues that "the policy of the individual diagnosis and treatment of juvenile offenders would seem best served by implementing the recommendation of the probation officer, who had the best opportunity in this case to carefully tailor a solution for K.H.'s unique, individual situation." Appellant's

RILEY, J. and FRIEDLANDER, J. concur

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Brief at 10. However, the trial court was not required to follow the probation officer's recommendation.